

**City of Cincinnati  
Independent Monitor's  
Eighth Quarterly Report**

**January 14, 2005**

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

Saul A. Green  
Monitor

Richard B. Jerome  
Deputy Monitor

**[www.cincinnati-monitor.org](http://www.cincinnati-monitor.org)**

## **INDEPENDENT MONITOR TEAM**

Saul Green  
Independent Monitor

Richard Jerome  
Deputy Monitor

Joseph Brann

Rana Sampson

Nancy McPherson

John Williams

Timothy Longo

David McDonald

Raven Sword

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**CITY OF CINCINNATI  
INDEPENDENT MONITOR'S EIGHTH  
QUARTERLY REPORT**

**EXECUTIVE SUMMARY**

This is the eighth Report of the Independent Monitor under the Memorandum of Agreement (MOA) between the City of Cincinnati and the United States Department of Justice, and the Collaborative Agreement (CA) among the City of Cincinnati, the Plaintiff class, and the Fraternal Order of Police (FOP). The period covered is from July 1, 2004, through October 31, 2004, though we also review more recent activities from November 1, 2004, to January 5, 2005.

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

As we note in the Introduction to this Report, the purposes of the Agreements have been significantly impeded by actions taken by the City of Cincinnati ("City") during this past reporting period. These actions have run the gamut from uncooperativeness, to violations of the requirements of the Agreements, to failure to perform. The City's actions are particularly unfortunate and counterproductive in light of some of the accomplishments under the MOA (such as the Mental Health Response Team program and the changes to the Field Training Officer program), and the outstanding work being done in a number of neighborhoods throughout Cincinnati that are implementing CPOP to enhance public safety in their communities.

**MEMORANDUM OF AGREEMENT**

**General Policies (MHRT Team and Foot Pursuits)**

The Monitor has consistently commended the Cincinnati Police Department (CPD) for its Mental Health Response Team (MHRT) program. The MOA requires the CPD to create a group of specially trained officers to respond to incidents involving persons who are mentally ill. The CPD has trained approximately 140 officers as MHRT officers, and revised its policies on dealing with the mentally ill. During this quarter, over 80 percent of MHRT calls resulted in an MHRT officer being dispatched to the call. The CPD conducted in-service training sessions and recertification for MHRT officers in September 2004, and conducted

training for 30 new MHRT officers in November 2004. We find that the City is in compliance with these MOA requirements with respect to policy, training and in actual practice.

We also determine that the CPD is in compliance with the foot pursuit provisions of the MOA.

### **Use of Force Policies**

This is the third quarter in which CPD officers made widespread use of the new X26 Tasers. CPD's use of force statistics and the Monitor's review of incidents clearly demonstrate that Tasers have substituted for other types of force, such as physical force, impact weapons and chemical spray. Using a Taser can eliminate the need for an officer to close the distance between himself or herself and the subject. The CPD has noted that this has reduced injuries to officers and also indicates that injuries to subjects also have decreased. Tasers are not risk-free, however. There have been injuries from Taser use, particularly from the fall to the ground.

Moreover, as we noted in our last Report, officers should not use Tasers in situations where force is not necessary. Cincinnati is not the only city in which concerns have been raised that Tasers are the option of "first resort" in encounters. A decrease in officers' communications skills would be a detriment to the City and the community. We recommended in our last Report that Taser deployment merits careful monitoring and evaluation by the CPD, to ensure that officers are properly considering alternatives to force such as de-escalation, verbal commands, or arrest control techniques. We reiterate that counsel in this Report. The CPD's policies and training highlight the importance of communications and de-escalation. The great advantages of Tasers will be diminished if their use and the perception that officers display and aim at City residents unnecessarily, creates added tension in police-community relations.

On a different matter, although the CPD and the Justice Department have disagreed regarding the CPD's use of canines, the Monitor has determined that the canine bite investigations it reviewed this quarter were in compliance with the MOA. With respect to chemical spray, there were still some provisions for which the CPD is not yet in compliance.

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

Documenting and reporting officers' use of force allows CPD supervisors to evaluate the appropriateness of the individual use of force

and to track and identify any needed changes in tactics, training and policy.

We again conclude that the reporting for officers' use of "hard hands" and takedowns without injury does not meet the modified reporting requirements agreed to in 2003. While officers are providing a narrative description of the incident, supervisors are not providing written comments on the officers' tactics, and whether the force was consistent or not with CPD policy.

The Monitor also reviewed the reporting and investigation of "hard hands" and takedowns where the subject was injured. While audio-taped statements are now not required, the investigating supervisors must continue to evaluate the initial stop and seizure, the officers' tactics and the force used. We identified several concerns regarding the completeness of the investigation and reporting in these incidents.

We also find that the CPD is not in compliance with the MOA documentation and investigation requirements with respect to Taser deployments. CPD supervisors are not audiotaping interviews with involved officers, and the Taser Reports do not indicate whether the subject or other witnesses were interviewed, as there is no summary or description of the statements of any of these individuals. The Monitor proposes to work with the CPD and the Justice Department to develop an appropriate resolution that reflects professional police standards and the goals of the MOA.

For the use of force investigations, we noted that many were thorough and complete; others were not, however. We noted some investigations where relevant witnesses were not interviewed, medical treatment (or refusal of treatment) was not documented, the basis of the stop or search was not evaluated, or warnings of force were not provided (or if provided, not documented).

### **Citizen Complaint Process**

As in prior quarters, the Monitor reviewed a sample of citizen complaint investigations. The majority of these were well conducted and thorough. The Monitor did identify several, however, that were not consistent with the MOA requirements. These included investigations where: credibility determinations were not made; leading questions were asked; discrepancies in statements were not explored; witnesses and complainants were not interviewed; and the investigation was not evaluated "based on a preponderance of evidence standard."



## **Management and Supervision**

The Monitor's ability to assess the CPD's progress in implementing its risk management system -- the Employee Tracking Solution (ETS) -- was stymied in this quarter by the CPD's refusal to allow the Department of Justice to review the ETS system with the Monitor Team. Therefore, we cannot conclude that the City is in compliance with this MOA requirement.

## **Training**

The CPD continues to demonstrate strong compliance in most areas of the MOA that involve training requirements. The training that is being provided continues to be of high quality and is routinely updated to ensure it remains relevant and responsive to the needs of both the community and the officers. As an example, the Monitor observed the MHRT training that was conducted this quarter. It was apparent that the CPD's training staff and MHRT personnel have worked closely with mental health professionals in the community to provide ongoing refinements and update this training, and the commitment of both the trainers and the officers was evident.

## **COLLABORATIVE AGREEMENT**

### **Community Problem-Oriented Policing (CPOP)**

Problem solving is at the center of the Collaborative Agreement, and each CA requirement is a building block in remolding a police agency into a community problem-oriented policing (CPOP) organization. As noted in paragraph 16 of the CA: "The City of Cincinnati, the plaintiffs and the FOP, shall adopt problem solving as the principal strategy for addressing crime and disorder problems." This fundamental approach grew from a jointly signed Agreement that seeks a positive, collaborative path for Cincinnatians towards improved police-community relations, organized around more effective policing. Progress on CPOP and a reshaped Cincinnati Police Department is reported in Chapter III.

This quarter saw some improvements, as well as great challenges. The improvements came in the form of additional CPOP training (two additional neighborhood groups received joint Partnering Center/CPD training) and the holding of a successful community CPOP Forum in which the Parties participated. There were many challenges this quarter, including those noted in the Introduction to this Report and the Monitor's Report to the Conciliator. In addition, personnel performance evaluation systems need to match what is expected by the CA, the CPD should submit quarterly problem-solving reports from each of its unit

Commanders, the CPD's CPOP tracking system should be functional and useful, and training related to aspects of CPOP should be ongoing. While there are individual officers and captains in the CPD whose work is consistent with the CA, this needs to be made the norm at the CPD, in all ranks and within all units and assignments. Superficial commitment to CPOP will not suffice. At the same time, the Monitoring Team has seen the Partnering Center, a product of the Agreement, thrive, reaching more neighborhoods and co-facilitating police-community CPOP efforts.

### **Evaluation Protocol**

On December 15, 2004, the RAND Corporation prepared its first quarterly report under the City contract, describing its progress on the Evaluation Protocol. While the components of the Evaluation Protocol have not yet begun, the RAND efforts are a very positive development. The Monitor will work closely with the Parties and RAND in this next quarter to begin the process of evaluating whether the goals of the CA are being achieved.

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

The CPD continues to collect vehicle stop data on Contact Cards and enter the information into a database, as required by the CA. Some of this data has been provided to RAND, but it has not yet been analyzed. In addition, the CPD does not use Contact Cards for all pedestrian stops. The CPD has stated that it collects sufficient data by other means to analyze pedestrian stops, but this determination has not yet been made by RAND.

### **Citizen Complaint Authority**

The Monitor has found the Citizen Complaint Authority (CCA) investigations generally to be thorough and well documented. Officers are responding to the CCA offices to be interviewed, CCA has access to CPD records, and parallel investigations by the CCA and the CPD do not appear to be hampering the effectiveness of either investigation. However, what is not clear is whether the City has taken appropriate action (such as discipline or other corrective measures) in cases where the CCA sustains violations, and the City Manager has agreed with the findings.

Also, there have been concerns raised by the Plaintiffs that the CCA has not been sufficiently supported by the Parties. The Plaintiffs have submitted a proposal that the Parties be convened to resolve issues related to the CCA. The FOP has agreed to participate so long as the process is highly structured. The CCA Board Chair and Executive

Director have indicated a willingness to participate. The Monitor has sent the proposal to the City with a request to be informed whether the City will participate in such a meeting.

## **CHAPTER ONE. INTRODUCTION**

The Parties to the CA described the purposes of the Agreement as follows:

The purposes of this Agreement are to resolve social conflict, to improve community-police relationships, to reduce crime and disorder, and to fully resolve all of the pending claims of all individuals and organizations named in the underlying litigation, to implement the consensus goals identified through the collaborative process, and foster an atmosphere throughout the community of mutual respect and trust among community members including the police.

These purposes have been significantly impeded by actions taken by the City of Cincinnati (“City”) during this past reporting period. These actions have run the gamut from uncooperativeness, to violations of the requirements of the Agreements, to failure to perform. These actions include:

- Barring Plaintiffs from going on ride-alongs. The City has offered its citizens the opportunity to go on ride-alongs for decades, and has codified that opportunity in Procedure 18.105 of the CPD Procedures Manual.
- Denial of the request of Plaintiffs’ counsel to attend Mental Health Response Team (“MHRT”) training at the Police Academy, despite clear CA language that calls upon the Parties to “review existing courses and recommend any new ones that may be appropriate for the Police Training Academy.”
- Denying the Justice Department (DOJ) access to a demonstration of the new CPD Employee Tracking System (ETS). The ETS is required by the MOA, and the Monitor had requested a demonstration of the implementation of the system. The DOJ’s request to attend the demonstration was denied by CPD.
- Despite clear language in the MOA that affords the DOJ “full and unrestricted access to any City and CPD documents...” the CPD recently refused to provide the DOJ documents related to use of force investigations, and suggested that the DOJ obtain CPD documents from the Monitor. Use of force is an essential MOA compliance component.

- The failure by CPD since September to respond to the Monitor’s request to provide written comments to the Monitor’s proposed Benchmarks and Standards for Defining MOA Compliance (Benchmarks). The Benchmarks were provided in draft form to the City and the DOJ to obtain input before they are finalized. The DOJ promptly submitted its comments. Finalizing the Benchmarks is a critical step in determining compliance by the City with the MOA.
- During a December 1, 2004 meeting by Monitor Team members with Lt. Col. Janke, convened as part of a site visit to discuss implementation of the CA and CPOP, Lt. Col. Janke spent much of the meeting deriding the competence of the Monitor Team, criticizing the Monitor Reports, and complaining about the CA reporting requirements.
- Also during the Monitor Team site visit, Chief Streicher asked members of the Monitor Team not to observe management training he was conducting at the Police Academy, and refused to allow a member of the Monitor Team to go on a scheduled ride-along to observe CPD handling of drug markets.

The City’s actions are particularly unfortunate and counterproductive in light of the outstanding work being done in neighborhoods throughout Cincinnati that are implementing CPOP to enhance public safety in their communities. See Chapter Three of this Report for a description of the excellent work being performed by citizens, neighborhood officers, the Community Police Partnering Center and others.

In its refusal to abide by the terms of the Agreements, the City complains that it has already implemented the terms of the MOA, that the reporting requirements of the Agreements are overly burdensome and a “waste of time,” and that the Monitor Team has focused too much on “outcomes and change” as opposed to “systems and processes.” Each of these complaints needs to be addressed.

Each Agreement provides for termination five years after its effective date (April 22, 2002, for the MOA and August 12, 2002, for the CA), or earlier if there has been substantial compliance with each of the provisions of the Agreement, and substantial compliance has been maintained for at least two years. Even a cursory reading of the Monitor’s first seven Quarterly Reports demonstrates that substantial compliance with each provision of the MOA and the CA has not been achieved.

There is no question that the Agreements require the City to expend time and resources in ways that are different than it did prior to entering the Agreements, and that the City (and the other Parties) are required to report on the progress in implementing the Agreements. The operating changes and reporting requirements are not a “waste of time.” To the degree they are burdensome, it is a function of the requirements of the Agreements the City signed. Every day the City of Cincinnati requires citizens of Cincinnati to abide by their legal obligations without excuse, and stiff sanctions are imposed when they don’t. While the City complains about fulfilling the requirements of Agreements that it voluntarily entered into, police professionals around the country have noted that provisions of Agreements such as the MOA and CA reflect “best practices” of the profession.

Criticism that the Monitor is too focused on “outcomes” is also not well taken. The CA explicitly states that “this Agreement is outcome oriented, putting great emphasis on objective measures of police-citizen relations and police effectiveness.” The monitoring is being performed consistent with the requirements of the Agreements.

On December 27, 2004, the Monitor filed a Report to the Conciliator stating: “The City’s non-compliance with the CA is a material breach of the Agreement.... Therefore, the Conciliator should forward his findings and conclusions to the Court, for a finding that the City has engaged in a material breach of the Agreement.” It is a sad commentary that we have reached this point. For seven quarterly reports, the Monitor has described areas of non-compliance, partial compliance and important areas of progress in implementing the Agreements. Apparently the City is now taking the position that it has done enough, and shouldn’t be expected to do any more.

The Monitor’s First Quarterly Report, after a difficult start in monitoring (due in large part to less than full cooperation from the City), stated:

To be successful in this important endeavor, the City and the Police Department will need to assert leadership and require accountability. The reforms in these Agreements are binding on the Parties and call for changes that are not easily accomplished. These changes will only happen if the Police Department embraces the reforms...

We appear to have come full circle.

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

### **I. General Policies**

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

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

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

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

The CPD has trained approximately 137 officers as Mental Health Response Team (MHRT) officers. In its November 2004 Status Report, the CPD reported that it had conducted an eight-hour in-service training class for all MHRT trained officers in September 2004. The training reviewed lessons learned since the program’s inception, as well as a refresher of other mental health issues. In addition, a 40-hour course of instruction took place in the first week of November for 27 additional officers to be certified as MHRT officers.

Statistics for July-September 2004 show that, for the City as a whole, there were MHRT officers working every shift, each day. The CPD also tracks the deployment of MHRT officers to MHRT calls. In July 2004, MHRT officers were dispatched on 79.8% of the calls that were initially designated as MHRT calls (308 out of 386 calls). In August 2004, the percentage was 80.8% (345 out of 427), and in September, it was 83.5% (348 out of 417 calls). According to the CPD, during this three month period, there were only 27 calls for which an MHRT officer was not available or not working. The remaining calls were either determined not to be MHRT situations and the call was “disregarded” by a supervisor and/or the call was handled before the arrival of the MHRT officer (93 or 7.5%), or the dispatcher did not enter an MHRT code (109 or 8.9%).

In reviewing past CPD statistics regarding MHRT calls for service and MHRT dispatch, we noted and previously commented on a

significant number of calls that were being cancelled without a MHRT unit being dispatched, or the MHRT response was “disregarded” by supervisors. For this quarter, we again reviewed the computer assisted dispatch (CAD) printout of all calls for service requiring an MHRT response for the months of September and October. To determine the reasons for the cancellations, we examined the CAD printout for all 1,083 MHRT calls received during these two months. These calls included both those initially coded as MHRT calls and those re-coded as MHRT by the officers on the scene.

Of the 1,083 MHRT calls for service during these two months, the CPD cancelled 108 calls without dispatch. We were able to review each of these calls and determined that all of them had been handled properly. The majority of the calls were found to be from chronic callers seeking transport to a mental health facility or just wanting to speak with someone.

One caller in particular accounted for a minimum of 29 of these calls or 27 percent. (We state minimum because there were so many from this caller that it is easy for us to have missed one or two. A representative sample of the event records is as follows: P042711865, P042711964, P042731116, and P042731908.) In addition to these cancelled calls from this caller, the CPD also dispatched officers to her location for the purpose of transporting her to a mental health facility an additional 10 times. We recommend that the CPD examine ways that these types of calls can be handled in an appropriate way from a mental health perspective, and without having an officer having to respond or keeping a 911 call taker on the phone for lengthy calls. Some of the call takers are taking several minutes talking with the caller and discussing current events. These calls keep the call taker from handling true emergency calls for service that may come into the 911 Center. This issue was in fact discussed during the MHRT training class at the Police Academy in November. The mental health professional conducting the training stated to the Police Communications Section manager present that the call taker should get off the phone quickly and tell the caller that it was not appropriate to call 911 for that type of call. The instructor stated further that the call takers, while believing they were helping the caller, were in fact enabling the caller to believe that she could continue to make these types of calls.

Also during this period we observed the MHRT training for new MHRT officers at the Police Academy. We were extremely impressed with the level of commitment from both the instructors and the officers in attendance. The officers showed interest in the subject and an understanding of MHRT calls for service, and sought ways to better handle these types of calls.



### **3. Assessment**

The Monitor has consistently commended the CPD for its MHRT program. The CPD's policies have been revised to comply with the requirements of the MOA relating to incidents involving persons suspected of being mentally ill. As we noted in prior reports, the CPD's training of its MHRT officers also complies with the MOA. The training was multi-disciplinary, emphasized de-escalation, included role-play exercises and "shadowing" of mental health professionals, and provided officers with additional tools for identifying mental illness and responding to incidents involving the mentally ill. This training is also now being provided to all new officers in the Police Academy.

CPD has also developed in-service training for the current MHRT officers. This training was completed in September 2004 for all trained MHRT officers. An additional 27 officers were trained in November to increase the number of trained MHRT officers available for dispatch. Adding these additional MHRT officers will assist the community and the existing MHRT officers; having the additional officers will mean that there will be fewer situations where a particular District does not have an MHRT officer on shift, and will need to have an MHRT officer dispatched from another District.

We also have determined that the CPD has met its requirement to plan and implement a partnership with health care professionals to make those professionals available on-site to assist in handling calls involving mentally ill individuals. The partnership with the Mobile Crisis Unit, and the location of MCU personnel in Districts 1 and 5 headquarters, was viewed as particularly helpful by the officers at the MHRT training.

With respect to whether MHRT officers are responding to the appropriate incidents, the CPD has maintained a consistent level of MHRT response to MHRT calls of over 75% each month based on the statistics provided by the CPD. The number of calls where it was documented that an MHRT officer was unavailable has been quite low. The Monitor Team once again audited the number of calls where there was no information regarding whether an MHRT officer was dispatched, or where the MHRT officer was disregarded by a supervisor. We have determined that the CPD is appropriately handling MHRT incidents. For this reason, we find that the City is in compliance with these MOA requirements with respect to policy, training and in actual practice.

## **B. Foot Pursuits [MOA ¶ 11]**

### **1. Requirement**

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

### **2. Status**

Supervisors review foot pursuits in their Use of Force Reports to assess whether the chase was tactically sound and in conformance with the CPD's policy and procedure. In addition, the tactical and risk considerations involving foot pursuits were discussed with CPD members in eight roll-call training scenarios in this quarter.

### **3. Assessment**

The Monitor has determined that the City is in compliance with this provision with respect to policy, training and actual practice. The only incident involving a foot pursuit that raised concerns was the Firearms Discharge Board's review, approved Oct. 5, 2004, noted in Section III.C below. In that case, the officer was conducting a solo foot pursuit of a person with something in his hands. When, during the pursuit, the officer observed it was a gun, he continued the pursuit and drew his weapon. The FDB did not address whether the officer should have considered calling for reinforcements and area surveillance, given the risks of the pursuit.

## **II. Use of Force**

In the table below, we provide the statistics for Use of Force incidents for the last nine quarters. As can be seen from the table, the most significant development in 2004 was the widespread introduction of the Taser as a part of the CPD's continuum of force. This significant change continued in the third quarter of 2004. The use of the Tasers has proven to be the tool of choice for officers. Use of the Taser and Taser training are discussed below.

## USE OF FORCE TABLE

	3 <sup>rd</sup> Q 2002	4 <sup>th</sup> Q 2002	1 <sup>st</sup> Q 2003	2 <sup>nd</sup> Q 2003	3 <sup>rd</sup> Q 2003	4 <sup>th</sup> Q 2003	1 <sup>st</sup> Q 2004	2 <sup>nd</sup> Q 2004	3 <sup>rd</sup> Q 2004
Chemical Irritant - Unrestrained Subjects	64	102	96	140	84	90	76	30	10
Restrained Subjects	24	15	26	15	19	15	10	9	10
Physical Force	52	67	71	79	27	29	17	4	2
Takedowns w/ injury					26	12	11	4	8
Non-compliant suspects					35	48	40	41	30
PR 24	9	7	5	3	5	4	0	0	1
Canine	5	5	2	5	2	2	4	1	3
Taser	1	1	1	2	0	0	72	177	198
Beanbag/ Foam round	1	0	0	4	0	0	1 foam	0	0
Pepperball	1	0	1	1	5	2	0	0	0
Firearms Discharge	0	0	1	0	0	1	3	2	0
<b>Total</b>	186	212	229	264	222	218	244	277	262

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

#### 1. Requirements

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

- It must clearly define the terms used in the policy
- The term “force” must be defined as it is defined in the MOA
- It must incorporate a “Use of Force model” that relates the officer’s responses and use of force options to the actions of the subject, and teaches that disengagement, area containment, or calling for reinforcement may be an appropriate response to a situation

- Whenever possible, individuals should be allowed to submit to arrest before force is used
- Advise against excessive force
- Prohibit choke holds
- The term “restraining force” must be removed from the CPD’s policy
- The CPD’s revised Use of Force policy must be published on the CPD’s website and be disseminated to community groups

## **2. Status**

On July 1, 2004, the CPD changed its Use of Force policy, Procedure 12.545, to eliminate the requirement of audiotaped interviews of witnesses and officers in incidents involving Taser deployment. The CPD also added language this quarter directing officers not to fire Tasers near flammable materials (including chemical irritant with alcohol-based propellant).

## **3. Assessment**

The Monitor’s assessment of the CPD’s Taser deployment, and its compliance with CPD policy and the MOA, is below. The Monitor’s assessment of Taser reporting and investigation is included in Section III of this Chapter.

### **Taser Implementation**

This is the third quarter in which CPD officers made widespread use of the new X26 Tasers. There were 198 Taser deployments in the third quarter of 2004. The CPD’s use of force statistics and the Monitor’s review of incidents clearly demonstrate that Tasers have substituted for other types of force, such as physical force, impact weapons and chemical spray. Using a Taser can eliminate the need for an officer to close the distance between himself or herself and the subject. The CPD has noted that this has reduced injuries to officers by 47 percent (comparing 47 officer injuries from 2/1/03 to 9/1/03, to 25 injuries from 2/1/04 to 9/1/04). The CPD also indicates that injuries to subjects decreased 37 percent, comparing these same time periods. Tasers are not risk-free, however. There have been subject injuries from Taser use this quarter, particularly from the fall to the ground, including:

abrasions, cuts, one loss of a tooth and a contusion to an eye, and one jaw and skull fracture.<sup>1</sup>

Moreover, as we noted in our last Report, officers should not use Tasers in situations where force is not necessary. Cincinnati is not the only city in which concerns have been raised that Tasers are the option of “first resort” in encounters. A decrease in officers’ communications skills would be a detriment to the City and the community. We recommended in our last Report that Taser deployment merits careful monitoring and evaluation by the CPD, to ensure that officers are properly considering alternatives to force such as de-escalation, verbal commands, or arrest control techniques.<sup>2</sup> We reiterate that counsel in this Report.

The CPD notes that its Use of Force policy, Procedure 12.545, discusses disengagement not “as a means of limiting the amount or degree of force used on a subject who is being arrested.” Rather, the CPD states that officers “may disengage when they find themselves at great risk” or if innocent persons are in jeopardy. Disengagement, however, is only one of the terms used in the Use of Force policy. Procedure 12.545 also states that “just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared immediately to de-escalate the use of force as the subject de-escalates or comes under police control.” In addition, the CPD’s training for MHRT officers highlights the importance of communications and de-escalation.<sup>3</sup> Thus, if there are situations where de-escalation can obviate the need for Taser deployment, officers certainly should consider that option.<sup>4</sup> Moreover, there appear to be situations where officers are

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<sup>1</sup> We note that in June 2004, a tased subject died from the fall to the pavement from a Taser deployment in Jefferson County, Louisiana.

<sup>2</sup> We also note that the CPD (and Taser International) states that Tasers have an effective range of 21 feet, there were numerous Taser deployments that were ineffective during a foot pursuit or where the distance between the subject and the officer was 15 feet or more. Unless both of the Taser barbs make contact with the subject, the Taser will be ineffective. Also, thick clothing can prevent Taser effectiveness. Thus, for situations where the subject is within three to five feet, chemical spray may be more effective in some incidents.

<sup>3</sup> De-escalation techniques and an emphasis on communications skills were the principal focus of the final day of MHRT training, November 12, 2004. One quote in the De-escalation Tool Kit is that “a butter knife won’t cut wood and a saw won’t cut butter.”

<sup>4</sup> We also note that Procedure 12.545 states that the Taser should be used for “actively resisting subjects, aggressive non-compliant subjects, violent or potentially violent subjects.” Thus, there may be situations where it would be inconsistent with CPD procedures to use the Taser for a non-violent, but non-complying subject (e.g., a subject

drawing and displaying their Tasers as they approach the subject, even before any verbal commands are given or communications are made (this appeared to be true for plainclothes officers in Tracking Nos. 0541 and 0735).

Finally, we also noted in our last Report a concern that officers might not be giving subjects sufficient time to comply with commands, prior to a second or subsequent deployment of the Taser. This was the case in cases this quarter as well [Tracking Nos. 0535, 0563].

The great advantages of Tasers will be diminished if their use and the perception that officers display and aim Tasers at City residents unnecessarily, create added tensions in police-community relations.

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

### **1. Requirements**

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

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

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who simply stays on the ground and refuses to stand up; or a subject who is being given a pedestrian citation, but then begins to walk away).

- Require officers to offer to decontaminate sprayed individuals
- Request medical response for complaining subjects
- Prohibit keeping sprayed subjects in a face down position any longer than necessary
- Prohibit use of spray on a restrained person, except to protect against harm or escape
- Use of spray against restrained persons must be investigated, including tape recorded statements of officers and witnesses
- Investigations of these incidents must be reviewed by the CPD's Inspections Section
- Provide restraining equipment in CPD squad cars
- Provide in-service training on chemical spray
- Account for chemical spray canisters
- Periodically review research on chemical spray

## **2. Status**

There were 20 deployments of chemical irritant for the third quarter, ten involving subjects who were restrained and ten involving subjects who were not restrained. The CPD notes in its November 12, 2004, MOA Status Report that four of the 20 reports do not include documentation of a warning of pending force, or an explanation as to why no warning was given.<sup>5</sup> In light of this, the CPD has taken further steps to ensure that this issue is corrected in the future. In August 2004, each supervisor was provided a wallet-size laminated reminder concerning use of force investigations, including the following information:

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<sup>5</sup> The CPD cites six chemical spray incidents with no warnings, but notes that in two, the Use of Force Report provides an explanation for the lack of warning. The Monitor Team reviewed both of these files and determined that while there may have been exigencies that justified the lack of a warning, those exigencies were not articulated in the reports. Thus, we conclude that there are six chemical spray incidents where the CPD did not comply with the MOA warning requirement.

**Critical Issues which must be addressed in the narrative of Use of Force Reports**

- Decision to arrest, incl. the basis for the stop and seizure
  - Verbalization, including warning of impending force
  - Suspect's noncompliance
  - Officer's counterforce
  - Exigent circumstances, e.g. reason for no verbalization, reason for partial/no effect on force used, etc.
  - Analysis of foot pursuit
  - Analysis of the propriety of the officer's use of force.
- Note: If two or more different types of force are used, e.g. takedown and Taser, the analysis should evaluate each.

In addition, the lieutenant assigned to the CPD's Police Relations Section reviews drafts of Use of Force reports which occurred the previous day to ensure these points are being covered. This reminder card and redundancy of review is designed to ensure that all Use of Force forms are completed in accordance with policy.

**3. Assessment**

**a. Policy**

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

**b. Review of Sample Investigations**

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

There were six of the twenty chemical spray reports that did not document a verbal warning or exigent circumstances warranting a lack of warning. Therefore, the Monitor cannot conclude compliance with this provision. However, the Monitor believes the steps taken by the CPD in reiterating to supervisors the need for complete force investigations and in adding review by the CRU lieutenant have improved the CPD's compliance toward the end of the quarter, and we believe that CPD's compliance in future quarters will be enhanced.

**ii. Spray of restrained individuals**

The Monitor reviewed seven incidents where chemical spray was used on restrained individuals. In five of the seven, the use of chemical irritant was consistent with the MOA requirements. In two of the seven, the District Command reviewing the chemical spray determined that the use of force was inconsistent with CPD policies. One of the officers was



disciplined for excessive force with a 56 hour suspension (No. 04-0130) and the second officer was given remedial training and supervisory counseling (No. 04-0485). Although those incidents did not comply with the MOA provisions for chemical spray, the Monitor commends the CPD for its investigations and corrective action.

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

The Monitor's review of the durations and targeting of chemical spray finds that the CPD is in compliance with these MOA provisions. With respect to decontamination, at least two of the 12 incidents we reviewed did not provide an opportunity for the subject to decontaminate (Nos. 0483, 0485).

## **C. Canines [MOA ¶20]**

In the third quarter of 2004, there were 147 total canine deployments, 22 canine apprehensions (where a suspect was found and arrested) and three canine bites. This is a bite ratio of 13.6 percent.

### **1. Requirements**

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

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed.
- Require approval of a supervisor before deployment, except for on-leash deployments.
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender.
- Handlers shall not allow their canines to bite a person unless the person poses an imminent danger, or is actively resisting or escaping.

- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries.
- The CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System.

## **2. Status**

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

	<u>Bite Ratio</u>
February 1, 2004 – July 31, 2004	13.51 percent
March 1, 2004 – August 31, 2004	10.81 percent
April 1, 2004 – September 30, 2004	9.52 percent

Each of these bite ratios is below the 20 percent ratio that would trigger a review of the Canine Unit under the MOA.

The CPD also calculated bite ratios for each handler/canine team. There was one handler/canine team that had a bite ratio exceeding 20 percent for all three of the three six-month periods; one team with a bite ratio exceeding 20 percent for two of the three six-month periods; and one team with a bite ratio exceeding 20 percent for one six-month period. According to the CPD, each of the canine bites involved was “consistent with Department policies and procedures. Additionally, Use of Force policies were reviewed with each officer. In each instance, there was minimal injury to the arrested and the control of the canine was exceptional.”

## **3. Assessment**

### **a. Policy**

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

## **b. Canine Deployments**

The Monitor Team reviewed 145 Canine Deployment Forms for incidents in which suspects were apprehended but not bitten. In the third quarter of 2004, the CPD Canine Unit was in compliance with the MOA requirement that canine searches be authorized by supervisors. It also appears that the unit complied with the MOA requirement that off-leash deployments be limited to commercial buildings or for suspects wanted for an offense of violence or reasonably believed to have a weapon. The CPD's MOA Status Report noted that many of the forms continue to omit information about a canine announcement, required by the MOA. According to the CPD, canine handlers are issuing announcements in the field, but are failing to consistently document the announcements (or the exigent circumstances justifying lack of announcement) on their reports. The CPD will address this matter in the upcoming quarter, either by adding a drop-down box to the form or including the information in the narrative.

## **c. Review of Investigations**

The Monitor reviewed eight canine bite investigations from 2003 and 2004. For each incident, supervisory authorization was given and a warning was made. The Monitor has determined that each of the canine engagements (bites) was consistent with the MOA requirements, and that the handlers called off the dog at the first safe moment. Three of the incidents involved off-leash searches, and each of these three met the MOA criteria for off-leash searches. We also note that one of the incidents involved the canine taking hold of the suspect's clothes, but not biting the suspect. The CPD considers this type of incident to be a canine bite, consistent with the MOA. Finally, we also note that in three incidents, the CPD Command cited the tactically sound use of a cover officer (either another canine officer or a patrol officer) during the search. We concur that the use of a cover officer on canine searches is both sound and can be a tactical and safety advantage.

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

There were no beanbag shotgun deployments in the second quarter of 2004. The CPD is in compliance with the MOA requirements relating to beanbag shotgun deployment.

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

Documenting and reporting officers' use of force allows CPD supervisors to evaluate the appropriateness of the individual use of force and to track an officer's behavior over time. It also allows CPD to analyze use of force incidents, trends and patterns to evaluate officer tactics and determine whether any changes in procedure or training are needed.

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

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

- All uses of force are to be reported. The Use of Force form shall indicate each use of force and require evaluation of each use of force. Use of Force Reports will include the supervisor's and officer's narrative description, and the officer's audio-taped statement.
- The CPD will implement an automated data system allowing supervisors access to all use of force information.
- The CPD will implement a Canine Deployment form.
- If the gun pointing requirement is triggered under the Collaborative Agreement, data reported shall be included in the risk management system.

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

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

In June 2003, the Justice Department and the CPD reached an agreement modifying how the CPD would report and investigate use of "hard hands" and takedowns, where there was no injury, complaint of injury or allegation of excessive force. In these situations, the officer using force must complete a "Noncompliant Suspect/Arrestee Report" (Form 18NC), which must be reviewed, along with the Arrest Report and any other associated reports, by the officer's supervisor. The officer must provide a written narrative of the incident and include a description of the subject's resistance, the defensive tactic used to overcome that resistance, the force used, and the events leading up to the use of force. The supervisor is required to evaluate and provide written comments on the tactics used and the appropriateness of the use of force. The Inspections Section must also review the reports for tactical errors, legal issues, and policy and training issues.

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

In May 2004, the CPD and the Justice Department accepted a proposal by the Monitor to resolve a dispute about the investigation and reporting of “hard hands” and takedowns where the suspect was injured. Supervisors will be called to the scene to conduct an investigation, which will include interviews with all witnesses, including the subject(s), officer(s), medical treating personnel (if practicable) and third party witnesses. However, the interviews do not need to be taped. The Monitor will review a sample of these investigations for six months, starting with incidents occurring after July 1, 2004. The Department of Justice was also supposed to be provided with the same investigative files to review.

If after the six-month period, the Monitor determines that the reporting is sufficient and that the uses of force and use of force investigations are consistent with the MOA, the MOA will be amended to reflect the proposal. If the Monitor determines that the force incidents and investigations are not consistent with the MOA, “hard hands” and takedowns that result in injuries will be reported with audio-taped statements from the subject, involved officers and witnesses.

## **c. Taser Investigations and Documentation**

Starting on July 1, 2004, the CPD changed its Use of Force Procedures so that investigations of Taser deployment no longer were required to include audiotaped interviews of the involved officers, witnesses and the subject.

### **3. Assessment**

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

This quarter the monitor reviewed 16 Non-Compliant Suspect/Arrestee Reports. An Arrest and Investigation or Trial Preparation Report accompanied several, and all but one (CAD No. P042061953) contained at least a narrative written by the involved officer that sufficiently described the circumstances that led to the application of force during the arrest or detention of a subject. In some cases, the supporting documentation such as the Arrest and Investigative report was of poor copy quality and was illegible.

Of the 16 reports reviewed, eight included a supervisor’s narrative that indicated their review of the incident and a concurrence with the force used to gain suspect control and/or compliance. There were two reports (CAD Nos. P042580645 and P042020277) that were excellent examples of supervisory review and follow-up investigation with respect

to the use of force for suspect non-compliance. Both carefully evaluated the tactics of the officers, the need for force, and the type of force used to reach the result intended. However, eight reports did not include a supervisor's written evaluation of the officer's use of force. (CAD Nos. P041850221, P041900086, P044200100, P042121951, P042330140, P042350055, P042061953)

Although all the reports submitted for review contained a supervisor's signature, arguably evidencing review, because eight of the reports did not include any written comments of the supervisor indicating review and evaluation of the officer's actions, we cannot conclude that the CPD is in compliance with this requirement.

### **b. Takedowns with Injury**

The Monitor reviewed eight Injury to Prisoner investigations. In seven of the cases, we determined that the use of force was consistent with the Agreement. However, in one case (No. 0519), the absence of specific information about how the injury occurred (given its severity) and of statements of witnesses or the subject, we could not determine whether or not the force was appropriate. In addition, there were concerns regarding some of the investigations: in one, the supervising investigator did not appear to consider the basis for a search of the subject (No. 0552); and in a second, there was no documentation of medical treatment for the injured subject (No. 0515); in a third, there was a witness who was not interviewed (No. 0489); and in a fourth, there was no indication that the subject was interviewed (No. 0580).

### **c. Taser Investigations**

Taser deployments are uses of force that require CPD supervisory investigation and documentation under the MOA. For the first six months of 2004, when the new X26 Tasers were first introduced, CPD procedures required investigating supervisors to audiotape interviews with officers, witnesses and the subject. Starting in July 2004, investigations of Tasers no longer were required to include audiotaped interviews.

Paragraph 24 states that use of force investigations will "include the officer(s)' audiotaped statement." Other provisions of the MOA require that CPD supervisors "ensure that all officers who witness a use of force or injury to prisoner provide a statement regarding the incident," ¶30, and that investigating supervisors interview other witnesses, ¶29.

The Monitor has determined that the CPD has not complied with these documentation requirements for Taser deployments. Not only are CPD supervisors not audiotaping interviews with involved officers, the Taser Reports (Form 18TBFP) do not indicate whether the subject or other witnesses were interviewed, and there is no summary or description of the statements of any of these individuals.

We recognize that given the large number of Taser deployments, audiotaping interviews of officers, witnesses and the subject for every deployment would take significant time for supervisors, and would require additional time for Command staff. However, investigating supervisors should, at the very minimum, conduct these appropriate interviews and include documentation and the relevant facts of the interviews in the Use of Force Report. The Monitor proposes to work with the CPD and the Justice Department to develop an appropriate provision that reflects professional police standards and the goal of the MOA.

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

### **1. Requirements**

- Officers to notify supervisor following any use of force, or allegation of excessive force. Supervisor to respond to scene. Incident not to be investigated by officer who used force or who authorized force.
- CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and tactics, including the basis of any stop or seizure.
- IIS will respond to scene of all “serious uses of force” and all canine bites with serious injuries. Inspections Section will review all investigations of canine bites, beanbags, foam rounds and baton uses.
- Investigators prohibited from asking leading questions. Investigators to consider all relevant evidence and make credibility determinations. No automatic preference for officer’s statement over citizen’s; statements of witness with connection to complainant should not be discounted. The CPD to resolve material inconsistencies. The CPD will train investigators on factors to consider in investigations.
- Investigators to ensure that all witness officers provide statement. Supervisors will ensure that reports list all

officers involved or on scene, and document any medical treatment or refusal of medical care.

- Lieutenant or higher will review each investigation conducted by CPD supervisors and identify any deficiency and require corrections. CPD supervisors to be held accountable for quality of investigations. Appropriate non-disciplinary or disciplinary action will be taken if investigations are not thorough, properly adjudicated, or where appropriate corrective action is not recommended.

## **2. Status**

There were no changes in policies or procedures with respect to the investigation of force incidents during this quarter.

## **3. Assessment**

### **a. Policy**

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

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

During this quarter, the Monitor Team reviewed 59 investigative files involving use of force incidents (including Taser deployments, hard hands with injury, chemical sprays and PR24). While many investigations were complete and thorough, others were not.

With respect to the MOA requirements, we determined that:

- Supervisors responded to the scene and investigated the use of force
- The supervisors' investigations were reviewed by a lieutenant or higher
- Incidents were not investigated by an officer who used force or who authorized force (other than No. 0478, a canine deployment where the supervisor who authorized the deployment also participated in the investigation; the supervisor was counseled)
- There was one investigation where the investigating supervisor asked leading questions, but Command identified that problem and counseled the supervisor (No. 0677)



- Medical attention, where relevant, was documented on most reports, but not on all (Nos. 0523, 0515)
- In some investigations, relevant witnesses were not interviewed (Nos. 0485, 0489, 0667, 0746) or at least the interviews were not documented; for all of the Taser investigations, there is no indication that the subject was interviewed
- The basis for the stop was not documented and explained (Nos. 0547, 0552)
- Warnings of use of force were not provided in some Taser deployments (No. 0563, 0735, 0751, possibly No. 0502)

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

#### **1. Requirements**

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

#### **2. Status**

There were no firearms discharges at suspects in the third quarter of 2004. There are five firearms discharge investigations and FDB reviews that are pending from earlier in 2004 and in late 2003. There was one officer-involved shooting on July 28, 2004 in Columbia

Township (outside the CPD's jurisdiction), but involving a CPD officer, that was reviewed by the Firearms Discharge Board in July and August 2004. The FDB report was approved by Chief Streicher on October 5, 2004.

### **3. Assessment**

The CPD's policy on critical firearms discharges complies with the MOA. The Monitor did review the FDB Report that was completed and provided. The Board in this Report determined (a) that the use of force during encounter was consistent with CPD policies and training; (b) that the officer used proper tactics; and (c) that lesser force alternatives were not reasonably available. The Monitor's only concern regarding this FDB review was noted above in Section I.B, regarding evaluation of the foot pursuit.

## **IV. Citizen Complaint Process**

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

#### **1. Requirements**

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

#### **2. Status**

There were no changes in procedures regarding complaint intake during this quarter. The CPD continued to conduct inspections to

ensure that complaint forms and materials were available in police buildings, police vehicles, and the public places outlined in the MOA.

### **3. Assessment**

There were several MOA provisions that were in compliance in this quarter, such as the availability of complaint forms, complaints being allowed to be filed in any form, and each complaint being resolved in writing. There were, however, at least four incidents where complainants alleged discouragement of their complaints, including CCRP Nos. 04170, 04184; and IIS No. 04037. With these three, the complaints were made and investigated. With a fourth incident, the complaint was not taken by the CPD, but was later taken by the CCA and investigated by both the CCA and CPD.

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

### **1. Requirements**

- Preponderance of evidence standard; City will develop appropriate training
- Officers who used spray or other force, or authorized the conduct at issue, may not investigate the incident
- All relevant evidence to be considered
- No automatic preference of officer's statements. Investigators will attempt to resolve inconsistencies. No leading questions. All officers on the scene are required to provide a statement
- All relevant police activity, including each use of force, will be investigated; searches and seizures will be evaluated. Investigations are not to be closed simply because a complaint has been withdrawn
- Conviction of the complainant will not be used as evidence of the appropriateness of the action of the CPD officer
- Complainant to be kept informed
- IIS to investigate complaints of force, pointing firearms, searches, discrimination

- Citizen Complaint Resolution Process (CCRP) complaints will be fully investigated
- CCRP complaints will be investigated by the chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
  - Tape all interviews with complainants, involved officers, and witnesses
  - Interviews at convenient times
  - Prohibit group interviews
  - Notify supervisors of complaints
  - Interview all appropriate CPD officers, including supervisors
  - Collect and analyze all appropriate evidence; canvas scene for witnesses; obtain medical records
  - Identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis
- Investigation to be complete within 90 days, absent exceptional circumstances

## **2. Status**

The MOA Status Report notes that 53 of 77 IIS cases completed during the third quarter of 2004 were completed in less than 90 days. For cases that cannot meet the 90 day investigative requirement, investigators may request an extension through the chain-of-command. The CPD notes that documentation of approved extensions is contained in the investigative file case jackets. For CCPR cases, 29 of 30 cases were completed in less than 90 days, which CPD notes is a significant improvement over the prior quarter.

### **3. Assessment**

#### **a. IIS investigations**

The Monitor reviewed 18 IIS investigations this quarter. Of these, the majority were complete and thorough and were in full compliance with the MOA requirements. We did identify the following concerns, however, regarding compliance with the MOA requirements:

- In one case (No. 4069), the investigation did not appear consistent with the MOA requirement that complaints be evaluated “based on a preponderance of evidence standard” (§39) and that CPD will consider all relevant evidence and make credibility determinations, if feasible (§41). Greater credence appeared to be given to the subject officer’s statements (this is despite the requirement that there should be “no automatic preference for an officer’s statement over a non-officer’s statement” (§41)). In addition, the discrepancies noted by the investigator between the statements of the officer and the other witnesses were not addressed in the investigation. It is unclear whether the City has resolved the different dispositions taken on this complaint by the CCA and IIS. If a final disposition has not been communicated to the officer, the Monitor recommends that this investigation be re-opened, pursuant to MOA §102, to examine and address the issues noted above.
- In a second case, there were witnesses and complainants who were not interviewed (No. 4068)
- In a third, the District sergeant who conducted the investigation routinely asked leading questions of civilian witnesses. (No. 4179)
- In a fourth, inconsistencies in statements were not explored (No. 4112)
- In a fifth, neither the investigator nor Command addressed questions regarding whether CPD policy permits use of profanity in encounters with citizens. (No. 4191)

#### **b. CCRP investigations**

The Monitor reviewed 11 CCRP investigations this quarter. While many were in compliance with the MOA requirements, there were two cases that involved use of force allegations, and should have been reviewed by IIS (Nos. 04170, 04172), there was one investigation where a

relevant witness was not interviewed (No. 04190), and two investigations where the investigating supervisor was involved in the incident (Nos. 04170, 04196).

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

**1. Requirements**

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

**2. Status**

The CPD reports that there were 30 CCRP complaints that were closed in the third quarter of 2004 with the following results:

Sustained	5
Sustained Other	0
Exonerated	10
Not Sustained	2
Unfounded	13

The CPD also reports that there were 77 investigations closed by IIS in the third quarter of 2004, involving 119 allegations. Those allegations were closed as follows:

Sustained	47
Sustained Other	0
Exonerated	0
Not Sustained	24
Unfounded	48

**3. Assessment**

The City is in compliance with the requirement that every complaint be closed with one of four dispositions: sustained, not sustained, unfounded or exonerated. (“Sustained-Other” is a sustained disposition for a violation that was not initially alleged in the complaint, but that was identified by the CPD.)

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

### **1. Requirements**

- The CCA is to assume all of the responsibilities of the Office of Municipal Investigation (OMI) within 120 days from the date of the Agreement
- Copies of all complaints, no matter with which office they are filed, will be directed to the CCA; the CCA is to have jurisdiction over complaints of excessive force, pointing firearms, unreasonable search or seizure, or discrimination; the CCA shall have sufficient number of investigators, with a minimum of five
- CPD officers must answer CCA questions; CCA director to have access to CPD files and records
- City to develop procedures to coordinate parallel investigations
- City will take appropriate action on CCA completed investigations
- CCA will complete investigations within 90 days; City Manager to take appropriate action within 30 days of CCA completion of investigation

### **2. Status**

In prior quarters, the Monitor raised the concern that there were some cases that were sustained by the CCA and the CCA disposition was agreed to by the City Manager, but no discipline was carried out because the CPD had not sustained a violation. The City averred that it was developing a mechanism or procedure to ensure that sustained CCA cases are reviewed by the City Manager and, if approved by the City Manager, proper discipline or correction is undertaken by the CPD. In the current MOA Status Report, the City states that the CPD and the CCA “are working together” to identify CCA cases where appropriate action might be needed. It also states that “it is hoped that the new Employee Tracking System (ETS) will allow both agencies to share a common data base.”

### **3. Assessment**

#### **a. General Operations**

The CCA has a full time executive director who has developed new CCA investigative standards and procedures. Thus, the City is in compliance with these provisions of the MOA.

#### **b. Sample Investigations**

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

- Officers are responding to the CCA offices to be interviewed
- CCA has access to CPD records
- Parallel investigations by the CCA and the CPD do not appear to be impairing the effectiveness of either investigation
- The CCA investigations include an investigator's report, summaries of interviews, descriptions of evidence, and conclusions
- The files are well-organized and the investigations thorough (the Monitor does note one case where additional investigation should be conducted, No. 04299; and a second case where an additional civilian witness might have been interviewed, No. 04468)

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

The Monitor has not yet been able to obtain data regarding actions taken after the City Manager has agreed with a sustained determination by the CCA. CCA Investigation No. 04053 is a case in point. Thus, the Monitor cannot determine whether the City is in compliance with the provision requiring the City to take "appropriate action, including imposing discipline and providing for non-disciplinary action where warranted."



## **V. Management and Supervision**

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

#### **1. Requirements**

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

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

appropriate “activity and pattern assessment” of the information in the system

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

## **2. Status**

According to the CPD’s MOA Status Report, the ETS system went live on October 1, 2004. Supervisors began entering data into the new system on that date.

The Monitor attempted to have a demonstration of the application after it went live, along with the Department of Justice. However, because the CPD refused to allow the Justice Department to attend, the demonstration had to be cancelled. The Monitor looks forward to having this demonstration rescheduled.

The vendor of the ETS system was working on the data conversion for all of the old data that is to be imported into the new system. The CPD expected this to be accomplished in November 2004. Once the data conversion has been completed, the CPD expects to complete its first analysis of the data. This analysis is to use the third quarter 2004 data and be considered a test analysis to determine what refinements, if any, are needed to the system before the first official analysis. The first official analysis will be conducted in January 2005, with the data collected during the fourth quarter of 2004.

While the ETS system was being developed, the MOA required the CPD to use existing databases to monitor officer behavior. As we have noted in prior Reports, the CPD maintained a manual risk management system known as the Department Risk Management System (DRMS).

This system uses existing databases and a matrix of risk factors to identify officers who are subject to an administrative review. Officers who accumulate more than a certain number of points within a 12 month period based on this matrix are identified for review.

During this quarter, six officers exceeded the DRMS threshold for review. In each instance, the supervisor met with the officer and reviewed the officer's incidents and history.

### **3. Assessment**

#### **a. ETS**

The Monitor could not determine during this quarter whether the CPD is in compliance with the MOA requirements for implementing the ETS, given the cancellation of the ETS demonstration.

The Monitor will assess CPD's use of the ETS system and implementation of the requirements of the ETS protocol in the next quarter, if the CPD allows a demonstration for the Monitor and DOJ.

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

Based on the data provided by the CPD, the CPD is in compliance with this requirement.

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

#### **1. Requirements**

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

#### **2. Status**

The CPD Inspections Section conducted an audit of the CCRP process for the third quarter of 2004. A sample of 20 closed cases was reviewed. The investigations were reviewed to ensure investigating supervisors addressed the complaints, used proper standards to reach

conclusions, and made recommendations consistent with the findings and the disciplinary matrix.

The Inspections Section reviewed the following criteria:

- Ensure CCRP complaints were entered into the database and the case files were in a secure area.
- Ensure necessary documentation was completed for each CCRP investigation.
- Ensure all files contained the appropriate documents.
- Ensure the investigating supervisor notified the complainant of the disposition and whether any corrective or disciplinary action was taken.

The audit report states that CCRP investigations were complete, logged into the proper databases, and stored in secured locations. Complainants were contacted and advised of the investigations outcome and whether any corrective or disciplinary action was taken.

In regards to follow-up with complainants, the Inspections Section attempted to contact complainants. However, only one complainant returned the Inspections Section's telephone calls. That complainant stated he was satisfied with the CCRP process. A summary of the audit was prepared on November 2, 2004.

### **3. Assessment**

Improvements in the CCRP audit process included (1) documenting which CCRP cases were reviewed; and (2) Inspections' attempt to contact and follow-up with complainants. We believe these improvements move CPD toward compliance with the CCRP audit requirement. We note, however, that it is not clear how the cases were chosen (e.g., a random sample or some other fashion?), nor whether there is an audit checklist for the cases audited that documents the audit's findings. Also, while the criteria for the audit appear consistent with the MOA, there was one CCRP case audited that the Monitor also reviewed in which a relevant witness did not appear to be interviewed (No. 04191).

The IIS audit will be available to the Monitor in the next quarter.

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

### **1. Requirements**

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

- Mandatory activation of MVR for all traffic stops
- Recording of consent to search, deployment of drug sniffing canines, and vehicle searches
- Recording of violent prisoner transport, where possible
- Supervisors to review all tapes where there are injuries to prisoners, uses of force, vehicle pursuits, citizen complaints
- CPD to retain and preserve tapes for 90 days, or as long as investigation is open
- If stop is not recorded, officer to notify shift supervisor
- Periodic random reviews of videotapes for training and integrity purposes; supervisors are to keep a log book of these reviews
- Random surveys of equipment are to be conducted

### **2. Status**

As we stated in previous Reports, the CPD received a congressional appropriation of \$371,000 to purchase 62 Digital Video Data (DVD) units with the supporting hardware and equipment. These cameras have been purchased and installation is ongoing. As of the end of the third quarter, a total of 31 of these cameras have been installed, with the remainder scheduled to be installed by the end of 2004.

In previous Reports we noted that while the CPD appears to be conducting the required random reviews of videotapes, it was unclear whether these reviews generated any outcomes, in terms of changes in tactics, training, counseling of officers or otherwise. In response, the CPD notes that it does not currently track the nature of interventions resulting from the random supervisory review of MVR tapes. The Monitor is still unsure as to what, if anything, has resulted from any information learned or observed during these random reviews. Last, we do note that in one of the investigations of chemical spray on a restrained person in the back of a police vehicle, the supervisor recommends that the MVR be used in the future for these types of incident, where possible. We commend the supervisor's recommendation.

### **3. Assessment**

At present, not all police vehicles are outfitted with MVR cameras. According to the CPD's MOA Status Report, there are a total of 67 marked patrol vehicles without MVRs. The CPD will be installing an additional 31 cameras by the end of 2004, leaving 36 vehicles without the required equipment.

Therefore, the CPD is still not yet in full compliance.

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

The CPD is in compliance with these provisions.

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

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

- CPD to revise disciplinary matrix to increase penalties for serious misconduct violations, such as excessive use of force and discrimination
- CPD will revise the matrix to take into account an officer's violation of different rules, rather than just repeated violations of the same rule
- Where matrix indicates discipline, it should be imposed absent exceptional circumstances. The CPD shall also consider non-disciplinary corrective action, even where discipline is imposed

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

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

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

imposes the minimum disciplinary action allowed under the matrix.”

In addition, the CPD added language in the Manual of Rules and Regulations that executives using the discipline matrix “must take into account an officer’s violations of different rules within the same section rather than just repeated violations of the same rule.” While this language is consistent with the MOA, the CPD notes that a Peer Review Panel (which an officer can request for discipline involving a written reprimand and/or a suspension of up to three days) “is not required to follow the progressive discipline process for repeat violations of the same section of the matrix.”

### **3. Assessment**

First, the CPD has not had the capabilities to track electronically the disciplinary penalties imposed in each case where a violation of policy has been sustained. Now that the ETS system is in the process of being implemented, however, we expect this data will be available, and the Monitor will be able to assess compliance.

Second, while we recognize that the Peer Review Panel is a contractual issue with the FOP, under paragraph 6 of the MOA, this fact does not eliminate the City’s obligation to implement an MOA provision, including progressive discipline for repeat violations.

Last, we raised the concern in prior Reports regarding those cases where the CCA sustained an allegation that was determined by the CPD to be not sustained, exonerated or unfounded. While the City has stated that the City Manager is now reviewing both sets of investigative files to make her final determination, it is not clear that the City resolved this issue for prior cases with conflicting findings.

## **VI. Training**

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

#### **1. Requirements**

This section of the MOA requires the CPD to:

- Coordinate and oversee use of force training to ensure that it complies with applicable laws and CPD policies

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

## **2. Status**

Annual firearms training resumed in the fall of this year. The curriculum for this training included review and discussion of the Use of Force policy. The agency also continues to develop and provide scenario-based training that deals with use of force issues, options and decisions. These scenarios are presented by supervisors and discussed during roll-call training throughout the year. Copies of the scenarios that are covered in roll-call are maintained and updated by the Academy.

MHRT in-service training was provided in September and a class to certify additional MHRT officers was conducted in November. The revisions and updates to these curricula were developed as a result of feedback and the periodic needs assessments that are being conducted to ensure training remains responsive to the organization's need.

The MHRT training is also designed to help officers reduce the need to resort to use of force. As an example, the November training included a session on de-escalation techniques that can be employed when dealing with mentally ill subjects, as well as during other encounters.



## **Assessment**

The CPD remains in compliance with this provision.

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

#### **1. Requirements**

The MOA requires the CPD to provide training on the handling of citizen complaints for all officers charged with accepting these complaints. The training must emphasize interpersonal skills so that citizen concerns and fears are treated seriously and respectfully. This training must address the roles of the CCA, IIS, and the CPRP process, so that complaint takers know how and where to make referrals. For the supervisors who investigate and determine outcomes of citizen complaints, their training must include how to implement the “preponderance of evidence” standard for the burden of proof, and the factors to consider in evaluating complainant, witness and officer credibility. The objective is to ensure that their recommendations regarding the disposition of complaints are unbiased, uniform, and legally appropriate.

#### **2. Status**

The citizen’s complaint process was last covered in training for new supervisors in April of this year. No additional training has been conducted since then.

#### **3. Assessment**

The Monitor did not observe the training conducted in April 2004. We will observe the next training session on the citizen complaint process, and determine compliance in that quarter.

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

### **1. Requirements**

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

### **2. Status**

The Department continues to send command personnel to outside training programs. One lieutenant attended the Police Executive Leadership College and another lieutenant and one sergeant attended the Southern Police Institute's Administrative Officer's Course.

### **3. Assessment**

The CPD is complying with this provision of the MOA.

## **D. Canine Training [MOA ¶84]**

### **1. Requirements**

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

### **2. Status**

Canine training continued in this quarter, and is conducted at facilities at the Firearms Range each week. Canine handlers, canines and supervisors are recertification annually, and the in-house canine trainer also has been certified.

### **3. Assessment**

The Monitor has determined that the CPD is in compliance with the MOA training provisions

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

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

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

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

The CPD continues to conduct roll-call training based on scenarios that are often developed from actual agency incidents. During the third quarter of 2004, several new scenarios were added to the library and presented in roll-call sessions. Additionally, training was conducted during these sessions on the following procedures:

- 12.180 - Use of the Crisis Negotiation Team
- 12.110 - Mentally Ill/Suicides
- 12.545 - Use of Force
- Tactical Patrol Guide

The Training Academy maintains files on the roll-call training that is conducted. Each division or unit provides a monthly report that is forwarded to the Academy and entered into its database. Roll-call training calendars and summaries of activity are maintained in the Training section.

##### **3. Assessment**

The CPD continues to exhibit compliance with this provision of the MOA.

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

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

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

## **2. Status**

The quarterly meeting between the City Solicitor's office and CPD took place on October 21, 2004. The items discussed in that meeting included:

- Appealed cases – the decision in the Roger Owensby case was appealed to the Sixth Circuit Court of Appeals. The issue in this case involves CPD's failure to provide medical care.
- The City's desire to implement an alternative dispute resolution process to address claims against the City in lieu of a lawsuit.
- Annual in-service training by the CPD's legal liaison involving stop and search issues.

## **3. Assessment**

The CPD is in compliance with this provision.

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

### **1. Requirements**

The MOA requires the City and the CPD to:

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

### **2. Status**

Nothing to report.

## **H. FTO Program [MOA ¶¶ 88-89]**

### **1. Requirements**

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

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

### **2. Status**

Nothing to report

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

### **1. Requirements**

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

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

## **2. Status**

The CPD resumed annual firearms qualification and training in the Fall. Approximately 400 officers completed their firearms qualification by the end of the third quarter. The Monitor did observe officers participating in those sessions during that time and also discussed the training content and modifications that have been implemented to tailor training to meet the needs of the officers.

This current qualifications course also requires officers to demonstrate their proficiency with various less-than-lethal weaponry such as the beanbag shotgun and Pepperball launcher.

## **3. Assessment**

The CPD remains in compliance with those elements of ¶¶ 90-91 that the Monitor Team has observed and/or reviewed through available training records.

## **CHAPTER THREE. COLLABORATIVE AGREEMENT**

Problem solving is at the center of the Collaborative Agreement, and each CA requirement is a building block in remodeling a police agency into a community problem oriented policing (CPOP) organization. As noted in paragraph 16 of the CA: “The City of Cincinnati, the plaintiffs and the FOP, shall adopt problem solving as the principal strategy for addressing crime and disorder problems.” This fundamental approach grew from a jointly signed Agreement that seeks a positive, collaborative path for Cincinnatians towards improved police-community relations, organized around more effective policing. Progress on CPOP and a reshaped Cincinnati Police Department is reported below.

This quarter saw some improvements as well as great challenges. The improvements came in the form of additional CPOP training (two additional neighborhood groups received joint Partnering Center/CPD training) and the holding of a successful community CPOP forum in which the Parties participated. There were many challenges this quarter, including those noted in the Introduction to this Report and the Monitor’s Report to the Conciliator. In addition, personnel performance evaluation systems need to match what is expected by the CA, the CPD should submit quarterly problem-solving reports from each of its units, the CPD’s CPOP tracking system should be functional and useful, and training related to aspects of CPOP should be ongoing. While there are individual officers and captains in the CPD whose work is consistent with the CA, this needs to be made the norm at the CPD, in all ranks and within all units and assignments. Superficial commitment to CPOP will not suffice. At the same time, the Monitoring Team has seen the Partnering Center, a product of the Agreement, thrive, reaching more neighborhoods and co-facilitating police-community CPOP efforts.

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

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

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

#### **2. Status**

In the second quarter of 2003, the Parties formally adopted a CPOP coordination plan, entitled the “City of Cincinnati Plan for Community Problem-Oriented Policing.” Since then, liaisons from the Departments of Buildings and Inspections, Public Services, Community Development and Planning and Health, Parks and Recreation, Fire, Water Works, and

Metropolitan Sewer District received training on their roles and responsibilities as resources to the Problem Coordinators (the CPD member or Partnering Center staff assigned to a CPOP team).

The City reports that it will be moving towards Community Problem-Oriented Government. “To this end, CPOP is viewed as part of a whole and not a stand-alone program, as citizens will have several ways to access services. Each access point will lead to a comprehensive, timely service response.” In October, the City Manager’s office began efforts to increase the effectiveness of the Code Enforcement Task Force. Also this quarter, the City Manager’s office created a CPOP Integration Team of City departments to review CPOP actions and improvements that can support the CPD. Under consideration is combining CPOP electronic files into an existing electronic database that tracks service requests, permits and code violations. This can provide “real-time” data on cases and access to citizens for updates.

### **3. Assessment**

In prior Reports we complimented the City for establishing a liaison system within other city agencies to handle CPOP requests. However, we have also noted in a number of prior Reports that we expect the Parties to report on the quality, timeliness, and results of inter-agency collaboration vis-à-vis the projects undertaken by the pilot CPOP teams (e.g., Are inter-agency liaisons responding in a timely way? How long does it take to board-up a problem property? Has the Health Department been responsive in a timely way to problem properties with health code violations? In what ways have CPD officers relied on the Community Development and Planning Agency? Should the City try to enlist certain County service deliverers, such as Social Services?). The Parties have not reported on the effectiveness of the liaison system in addressing CPOP problems.

Late last quarter, the Cincinnati City Manager appointed an Assistant City Manager to coordinate the involvement and participation of other City departments. In the prior CA Status Report, the City stated that she will coordinate the effort and report back on problem-solving projects in future reports. We saw this as positive development. Based on the current CA Status Report, it appears that the City is now embarking on a number of inter-agency collaboration initiatives. One of the new initiatives involves latitude for cross-discipline inspections. For instance, officers in some cases will be able to write code enforcement summonses (both criminal and civil). If we read the CA Status Report correctly, another initiative may involve merging CPOP files with the service requests of some other City agencies. Our concern is that how the City government coordinates and monitors CPOP service requests (their



effectiveness and timeliness) may get lost among this new mix of City initiatives.

The City states that these efforts will be consistent with and expand upon CPOP, and this may be the case. However, CPOP focuses on repeat problems that have a public safety core. While Community Problem-Oriented Government makes great sense, and other cities have adopted this approach, we want to ensure that CPOP requests do not lose priority (except when appropriately trumped). We also want to ensure that the service request system does not replace a CPOP tracking system. The CPOP tracking system (required in paragraph 29(m)), which the CPD states it will be revising, must contain sufficient detail about each CPOP case so that others in the organization and community members can see how the problem was identified, what exactly the problem was, the analysis undertaken, how the solutions are drawn from the analysis, whether they were implemented, and to what extent they reduced the problem.

The Monitor's concern is that the City has not yet reported how well the initial system worked in support of CPOP. It is now not clear what will remain of that system, and how the incorporation of other City agencies into the same system will impact CPOP requests.

The City remains in partial compliance of this CA section.

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

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

### **2. Status**

In this and the last quarter, the CPOP website included a "problem-oriented policing best practices" tab housing reports on crime control practices and community engagement strategies. Currently the Problem-Oriented Policing Best Practices tab shows 28 different publications, up from 12 on the site last quarter. The CPOP Best Practices Committee, formed by the Parties to vet the inclusion of a publication under "best practices," approved these additional publications. These best practices are publicly available on Cincinnati's CPOP website at <http://cagisperm.hamilton-co.org/cpop/library.aspx>. In addition, Plaintiffs are working with the Cincinnati Public Library to partner as a resource for CPOP "best practices" research.

### **3. Assessment**

The “best practices” publications are an impressive array of reports, many on community building and partnership, some on evaluating crime reduction efforts, and others on problem-oriented policing, the environment and crime, and situational crime prevention. These, in combination with the Problem-Oriented Guides for Police (also housed under a tab on the CPOP website), provide a robust crime reduction framework of best practices. To simplify the site for users the Parties may want to consider organizing these publications into two broad categories within the “best practices” tab: (1) Reducing Crime and Other Public Safety Problems; and (2) Community Building and Partnering. This will need to be updated if new, relevant publications become available.

The Parties have been in compliance with this section for two consecutive quarters.

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

The City, in consultation with the Parties:

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

#### **2. Status**

This quarter, the CA Status Report contains no mention of CPD training on experiences with problem solving within the department or dissemination of problem-solving efforts throughout the CPD.<sup>6</sup>

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<sup>6</sup> In reporting on section 29(c) in this quarter’s CA Status Report, the CPD notes that it issued a roll-call training memo on racial profiling. The memo includes two scenarios, describes department policy, and provides questions for prompting discussion on aspects of racial profiling with CPD officers. Discussion of this scenario is more appropriate under ¶52 of the CA relating to Bias-Free Policing training.

### **3. Assessment**

Under Section 29(c), experiences with problem-solving should be documented and disseminated. The descriptions of the efforts are important for purposes of modeling; they provide concrete examples of what is expected of employees under the CA. Effective descriptions of problem solving also help residents of Cincinnati by creating a knowledge base of what different neighborhoods in their City have done and whether it has worked (or has not worked) to reduce crime or other public safety problems.

This CA section also requires that the CPD emphasize problem solving in training. It does not appear that problem solving is emphasized in the Academy, in in-service training, in field officer training or in field officer supervisors' training.

As we noted in prior Reports, there are many ways in which problem solving can be incorporated into CPD training, and disseminated throughout the department. Ongoing training required under this CA section can also be crafted around the "best practices" identified on the CPD's CPOP website.

The Monitor Team has found that additional training emphasizing problem solving is needed, even for the CPOP officers. Some neighborhood officers appear well versed, while others would benefit from additional training. Some of the CPOP supervisors appear proficient in community policing, but less so in problem-oriented policing, putting them at a disadvantage in participating in or coaching problem solving.

The Partnering Center proposed this quarter that neighborhood officers participate with Partnering Center outreach workers in joint training to sharpen their understanding of problem-solving and fine-tune their presentation skills. The Partnering Center believes this will better prepare officers and outreach workers for the new round of jointly facilitated CPOP training this Spring. Earlier offers of joint training were taken up only by a few of the CPD's neighborhood officers, leaving an uneven base of knowledge among neighborhood officers about what CPOP entails. Moreover, training for the rest of the department in problem solving should be ongoing, and should be integrated with different curricula, whether it is training for narcotics officers, field trainers, vice, traffic, property or personal crime investigators, etc.

Of the four subparts to this subparagraph, the Parties are only in compliance with the public dissemination requirement. The Parties are in partial compliance with this section of the CA.

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

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

## **2. Status**

In this quarter, there are several examples of efforts consistent with this section of the CA. The first comes from the Partnering Center. Partnering Center outreach workers have read problem-specific problem-oriented policing guides to assist them in their work; they are highly familiar with the Center for Problem-Oriented Policing website and its application; and they keep updated on problem-solving advances. Because of their efforts, community members on some CPOP teams have had exposure to problem solving examples from other jurisdictions. For instance, the Northside CPOP community group ordered free copies of a publication containing 50 problem solving case studies from the Justice Department's COPS Office so they can review these as they proceed with their work on crime.

A second example consistent with this section of the CA involves Cincinnati residents observing first-hand problem-solving efforts from different policing agencies at the International Conference on Problem-Oriented Policing. Six Partnering Center outreach workers and its Executive Director attended. The Partnering Center also paid for three community members to attend the conference. Also attending was the CPD's CPOP coordinator and one of the Plaintiffs' attorneys.

One of the community members attending is the Madisonville CPOP Team leader. Upon her return she shared with her CPOP team colleagues a report she wrote describing what she learned from the conference. The conference exposed Cincinnati attendees (along with 400 others) to problem-solving efforts from the United States and other countries, as well as crime theories explaining hot spots and risky places. Those participating from Cincinnati attended problem-specific sessions, including sessions on bank robberies, motel crime, open-air drug markets, underage drinking, identity theft, street racing, speeding vehicles in residential areas, crime in public housing, auto thefts, missing persons, and convenience store robberies.<sup>7</sup>

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<sup>7</sup> Participants also attended sessions such as crime analysis for problem solvers (Level I and Level II), analyzing fear of crime, the effect of CCTV cameras in public places, situational crime prevention, and crime displacement. Police officers, police

A third example involves the University of Cincinnati and the CPD. At the encouragement of Councilmember David Pepper, the CPD will be working with University of Cincinnati's Ohio Service for Crime Opportunity Reduction (OSCOR) on five city hotspots. UC staff will observe and analyze the hotspots. The project essentially follows a problem-solving model (selection of crime reduction targets, collection and analysis of data, responses suggested, feedback on implementation, evaluation). Analysis of the five hotspots is expected to be complete in June, 2005.

Another CPD example of an effort consistent with this CA section comes from District 2. Several District 2 neighborhood officers are familiar with the Problem Oriented Policing Guides. One had used the guides to help understand aspects of speeding and drug dealing in privately owned apartment complexes. Several had examined the POP Center website. During a Kennedy Heights CPOP Team meeting, the District 2 Commander referred community members to a specific section of the POP Center website to help them work on a neighborhood prostitution problem.

### **3. Assessment**

The Monitor Team views these examples as bright spots. Certainly it is clear that the Partnering Center is committed to CPOP, as it permeates all that they do. This is in sharp contrast to the City, where commitment to CPOP from the top of the CPD is minimal.

The commitment to CPOP in the levels below CPD leadership appears ad hoc. Captains committed to CPOP appear to be the exception rather than the rule. One captain told the Monitor Team this quarter that he would not ask any of his officers to read any of the problem-oriented guides (which are on the CPD's website) "because they are too busy." Of course, this is part of the point of problem solving: officers are often busy because they are going back to the same chronic repeat addresses again and again.

The intent of this section is to have the Parties look outside the CPD's existing approaches to reducing crime and safety problems to those efforts employing a problem-oriented policing approach, and to disseminate these widely within the organization (not just to make them available). Doing so will help build the CPD's capacity to engage in community problem-oriented policing. As the Monitor Team has noted

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commanders, crime analysts, as well as academics and crime reduction practitioners presented on each of these topics.

before, 29(b), 29(c) and 29(d) are closely tied, and these and other CA sections are meant as ways to ensure that the CPD adopts CPOP as its principal strategy to reduce crime and disorder in Cincinnati.

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

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

The Parties, through the Community Partnering Program, will conduct CPOP training for the community and jointly promote CPOP.

### **2. Status**

Two additional trainings occurred this quarter, making 29 neighborhoods trained in SARA Problem Solving (up from 27).<sup>8</sup> Training will resume in the Spring, although a schedule has not as yet been set. Some of the neighborhood groups that received training earlier have active CPOP teams: they have selected a problem, completed a Community Problem Solving Worksheet, and are ready for or participating in meetings that are jointly facilitated by a CPD officer and a Partnering Center outreach worker. Of the 29 neighborhoods that received training to date, there are now 19 active teams.

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<sup>8</sup> SARA stands for Scan, Analysis, Response and Assessment, and is a methodology for police problem solving.

	<b>Neighborhood Team Trained but Not Yet Active</b>	<b>Active Neighborhood Team</b>
<b>District 1</b>	St. Anthony's Village	West End Pendleton Over-the-Rhine
<b>District 2</b>	Hyde Park Pleasant Ridge	Oakley Kennedy Heights California Evanston East Walnut Hills Madisonville team 1
<b>District 3</b>	Sedamsville South Cumminsville English Woods	Lower Price Hill North Fairmount
<b>District 4</b>	Paddock Hills Hartwell Carthage	Roselawn Bond Hill Mt. Auburn North Avondale Avondale Walnut Hills
<b>District 5</b>	Winton Terrace/Winton Hills	Northside College Hill
<b>As of December 2004</b>	<b>10 Neighborhoods Teams Trained, But Not Yet Active</b>	<b>19 Active Neighborhood Teams</b>

In anticipation of providing CPOP training this Spring, Partnering Center outreach workers have begun building support in different neighborhoods. The goal of Center staff is to assess community readiness for the next round of SARA training. At the next CPOP Working Group meeting, they hope to recommend certain neighborhoods for Spring training.

There were several noteworthy CPOP efforts this quarter. For example, Bond Hill's CPOP Team tackled a problem of youth loitering, fights, and graffiti in front of the Loving Arms Daycare Center on Paddock and California Avenues. A Daycare employee reported that she had to step outside *four to five times each day* to break up fights among the teenagers hanging around in front of the Center. She would ask the teens not to write graffiti on the daycare doors and to refrain from littering. The employee reached out to the teens taking them on a tour of the daycare facility. She hoped that by showing them the important work of the daycare center, the teens would cooperate. Unfortunately, nothing changed. A CPOP team formed to address this issue. Their analysis

showed that the frequency and number of busses stopping in front of the Center contributed to the loitering, which allowed the fights and the graffiti. The CPOP team worked with Metro Bus and now, as a result, the #45 bus no longer stops in front of the daycare center. It now stops in front of the Bond Hill Presbyterian Church on Paddock Road, and the CPOP team has contacted the Church about its guardianship over the location and will discuss the need for a plan if a recurrence of the problem emerges. A second bus, #48 still stops in front of the Center, but less frequently and does not appear to contribute as much to the problem. The Partnering Center reports: “These relatively minor changes, along with increased activity from neighborhood stakeholders, have resulted in a noticeable reduction of the negative activities that previously took place at the location.”

In addition to providing CPOP training, the Partnering Center facilitates (or co-facilitates) meetings for many of the CPOP teams. They have made partners with officers and community members, enthusiastically assist at neighborhood CPOP events, and bring knowledge about crime reduction efforts to the table. The Partnering Center Executive Director has made linkages across agencies and across neighborhoods, bringing more and more partners to the table. For example, in the Pendleton area, the Partnering Center met with some residents and an area business owner to discuss concerns arising from the street closing at 12<sup>th</sup> and Republic. By doing so, staff were able to allay some concerns and share with CPD issues that may require further attention.

For another initiative, Partnering Center staff worked with the CPD (Lt. Col. Combs and Captain Humphries), Talbert House, and several substance abuse outreach organizations to engage new stakeholders to participate in the 25 Cities Initiative. The Initiative would focus on three neighborhoods, Lower Price Hill, Kennedy Heights, and Madisonville, and would support coordinating policing, prevention, and treatment efforts to reduce drug use and its related violence.

In addition, in this quarter the Partnering Center participated in activities to promote CPOP, including:

- Outreach to new neighborhoods
- Meeting with District sergeants regarding CPOP
- Participating in North Fairmount’s Make a Difference Day



- Meeting with Cincinnati's Public Library to discuss creation of a CPOP resource area in library branches
- Meeting with WDBZ radio station to discuss the creation of a talk show to highlight the Collaborative Agreement and CPOP efforts. As a result, the station committed to a weekly show covering CPOP problem-solving efforts in neighborhoods

During this quarter, the Police Department participated in a number of outreach activities in the community, including:

- A fourth Citizens' Academy for mental health professionals
- Training community members for participation in Citizens on Patrol; holding an annual awards ceremony for participants
- Attending numerous community meetings
- Serving holiday dinner to residents of Tender Mercies, an Over-the-Rhine assisted living facility for people with mental illness who were formerly homeless. Officers and the District 1 Captain (and his family) provided the dinner and all made a substantial donation to Tender Mercies to assist its residents
- Conducting safety talks on home security
- Extending the Hispanic Interpreter project, which began as a pilot project November 2003 to help meet the gap between the need for Spanish speaking officers and calls for service requiring a Spanish speaker

### **3. Assessment**

This quarter involved less training than the prior two quarters; however, neighborhood training will resume in the Spring. In the interim, the Partnering Center and the CPD participated with a number of the neighborhoods already trained, building their readiness to work on a problem and assisting those that are active teams in their crime reduction efforts. Both the Partnering Center and the CPD also attended many events this quarter, participating in different ways across many different communities. In such a short period of time, the Partnering Center has clearly become a great asset to Cincinnati neighborhoods.

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

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

The Parties shall coordinate efforts through the Community Police Partnering Center to establish ongoing community dialogue and structured involvement by the CPD with segments of the community, including youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents, and other city residents on the purposes and practices of CPOP.

### **2. Status**

The first All-Parties Community Forum, originally scheduled for August 2004, was conducted on September 23, 2004. The Monitor Team reviewed the videotape of the forum.

At the forum, attendees heard from the City Manager, the Police Chief, and the Plaintiffs' ACLU attorney. The City Manager spoke of her commitment to the CA, the Police Chief spoke about problem solving, and Plaintiffs' attorney spoke about the positive outcomes to which the CA committed the Parties and the need for problem solving. Partnering Center Executive Director Rick Biehl then moderated a panel discussion on CPOP. Panelists included several Partnering Center outreach workers, several community CPOP team members, a neighborhood officer, a sergeant and a District Commander.

Community panelists and officers spoke inspiringly of the work accomplished on specific locations each of these CPOP team members worked to turn around. Partnering Center outreach workers added details about how decisions by the CPOP teams were made. The Parties report that approximately 75 people attended the Forum, predominantly representatives from community councils, social services, faith-based agencies, and civic organizations.

In addition to the Community Forum, in mid-September, Plaintiffs provided the Parties a draft plan and timetable for conducting additional joint community forums. The Monitor has not yet seen a response from the other Parties.

### **3. Assessment**

The first CPOP Forum was an excellent beginning. The CPOP stories from the community members were nothing less than inspiring. The Monitor recommends additional forums, including discussion of the CA and the MOA, use of force, vehicle stop study, as well as CPOP.

Nearly a year ago, the Parties tasked the CPOP Committee with developing a community dialogue/interaction plan, with implementation beginning in June 2004. The Monitor would like to see a coordinated plan outlining community forums to discuss the issues that brought the Parties initially to the table. These include fair and equitable policing, police use of force and alternatives to use of force, police response to the mentally ill, and police response to those under the influence of drugs or alcohol.

As we noted in prior Reports, the CA calls for nothing less than a historic change in the style of policing for the Cincinnati Police Department. As part of this change, the CA calls for dialogue and community interaction. The Parties, through the Partnering Center, are to develop ongoing community dialogue and interaction for CPD with youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low-income residents and other City residents on the purposes and practices of CPOP. More of these types of events and others tailored to the different groups should be jointly promoted.

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

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

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

### **2. Status**

At the CPOP meeting in July, the Partnering Center Executive Director Richard Biehl was appointed to chair the awards committee. The Awards Committee was convened in October. The Committee established five award categories:

- outstanding community efforts
- outstanding contribution to community efforts
- partnering
- innovation
- all-around

The CPOP Awards Committee will discuss guidelines at the January 30, 2005, Neighborhood Summit. It is expected that the awards nomination deadline will be March 1, 2005, with a ceremony in early May 2005. No agreement has been reached for funding the awards ceremony.

### **3. Assessment**

Currently, the Parties are not in compliance with this section of the CA. However, as we noted in prior Reports, the rolling out of joint CPOP training took precedence over the awards process, so the Parties and communities would have the skills to address problems. With 19 active CPOP neighborhood teams, an awards ceremony will be a timely addition by recognizing the committed efforts of those engaged in problem-solving.

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

The City, in consultation with the Parties, shall develop and implement a communications system for informing the public about police policies and procedures. In addition, the City will conduct a communications audit and develop and implement a plan for improved internal and external communications. The National Conference for Community and Justice (NCCJ) will fund the communications audit.

#### **2. Status**

This CA section has two parts: (1) informing the public about CPD policies and procedures, and (2) conducting a communications audit and developing and implementing a plan for improving internal and external communications. With respect to the first, CPD policies and procedures are accessible from the City website. On the second, the communications audit was conducted in 2002. Also, the Parties had been scheduled to develop a communications plan this past Spring through their CPOP Committee. The plan has not yet been developed, however.

The audit's main findings include the following:

- Cincinnati should embrace CPOP by seeking collaboration with the community, with the motivation to become a more harmonious community and to accomplish a better quality of living. The importance and value of CPOP should permeate the Department.
- Improved race relations should be aggressively addressed. This is not just a "black/white" issue. Cincinnati is host to growing populations of other minorities such as Latinos, Asians and people from the Pacific Rim. Part of community policing will require an understanding of the cultures of many people.
- CPD leaders and officers shouldn't be resistant to change

- There should be a stronger connection in the messages between CPD leadership and officers
- The CPD should do more to recognize and celebrate good work
- Community support is better than the CPD appreciates

In the CA Status Report, the Parties state that the NCCJ (which funded the audit), working with a communications/marketing consultant, will provide the CPD with a “loaned executive” to serve as a Community Relations Coordinator. This person will serve as the primary liaison between the CPD and the community for purposes of implementing portions of the communications audit. The CA Status Report listed at least 19 separate first year activities for the Coordinator, including developing a strategic communications plan, developing a “new relationship initiative between the CPD leadership and community, business and political leaders,” and establishing community relations activities to raise the visibility of CPOP, Citizens’ Police Academy, Youth Services and other CPD Initiatives.

### **3. Assessment**

Concerning the first part of this CA section, accessibility to policies and procedures, they are available to the public on the CPD’s website, <http://www.cincinnati-oh.gov/cpd>. The City is in compliance with this part of paragraph 29(h). We also believe it would be helpful to have a link in the City’s CPOP website (<http://cagisperm.hamilton-co.org/cpop/>) to the policies and procedures, so that those community members most engaged with the police and who have access to the internet can easily review any policy or procedure on the CPOP website.

Concerning the second part of this CA section, the City conducted a communications audit, but has not yet developed and implemented a plan for improved internal and external communications.

The Parties at this point are not yet in compliance with this component of paragraph 29(h).

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

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

## **2. Status**

The CPD created a Community Relations Unit (CRU) in 2003. The CRU is a division of the Police Relations Section. Initially, the CRU Manager reported to the Executive Manager of Police Relations and assisted in coordinating the implementation of the CA. In early 2004, the CRU Manager was transferred to the Records Division to achieve budget savings. The CPD states that the CRU manager will be allocating half her time to assisting RAND (the CA evaluator) by providing documentation and records needed to conduct its evaluation of the Parties' progress with the CA. This quarter, the CPD detailed another officer to the CRU. She is tasked with redefining the CPD's quarterly Unit Commander CPOP reporting process, making recommendations about the CPD's current problem tracking system, and assisting with implementing aspects of the communications audit. She will also assist with the implementation and reporting requirements of the Agreement.

## **3. Assessment**

The addition of an officer to CRU is a positive development and we look forward to working with her. The City is in compliance with this CA requirement.

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

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

### **2. Status**

The CPD submitted its CPOP Annual Report for 2003 in September 2003. The Parties submitted their 2004 CPOP Annual Report in September 2004. Milestones documented in the 2004 Report included:

- The establishment of the Community Police Partnering Center
- Development of joint CPOP training delivered by CPD and the Partnering Center outreach staff
- Delivery of joint training to numerous Cincinnati communities

### **3. Assessment**

The Parties have been in compliance with this section of the CA for two consecutive annual deadlines.

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

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

#### **2. Status**

The CPD provided descriptions of efforts from the Patrol, Investigations, Youth Services, and Training Bureaus, as well as the False Alarm Unit. Other Unit Commander reports have not been submitted.

Patrol Bureau. Many of the efforts center on drug markets in various neighborhoods, although citizens have also engaged officers on other types of problems, including: noise complaints; homeless outreach; garage and business burglaries; traffic congestion; disorderly behavior; youth loitering; graffiti; robbery; theft from vehicle; vandalism; assault; junked autos; litter; and zoning violations.

Some of the efforts are described by the Partnering Center as well, but we recount here a sample of the descriptions from the Patrol Bureau report:

- 1932 Kentucky Avenue: Abandoned buildings, junked vehicles, and litter. Conducted coordinated walk through by CPD, Fire, Health, Buildings and Inspections, Public Services, and Code Enforcement Response Team representatives. Property violations cited. Follow-up visit showed that many of the violations were addressed or that there was significant improvement towards compliance.
- Euclid and Daniels: Complaints of drug activity. Citations issued for violations ranging from loud music to drug possession; criminal trespass laws enforced; evictions made.
- Drug sales at 7750 and 7769 Stillwell, 7801-7839 New Bedford, 1618 – 1650 Cresthill, and Glenorchard and

Sparkle Avenue: Directed patrols by different CPD units; officers met with landlords to address safety issues and evictions.

- 660 Neave Street: Several complaints of persons loitering and blocking the sidewalk. The neighborhood officer is meeting with the community council to develop a strategy to deal with the problem.
- 4916 Reading Road: Drug activity and loitering. Officers working with community council and Cinergy to improve lighting and trim hedges and trees.
- 5810 Madison Road: Drug sales and use, public drinking, disorderly conduct. Higher visibility patrol by officers and Madisonville Citizens on Patrol to dissuade illegal business.
- Mt. Auburn: Burglaries and thefts from auto. Neighborhood Watch walks in area to discourage crime and identify crime safety issues. Officers held safety talks on home security. Covert surveillance established.
- Hartwell: Garage burglaries. Police effort to advise residents to secure their garages. Covert surveillance established.
- Neighborhood Intelligence Cooperation and Education (NICE): District 4 officers, with officers from other districts, conducted an operation to reduce homicides, crimes, and to educate the public on safety, especially those most prone to violence. In preparation, Captain Schmaltz, Lt. Neville, and Sgt. Lehman established goals and developed an action plan. Specific locations were identified based on crime “hot spot” analysis. At roll-calls, information was relayed and officer input was solicited. The information obtained was then forwarded to the Criminal Investigation Section for its review. A second operation was conducted on October 2, 2004. Both operations resulted in arrests and drugs seized.

Investigations: Several of this quarter’s efforts include:

- The CPD provided the Monitor with a report developed by the Hamilton County Municipal Court describing a court initiated project exploring alternative sanctions for prostitutes. Current sanctions are inadequate. In April, jail overcrowding caused Hamilton County’s Sheriff to cease



housing women arrestees unless charged with violent and serious felonies. The arrestees are simply fingerprinted, photographed, given a court date and released. Last year, the CPD made over 1,000 prostitution arrests. The project team, consisting of numerous agencies, organizations and groups, commissioned a review of the research on prostitution and alternative programs.<sup>9</sup> Captain Vince Demasi, a CPD unit commander, is on the project's planning team, which met on October 22, 2004. The team sought and received a planning grant from the Health Foundation of Greater Cincinnati to assist it in its undertaking. The project is entitled the Off the Streets Planning Project and will meet regularly in the coming months to develop an alternative plan to address aspects of the prostitution problem in Cincinnati, since arrested prostitutes will only be fingerprinted and released.

- The CPD Community Response Team (CRT) conducted a two-day initiative on October 26 and 27 in response to community complaints and a review of crime analysis data. Most complaints were of drug and prostitution activity. The operations resulted in arrests, and seizure of drugs and currency.

Youth Services: Several of this quarter's efforts include:

- Attending Teen Day at New Friendship Baptist Church
- The DARE Unit attending Hamilton County Community Action Agency's Open Enrollment Fair at Jordan's Crossing
- Presenting a program talk at Syrian Shriners 100 Luncheon Club
- Providing gang presentation to security assistants at Cincinnati Public Schools Education Center
- The DARE Officer presenting before 200 students at Northern Kentucky University about gangs

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<sup>9</sup> This Hamilton County collaboration includes: Probation, Mental Health, Pretrial Services, Court Clinic, Alcohol Drug Addiction Services, Prosecutor's Office, Tender Mercies, First Step Home, Court of Common Pleas, Municipal Court, Talbert House, Hamilton County Courts, and neighborhood groups and local businesses.

### Alarm Reduction Unit:

- In 2003, Cincinnati 911 received 30,000 false burglar alarm calls diverting resources from other police emergencies. CPD created a False Alarm Unit to deal with the false calls. October 2004 alarm calls were 496 less than the same month last year, a 22.12% reduction.

The City is revising its Commander reports with the assistance of the officer assigned to the CPD's Community Relations Unit.

### **3. Assessment**

Unit Commander quarterly reports are to detail problem-solving efforts. Some of the efforts described above are highly consistent with problem solving; others are less so. Also, there were some units whose commanders did not submit quarterly reports. We look forward to viewing the revised unit commander quarterly reports.

The CPD is in partial compliance with this section of the CA.

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

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

#### **2. Status**

In March 2004, the Parties proposed a timeline beginning in May 2004 for review of Academy courses and implementation of additional courses. Plaintiffs and the FOP agreed to meet with District Commanders and audit CPD training to recommend changes or additions. However, the Plaintiffs and the FOP reported in the June 2004 Status Report and the September 2004 Status Report that they had not yet done this. In addition, in this quarter, the City denied Plaintiffs access to training and ride alongs.

On November 18, Plaintiffs filed a motion seeking an expedited Conciliator ruling directing the City to comply with the CA and MOA, and permitting Plaintiffs to observe Police Academy training, as well as permitting Plaintiffs and the public to resume opportunities for ride-alongs with CPD officers.

### **3. Assessment**

The Plaintiffs have been denied access to review police training. As the FOP still has the opportunity to review Academy courses, we encourage the FOP to suggest any modifications or new courses that would help CPD officers better prepare for policing in an urban environment.

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

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

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

#### **2. Status**

CPD recognizes that its problem tracking system requires improvements and has tasked the Community Relations Unit to improve the system. The City reports that it has reviewed previous reports of the Monitor and has prepared a draft document for review by neighborhood area sergeants.

### **3. Assessment**

Improvements to the problem tracking system will be a positive advance. Once the Parties collaborate on this improvement, we recommend that they share their draft for an improved tracking system with the Monitor. The Monitor will determine compliance when the new system is up and running.

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

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

#### **2. Status**

The CPD has stated that it regularly reviews staffing to match workload requirements with resources. On numerous occasions (starting with our Third Report in October 2003), the Monitor requested the CPD's staffing formula and a description of how the CPD applies it. The CPD provided a description, including the formula used, in September 2004.

Plaintiffs suggest that the description the CPD provided of its staffing approach supplies the mechanics of its staffing plan, but has not changed “in light of its commitment under CPOP” and the CA requirement that problem solving become the CPD’s principal approach to crime and disorder. In addition, since crime analysis is key to problem solving, Plaintiffs suggest that the City should have proposed substantial budget increases for crime analysis capacity within the CPD. Currently, the CPD has 1.5 analysts for 1,000 sworn officers.

### **3. Assessment**

The staffing formula appears not to take into account the switch the CPD must make to a CPOP agency. The CPD can explore a range of options for folding problem solving into the uncommitted time of patrol officers. In addition, given the importance of analysis to CPOP, the Department’s staffing plan should consider whether its current crime analysis staffing level is sufficiently robust to support the type of work expected under the CA.

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

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

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

#### **2. Status**

The City has proposed new police job description and performance review standards to satisfy this CA section. The Parties’ CA Status Report states that the Human Resources Committee reviewed and revised job descriptions and performance evaluation standards, and recommended submission of these revised criteria to the Civil Service Commission for approval. A copy of the CPD’s Police Performance Evaluation Rating Manual received by the Monitor Team during a site visit reads: “Approved by Civil Service Commission 10/21/04,” so it appears that the revisions have been approved.<sup>10</sup>

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<sup>10</sup> CPD’s Staff Notes for November 2, 2004 at [http://www.cincinnati-oh.gov/police/downloads/police\\_pdf9579.pdf](http://www.cincinnati-oh.gov/police/downloads/police_pdf9579.pdf) confirms this approval and CPD’s December 21, 2004 Staff Notes indicate that performance ratings under this new system are due on or before January 22, 2005: [http://www.cincinnati-oh.gov/police/downloads/police\\_pdf9856.pdf](http://www.cincinnati-oh.gov/police/downloads/police_pdf9856.pdf).

In the Monitor' Report we quoted the paragraph below drawn from the Parties' CA Status Report, as it noted some disagreements between the Parties:

Due to the disagreement between the Parties on the philosophical definition of CPOP, work has been delayed in this area. Once the deliverables for the CPOP portion of the Agreement are finalized, job descriptions and performance evaluations will again be reviewed and necessary modifications will be made.

Although Plaintiffs and the FOP participate in the Human Resources Committee, it is clear that Plaintiffs have not signed off on the revisions, and believed they are still in draft form. In the CA Status Report, Plaintiffs note that the proposed revisions "are a first step" but also state that they "look forward to future drafts of these proposed items that communicate the priority of the commitment to problem solving to the entire force."

### **3. Assessment**

The Monitor must determine whether the revised documents are consistent with the CPD's required commitment to CPOP. We do not find this is the case.

The CPD uses ten categories to evaluate all officers' performance and then approximately eight additional categories based on assignment and rank. Of the initial ten categories by which all sworn personnel are rated, two are changed in the new evaluation form: *problem solving* substitutes for *maintaining equipment* and *community interaction* substitutes for *meeting and dealing with the public*. The eight remaining categories are:

- quality of work
- judgment
- attendance and punctuality
- completion of assignment
- grooming and dress
- physical conditioning
- attitude towards department policy
- developing and assisting other officers

As noted, the additional eight categories depend upon rank and assignment. For patrol officers, the eight additional rated categories are:

- investigation and case preparation

- handling stressful situations
- preventive patrol
- quantity of work
- teamwork
- gathering of criminal intelligence information
- writing police reports
- processing evidence

The Rating Manual contains the criteria qualifying an officer for one of six performance ratings (outstanding, excellent, very good, satisfactory, improvement needed, unsatisfactory) for each of 18 rated categories. Each performance rating has a point value: outstanding = 25 points; excellent = 20 points; satisfactory = 15 points; improvement needed = 10 points; and unsatisfactory = 5 points. For instance, the Problem Solving category reads as follows:

Outstanding	Is the one highest achiever in this category ever encountered by the rater.
Excellent	Has an exceptional ability to identify potential or existing problems. Shows unusual initiative and innovation in seeking appropriate solutions.
Very Good	Displays considerable ability in identifying potential or existing problems through use of the SARA problem-solving method. Shows initiative and innovation in seeking appropriate solutions.
Satisfactory	Has a broad understanding of the SARA problem-solving method and utilizes it in making decisions to assist the public.
Improvement Needed	Consistently fails to identify problems, either potential or existing. Somewhat understands the SARA problem-solving methodology for consistent application in CPOP teams.
Unsatisfactory	Unable to identify a problem or utilize the SARA problem-solving process.

We have several concerns with this first section. First, while SARA is mentioned (the police problem solving acronym representing Scanning,

Analysis, Response, Assessment) only two of its elements are highlighted in the rating description: problem identification and solutions (response). The absence of analysis and assessment may describe a type of police problem solving that ultimately is less than called for by the CA. Analysis and assessment are key to the form of CPOP the CPD is to adopt.<sup>11</sup> Second, the *improvement needed* rating mentions CPOP teams. Under the CA, problem solving is to become the principal strategy to fight crime and disorder in Cincinnati, not just for the CPOP teams.

We are also concerned about aspects of the category *Community Interaction*. The ratings in that category are as follows:

Outstanding	Is the one highest achiever in this category ever encountered by the rater.
Excellent	Handles all dealings with the public in an extremely professional manner. Is highly receptive to individual problems and makes a special effort to provide assistance. Builds effective working relationships with residents and businesses through utilization of Community Problem Oriented Policing methods.
Very Good	Consistently friendly and courteous to the public and fellow employees. Is highly receptive to problems of individual citizens and makes an effort to provide assistance through Community Oriented Policing methods.
Satisfactory	Has a working knowledge of Community Problem Oriented Policing and projects a competent and efficient image when dealing with the public and fellow employees.

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<sup>11</sup> It appears that the CPD took language from a rating category used in its previous evaluation rating system -- the Civil Service approved version from 1978. The category called *Problem Identification and Resolution* in that version applies only to staff officers, and is identical in the current rating system as well (see page 29 of current system). The *Problem Identification and Resolution* section is 26 years old. Problem solving language in the personnel evaluation rating system should be updated to reflect the way it is used in the Collaborative Agreement.

Improvement Needed	Is frequently rude or indifferent in almost all dealings with the public and fellow employees.
Unsatisfactory	Refuses to deal with the public and/or fellow employees and always acts rude or indifferent toward them.

For “improvement needed,” an officer must be rude or indifferent “in almost all dealings with the public and fellow employees.” Certainly an officer who is frequently rude or frequently indifferent to the public needs improvement, even if it is with only a portion of his dealings with the public.

Overall, the Monitor believes that the revisions fail to place problem-solving as the CPD’s central approach. Officers, supervisors, and managers can receive a good rating in other categories and be eligible for promotion without doing well in problem solving and community engagement. Moreover, the other categories in the rating system are virtually identical to the 1978 Civil Service approved CPD evaluation rating system, suggesting that problem-solving is simply an add-on. This can signal to employees that very little has changed.

We recommend that the Parties meet to discuss these issues, with the CA as the guide. Should the Parties reach consensus, we anticipate CPD will train its personnel so that employees and supervisory raters have a full understanding of the importance of problem solving to CPD policing, and the type of problem solving required.

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

**1. Requirement 29(p)**

The City shall design and implement a system to easily retrieve and routinely search (consistent with Ohio law) information on repeat victims, repeat locations, and repeat offenders. The system also shall include information necessary to comply with nondiscrimination in policing and early warning requirements.

**2. Status**

As noted in our prior Reports, the City expects to meet this requirement through the acquisition of a new Records Management System (RMS) and Computer Aided Dispatch (CAD) system. The City contracted with Gartner Consulting and in late 2003 began reviewing design specifications for a Request for Proposal (RFP). An RFP was



issued by the City's Purchasing Department and released June 22, 2004. Five vendors submitted proposals by the August 20, 2004 due date. The Department narrowed the number of bidders to three in this quarter and expects the three vendors to provide demonstrations during January 2005. The City expects to enter into contract negotiations with the vendor in February 2005.

### **3. Assessment**

The City is not yet in compliance with this CA provision.

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

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

#### **2. Status**

The Parties believe that the new RMS system will also meet the requirements of this section of the CA.

#### **3. Assessment**

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

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

### **1. Requirements**

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

The Evaluation Protocol must include the following components:

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

## **2. Status**

The RAND Corporation was selected by the Parties to be the Evaluator and to implement the Evaluation Protocol, and RAND entered into a contract with the City of Cincinnati to accomplish these tasks. A kick-off meeting was held on September 1, 2004, between the RAND project team and CPD personnel. On December 15, 2004, RAND

prepared its first quarterly report under the City contract, describing its progress on the Evaluation Protocol. In its quarterly report, RAND cites the following:

- It has developed four separate survey instruments that will be pilot tested in February 2005 and fielded in Spring of 2005. These draft surveys accompanied the quarterly report. The surveys of community residents, citizens who have interacted with the police, and police officers in the field will be repeated in 2007. (Surveys of citizens and officers involved in the complaint process will be done on an ongoing basis.)
- RAND has developed multiple benchmarks and recommendations on how to assess bias-free policing, including traffic stop data collection and analysis
- It has developed observations forms and surveys for its review of community meetings and problem solving projects
- RAND expects to sample approximately 300 incidents per year that are captured on video and audiotape (police vehicle MVRs)
- RAND has given the CPD and the City of Cincinnati several data requests. A significant amount of data has already been provided, although there is a significant amount of data that still is needed.

In addition, the CPD has requested any comments on the RAND quarterly report and the accompanying documents at the beginning of January, so that RAND can quickly move forward on the Evaluation Protocol.

### **3. Assessment**

While the components of the Evaluation Protocol have not begun, the RAND efforts are a very positive development. The Monitor will work closely with the Parties and RAND in this next quarter to begin the process of evaluating whether the goals of the CA are being achieved.

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

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

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

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

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

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

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

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

- Citizen complaints against members of the CPD

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

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

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

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

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

## **2. Status**

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

CPD officers continue to collect traffic stop data on Contact Cards. The CPD reports that it has prioritized the entry of data from the Contact Cards submitted in 2003. The 2003 data has been forwarded to RAND for analysis. The December 2004 RAND Quarterly Report describes the traffic stop analysis it will conduct as part of the evaluation protocol, the data requests it has made to the CPD, the data it has received, and the status of its analysis. RAND is at the beginning stages of analysis, with no products to report at this stage.

## **b. Pedestrian Stop Data**

The CPD has revised its Investigatory Stops Policy, Procedure 12.554, to require a Contact Card be filled out for (1) all vehicle stops, and for (2) any vehicle passenger detention that meets the definition of a Terry stop.<sup>12</sup> For consensual citizen contacts, the policy states that an officer **may** complete a Contact Card, if the officer believes the card will provide intelligence information and the information is provided voluntarily. However, the procedure is silent on whether officers are required to complete Contact Cards for Terry stops stemming from pedestrian encounters. Current practice leaves this up to the discretion of the officer.

The City states that the CPD and the Plaintiffs view officer completion of Contact Cards after pedestrian stops as problematic – they believe there are legal constraints, and collection may cause community relations problems. The City believes that data collection on pedestrian stops can be gathered from other sources, including existing CPD reports:

- FIR Cards
- Form 527 Arrest Reports
- Adult and Juvenile Notice to Appear Citations
- Adult and Juvenile MUTT Citations
- Form 316 Aided Case Reports
- Warning Citations for Pedestrian Violations

The City states that the CPD and RAND will work together to extract this information. The December 2004 RAND Quarterly Report indicates it will request statistical compilations from the City in January 2005. The Report did not describe any analysis of pedestrian stop data.

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

The CPD has provided use of force data, broken down by race, for the first three quarters of 2004. The December 2004 Rand Quarterly Report indicates it will request statistical compilations from the City in January 2005. The Report did not describe any analysis of use of force data.

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<sup>12</sup> A Terry stop is one where the officer has reasonable suspicion to believe the person is committing or has committed a crime.

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

The Parties have agreed to a Report of Favorable Police Conduct form, which has been printed and disseminated. This quarter, the CPD processed 46 reports of favorable officer conduct. The reports are widely available to citizens, they are at all CPD and public facilities, on the CPD website, and each CPD vehicle contains a supply. The CPD has initiated inspection of some of these places to ensure an adequate supply of reports, including CPD facilities, CPD neighborhood stations, designated public facilities (libraries, recreation centers, etc.) and designated CPD vehicles. The inspections are completed either monthly or quarterly.

The Parties report in their most recent CA Status Report that the FOP continues to meet with appropriate members of the City and Police administrations to develop a coordinated effort to publicize the fact that citizens having favorable contacts with members of the CPD are encouraged to file reports of such favorable conduct on forms available to all police officers and located in all police facilities.

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

The Parties have developed a protocol for the reporting and tracking of unfavorable citizen interactions. The Parties to the CA agree that:

- Rude and discourteous conduct by citizens toward police is a problem that can be addressed by community problem oriented policing
- The conduct at issue is typically not criminal and is normally protected by the federal and state constitutions
- A protocol for tracking rude and discourteous conduct by citizens toward the police can be developed through problem-solving while respecting the constitutional rights of all citizens

The Parties developed a protocol for reporting and tracking such conduct, and permitting the evaluation team (RAND) to perform statistical compilations and prepare required reports of such conduct to the Parties, pursuant to paragraphs 38, 39, 40, 44, 45 and 46 of the CA. The protocol has been entered by Judge Dlott as “Protective Order Re: Mutual Accountability Reports of Unfavorable Conduct by Citizens During Implementation of the Collaborative Agreement.” The FOP is taking steps to see that appropriate sealed containers are located in all

police Districts and units of assignment, and that the Mutual Accountability Form 1 (MA-1) is printed in sufficient numbers. The FOP is working with CPD to ensure the form is made available to all CPD officers.

### **3. Assessment**

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

The CPD is collecting traffic stop data on Contact Cards, which are now being sent to RAND for analysis. RAND is at the beginning stage of checking quality and consistency of the data fields. The Parties are not yet fully in compliance with this requirement.

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

RAND will request statistical compilations produced by the City in January 2005. The Parties are not yet fully in compliance with this requirement.

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

RAND will request statistical compilations produced by the City in January 2005. The Parties are not yet fully in compliance with this requirement.

#### **d. Favorable Interactions**

The Parties are in compliance with this CA requirement.

#### **e. Unfavorable Interactions**

The Parties have developed a protocol for reporting unfavorable interaction by CPD officers with citizens. The protocol has been approved and entered by the Court as “Protective Order Re: Mutual Accountability Reports of Unfavorable Conduct by Citizens During Implementation of the Collaborative Agreement.” Mutual Accountability Forms have been developed and are being made available at all police districts and units of assignment. The Parties are in compliance with this CA requirement.



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

### **1. Requirement**

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

### **2. Status**

The Parties report this quarter that the CPD issued a roll-call training scenario regarding racial profiling. No progress is reported on the Parties cooperating in ongoing training and dissemination of information regarding Professional Traffic Stops/Bias Free Policing Training.

### **3. Assessment**

As we noted in our last Report, the Monitor has not seen evidence that the Parties are cooperating in ongoing bias-free policing training. Therefore, we cannot find compliance at this time.

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

### **1. Requirement**

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

### **2. Status**

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

### **3. Assessment**

Based on the information we have to date, the City is in compliance with this provision. Additional information will be available when the Evaluation Protocol gets underway.

## **V. Citizen Complaint Authority**

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

#### **1. Requirements**

- The City will establish the Citizen Complaint Authority
- The CCA will replace the CPRP and investigative functions of the OMI. The CCA will investigate serious interventions by police including shots fired, deaths in custody, major uses of force; and will review and resolve citizen complaints
- The CCA Board will consist of seven citizens; the CCA will be run by an Executive Director and have a minimum of five professional investigators; the Board must be diverse
- The Board and Executive Director to develop standards for board members, and training program, including Academy session and ride-along
- The Board and Executive Director will develop procedures for the CCA
- The CCA will examine complaint patterns
- The CCA will develop a complaint brochure, as well as information plan to explain CCA workings to officers and public
- The CCA will issue annual reports
- The City Council will allocate sufficient funds for the CCA

#### **2. Status**

The CCA has been operating and investigating complaints since January 6, 2003. A CCA Board of seven members is in place, having undergone a training program before beginning work and reviewing

complaints. The CCA has also established procedures for its Board meetings, appeal hearings, and its investigations. The CCA Board has chosen Board member Richard Siegel as the new chairperson of the CCA.

### **3. Assessment**

The City is in compliance with the provisions relating to establishing the CCA and CCA Board.

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

### **1. Status**

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

As noted in earlier Reports, Mr. Wendell France was selected to be the new Executive Director of CCA and started in April 2004.

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

The CCA hired a fifth investigator who started work in the first quarter of 2004. The City now has the minimum number of investigators required by the Agreements.

The CPD invited the CCA investigators to participate in an Internal Affairs training school run by a professional police training center. This 40-hour block of instruction, attended jointly with the CPD, should enhance CCA investigator skills and keep them abreast of relevant court decisions.

### **2. Assessment**

The Parties are now in compliance with these provisions of the CA.

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

### **1. Requirements**

Each citizen complaint, excluding criminal matters, is to be directed to the CCA, regardless of where it is initially filed. Where a complaint is to be investigated by CCA, an investigator will be assigned within 48 hours. The decisions of the CCA shall be forwarded to the City Manager, and the City Manager and the Police Chief “will refrain from making a final decision on discipline until after the receipt of the CCA report.” The City Manager shall agree, disagree or agree in part with the CCA’s findings and recommendations.

In addition to the review of individual complaints, paragraph 83 of the CA calls on the CCA to examine complaint patterns that might provide opportunities for the CPD and the community to reduce complaints. Following the identification of such patterns, the CCA and the CPD are to jointly undertake a problem-solving project to address the issues raised.

Also, paragraph 80 requires the CCA and CPD to develop a shared database to track all citizen complaints, the manner in which they are handled, and their disposition.

## **2. Status**

At the July 2004 All Parties meeting, the Monitor requested data on the CPD's actions resulting from completed CCA investigations. The City Manager asked CCA to provide her with a complete list of 2004 sustained cases, to be compared with a list of IIS completed investigations, to determine if appropriate action was taken. The information has not yet been provided to the Monitor.

This quarter, CCA prepared materials regarding complaint patterns, looking at repeat officer, repeat citizen complainants, and repeat complaint circumstances. According to the CA Status Report, the CCA and the CPD will jointly undertake a problem-solving project to determine the reason(s) for the patterns and whether there are opportunities to eliminate or reduce root causes.

## **3. Assessment**

Our review of CCA investigations is discussed in Chapter Two, Section IV.D. The CCA's investigations were thorough and complete.

With respect to paragraph 83, the CCA has prepared an analysis that will now be reviewed by the CCA Board and Police Chief, to facilitate the problem solving project. The CCA is in compliance with this CA provision.

On paragraph 80, the CCA currently does not have access to a shared database, and the City is not in compliance with this provision. However, the City stated in the last quarter that it anticipates obtaining a vendor to develop software so that CCA will have access to the ETS system.

The area of greatest concern is whether the City will take appropriate action on CCA findings where the City Manager agrees with those findings. Also, there have been concerns raised by the Plaintiffs

that the CCA has not been sufficiently supported by the Parties. The Plaintiffs have submitted a proposal that the Parties be convened to resolve issues related to the CCA. The proposal envisions a facilitated, intensive dialogue between Party representatives around the CCA, and the perceptions of it held by the Parties. The goal would be to efficiently address the problems identified during the dialogue, to assist in ensuring that the CCA fulfills its purpose. The FOP has agreed to participate so long as the process is highly structured. The CCA Board Chair and Executive Director have indicated a willingness to participate. The Monitor has sent the proposal to the City with a request to be informed whether the City will participate in such a meeting.

## **CHAPTER FOUR. INVESTIGATIONS**

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

#### **A. Use of PR 24**

1. Control Number: 2004-0593  
Date and Time: August 4, 2004 0958 hours

Summary: An officer was working an off-duty, uniformed, security detail in a store when a subject approached a female employee and began using vulgar language and making lewd comments to her. The officer overheard this, approached the subject and asked the subject to leave. The subject refused and the officer told him he would have to leave the premises, but the subject continued to refuse. The officer attempted to escort him out of the premises when the subject shoved the officer. The officer told the subject he was under arrest.

The subject said he wasn't going to jail and assumed a fighting stance, telling the officer to "come on" and that he was ready to fight. The officer attempted to defuse the situation while requesting assistance via his radio and keeping the subject at bay. The subject kept challenging the officer so the officer withdrew his mace and told him he would be maced if he didn't desist. The subject then lunged at him, at which time the officer applied a three-second burst of chemical irritant to the subject's facial area. (Note: the officer did not have a Taser). This had no effect and the subject continued to advance on the officer while swinging at him. The subject struck the officer in the face and a physical struggle ensued. The subject managed to knock the officer to the ground during the struggle.

At about this time other officers arrived and one of them immediately deployed his Taser on the subject. This also had no effect and the subject continued to resist and fight with the officers. The first officer got back to his feet, and during the struggle with the subject, he used his PR 24 to strike the subject in the rib area.

Another officer also deployed his Taser and this did cause the subject to collapse and fall to the ground. The subject attempted to pull the barbs out so repeated activations of the Taser were applied until the subject quit resisting and could finally be handcuffed. First aid was provided on scene and additional medical attention, including decontamination of the CI spray, was provided at the hospital.

This incident was captured on the store's video camera. Several independent witnesses were present and were interviewed by the

investigating sergeant. The report also noted a contributing factor in this incident of mental illness on the part of the subject.

CPD Review: A District supervisor reviewed the incident, interviewed all involved officers, witnesses and the subject, and observed the video tape recording. The descriptions of the incident by the independent witness were entirely consistent with those of the officers who were present. The supervisor found the handling of the incident and use of force (PR 24, chemical irritant and Taser deployments) by the involved officers to be consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with the CPD's assessment and findings. The officers' handling of the incident was appropriate and the supervisor's investigation was thorough.

## **B. Use of Tasers**

The Monitor reviewed 30 Use of Taser Reports this quarter. Most of the Reports were accompanied by the Taser download document, a Taser diagram, showing where on the body the Taser's barb struck, and subject/scene photographs. During this quarter, however, no audiotapes were made of any interviews. The Monitor's assessment is based on the review of these materials.

In at least ten of the cases reviewed, the Taser either missed its intended target or was determined to be ineffective because at least one of the barbs failed to contact the subject. In two of these situations, the Taser was redeployed a second time and had its desired effect, and in a third, a second officer deployed a Taser.

1. Tracking Number: 2004-0502  
Date: July 7, 2004 0053 hours

Summary: A subject ran from police after she alerted others engaged in suspected drug activity that police were in the area. A CPD officer gave pursuit with the intention of arresting the subject for Obstructing Official Business. The officer ordered the subject to stop, but she failed to comply. The Taser was deployed resulting in immediate compliance. She was found to be in possession of a crack pipe and a quantity of suspected crack cocaine.

CPD Review: CPD found the Taser use to be consistent with department policy and state law.

Monitor's Assessment: The Monitor finds the use of the Taser and the subsequent investigation to be in compliance with the Agreement.

However, it remains unclear as to whether the order given by the officer was simply an order to stop, or an order to stop with a warning of impending force.

2. Tracking Number: 2004-0508  
Date: July 9, 2004 2141 hours

Summary: Officers approached two subjects who sold drugs to a confidential informant, advised them that they were police officers and informed the subjects they were both under arrest. The suspects fled on foot, with one officer pursuing each subject. During the foot pursuit, the officer demanded the subject stop and warned him the Taser would be used. The subject continued to flee and the officer deployed her Taser from a distance she estimated to be about seven feet, striking the subject in the lower back area. The Taser had no effect and the subject was able to elude the officers. It is unknown whether the barbs penetrated the subject's clothing. The subject was not identified or known to the officers.

CPD Review: CPD Command concluded the use of the Taser was within policy and consistent with training and state law.

Monitor's Assessment: The Monitor concurs with the findings by CPD Command that the deployment of the Taser was consistent with CPD policies.

3. Tracking Number: 2004-0523  
Date: July 14, 2004 1652 hours

Summary: Subject was being stopped for a narcotics violation. Officers observed the subject and another male engaged in a hand-to-hand drug transaction. As officers approached the subject, they directed the subject to remain where he was standing. The subject instead began to flee on foot from one of the officers. The officer pursued the subject and gave him numerous verbal commands to stop his running. The subject refused to comply with these commands. The officer then deployed his Taser, striking the subject in the back. The Taser was effective and the subject fell to the ground and was handcuffed and placed under arrest without further incident. The barbs left marks on the lower back of the subject.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command interviewed the officers and completed all of the required forms. Command found that the use of the Taser was consistent with CPD policy.



Monitor's Assessment: The Monitor concurs with Command's assessment that the use of the Taser is consistent with CPD policy. However, there is no indication that medical treatment was provided to the subject as a result of the Taser or barbs striking him in the back and leaving visible marks; nor is there an indication that a verbal warning about the use of Taser was ever given by the officer. Also, there is no documentation that the sergeant interviewed the subject during the investigation.

4. Tracking Number: 2004-0529  
Date: July 17, 2004 0327 hours

Summary: CPD officers responded to a call for a disorderly person in front of a complainant's home. Upon the officer's arrival, the subject was continuing his disorderly behavior and at one point grabbed the complainant's leg. The officer gave the subject several commands to cease his behavior, to which the subject failed to comply. The subject then advanced towards the officer and was directed to stop or be shot with the Taser. The subject failed to heed the officer's warning and continued to advance. The officer deployed his Taser from a distance of four feet. The barbs struck the subject in his chest and stomach area, thus immobilizing him. He was taken into custody without further incident.

CPD Review: The CPD found the incident to be consistent with department policy and state law.

Monitor's Assessment: The subject's advancement toward the officer, coupled with his aggressive/irrational behavior and failure to heed a warning of impending force, made the use of the Taser under these circumstances both reasonable and in compliance with the Agreement.

5. Tracking Number: 2004-0535  
Date: July 20, 2004 0351 hours

Summary: The subject was originally involved in an incident in which he attempted to force entry into a residence. He left the scene prior to the arrival of officers but later returned to the area. He was observed driving a vehicle by an officer who attempted to stop him. The subject fled and a vehicle pursuit ensued. The subject crashed his vehicle and fled on foot. Another officer pursued him on foot and caught up to him on the roof of a garage. The subject continued to try and elude the officer and fell from the roof. The officer warned the subject to stay on the ground or he would be tased. The subject attempted to run and the officer tased him. The suspect attempted to run again and he was tased

a second time. When the suspect attempted to flee again, he was tased a third time. The subject was then taken into custody and given medical attention. He was also described as being under the influence of alcohol.

CPD Review: Command concluded the deployment of the Taser, the vehicle pursuit and the foot pursuit were all consistent with CPD policies and state law.

Monitor's Assessment: The Monitor concurs that deployment of the Taser was justified based on the efforts by the subject to flee and his refusal to submit to the initial efforts to arrest him. However, several concerns were noted with this investigation. There is no indication the supervisor made any effort to obtain a statement from the subject regarding the use of force investigation. The "Use of Taser" investigation form was incomplete (it did not include information on the officer involved). It was noted that an MVR tape was made but it was not included in the materials provided to the Monitor. The report indicates there was one simultaneous deployment of a Taser during this incident, but that appears to be either an error or it was never addressed in the course of the investigation.

One area of particular concern involves the printout of the officer's Taser data, which appears to be inconsistent with the description of the incident provided by the investigating supervisor. The supervisor stated the subject attempted to run after he was tased the first time and that resulted in his being tased again. The downloaded data for the Taser shows the initial burst was applied for six seconds, and the second burst was then immediately applied, with no lapse in time between the first and second applications. The second burst was for an additional five seconds. After the second burst ceased, approximately 5 seconds elapsed before a third burst was applied. The third burst was for two seconds. The supervisor's investigation indicates the first Taser deployment did incapacitate the subject, but the report also says the subject immediately attempted to flee again. This description, when coupled with the documentation showing there was no lapse between the first and second bursts from the Taser, raises questions about the accuracy and quality of the investigation. It appears the second deployment was done so rapidly that there would not have been any opportunity to react to instructions, much less make an effort to flee. There was no effort made to address this inconsistency and the lack of any documentation of interviews raises questions concerning the quality and thoroughness of the investigation.

6. Tracking Number: 2004 0541  
Date: July 21, 2004 2241 hours

Summary: Officers observed the subject involved in a drug transaction with an undercover officer. The arresting officer approached the subject and ordered him to not move or he would be tased. The subject jumped backwards after the officer gave this command. The officer again directed the subject to not move or he would be tased. The subject again turned and jumped a second time in an attempt to flee from the officer. The officer fired his Taser striking the subject in his lower right abdomen. The subject became rigid and fell to the ground striking the right side of his face on the ground. This left a small abrasion on the subject's face. Medical personnel responded and treated the subject. An officer removed the barbs on the scene. The subject was also treated at the University of Cincinnati Hospital for his injuries.

CPD Review: The investigation was conducted by a sergeant and reviewed by captain. Command determined that the officer's use of the Taser was consistent with the policies of the CPD.

Monitor Assessment: The Monitor concurs with the decision of the CPD. The subject was warned about the impending use of the Taser and was provided with medical assistance. There was no indication that the subject was interviewed or provided a statement to the investigating official.

7. Tracking Number: 2004 0563  
Date: July 24, 2004 0001 hours

Summary: Officers were conducting surveillance on a vehicle that had a felony warrant associated with it. While observing the vehicle, the officers observed a subject run out of a house and enter another vehicle and leave the area at a high rate of speed. The officers followed the speeding vehicle and observed it fail to stop for a stop sign and the driver lose control. The vehicle spun out of control and came to rest after striking a building. The driver immediately fled the vehicle and ran from the scene. One of the officers gave foot pursuit in an attempt to capture the subject. A passenger was observed exiting the vehicle and the second officer ordered him to stop and get on the ground. The subject refused to comply and started to walk away from the officer. The officer continued to give orders to the subject to stop and get on the ground only to have the subject continue to walk away. The officer then fired his Taser at the subject, striking him in the chest and blue jeans. The subject fell to the ground and the officer attempted to handcuff him. However, the subject refused to roll over on his stomach so the officer could handcuff him. The officer then fired a second 5-second burst with

the Taser resulting in the subject complying with his commands. The subject was handcuffed and placed under arrest. Engine 20 responded and provided medical assistance to the subject. The driver of the vehicle was not apprehended.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. The CPD Command determined that all policies and procedures were complied with in the use of the Taser.

Monitor's Assessment: The use of the Taser was within the policy of the CPD. The officer used the Taser to affect the arrest of the subject and was able to do so without any injuries being received by the subject or the officer. However, the Monitor does have the following concerns about this use of Taser: there was no documentation of verbal warning that the Taser would be used if the subject failed to comply with the officer's commands. There is also no indication in the investigation that the investigating sergeant interviewed the subject. Additionally, the officer fired the first burst of the Taser at 2350 and 02 seconds, for five seconds; the second burst was fired at 2350 and 09 seconds. That left the subject with two seconds to comply with the commands of the officer after the first burst. This seems to be an insufficient time for the subject to regain control of his body and thoughts to adequately comply with the officer's commands.

8. Tracking Number: 2004-0547  
Date: July 29, 2004 2131 hours

Summary: An officer approached a subject who had committed a pedestrian violation. The subject initially began to walk quickly away from the officer and then began to run. The officer pursued the subject, commanded that he stop, and gave a warning of impending force. The subject failed to comply, and the Taser was deployed from a distance of 15 feet. The barbs missed their intended target and the subject continued to flee without being apprehended.

CPD Review: The CPD concluded the use of the Taser under these circumstances to be consistent with department policy and state law.

Monitor's Assessment: The Monitor is unable to determine whether the use of the Taser is consistent with the agreement.

While the policy may permit use of the Taser to effect the stop of a fleeing suspect, not knowing the specific basis for the stop makes it difficult to truly determine whether the use of the Taser was a reasonable use of force in light of those circumstances. It is important to understand why the subject was being pursued to balance the need to

use force against the offense for which the subject is being sought. The narrative fails to outline the specific basis that prompted the action taken by the officer. Additional narrative or an audio taped statement of the officer's account may have proven helpful in properly assessing this deployment.

9. Tracking Number: 2004-0554  
Date: July 30, 2004 1953 hours

Summary: Officers observed the subject operating a vehicle which then struck a parked car. He exited his vehicle and attempted to walk away from the scene. The officers approached him, issued several verbal commands for him to stop and then warned him they would use the Taser. It was noted he was under the influence of alcohol and he was taken into custody without incident at that time, handcuffed and escorted back to the officers' vehicle. He refused to be seated in the vehicle and an officer used the Taser in the drive stun mode to gain his compliance. The burst applied was for two seconds in duration. The subject was arrested for leaving the scene of an accident, obstructing official business, driving under suspension, resisting arrest, operating a vehicle while intoxicated and being in possession of an open container. He was examined by the Fire Department and then transported to the Justice Center.

CPD Review: The CPD Command found the use of the Taser complied with CPD policies and procedures.

Monitor's Assessment: The Monitor does have concerns about the deployment of the Taser during this incident. The subject was already in custody and handcuffed when the Taser was deployed. Although he was advised the Taser would be deployed and given an opportunity to cooperate, the fact the subject was already restrained and handcuffed poses a potential liability and increases the exposure to injury in the event of a fall. The inability to protect oneself from injury due to falling is not addressed and it is unknown what precautions, if any, were taken by the officers. Also, there is no indication the subject was ever contacted or interviewed by the supervisor regarding the use of force investigation.

10. Tracking Number: 2004-0603  
Date: August 4, 2004 2012 hours

Summary: A subject was observed by police to be engaged in a hand-to-hand drug transaction. The subject placed the suspected contraband in his pants pocket and began to leave the area. He was approached by police and fled on a bicycle. He was ordered to stop, followed by a warning of impending force. The Taser was deployed for six

seconds. According to the 18TBFP narrative, the initial deployment struck the subject in the left shoulder and right hand. The barb that struck the subject's shoulder became lodged in his clothing and was not effective. The officer initiated a second cycle for five seconds that resulted in compliance.

CPD review: CPD found the incident to be in compliance with department policy and state law.

Monitor's Assessment: The Monitor finds the incident and subsequent investigation to be in compliance with the Agreement.

11. Tracking Number: 2004-0609  
Date: August 9, 2004 0131 hours

Summary: Officers were involved in a vehicle pursuit that ended in the driver losing control of the vehicle and striking a concrete wall. The subject then fled on foot, but was located by officers who ordered him to stop and get on the ground. He did not comply even after officers told him the Taser would be used. The initial deployment of the Taser resulted in the barbs missing him, but the subject fell to the ground. He still refused to comply with orders to stay on the ground and put his hands behind his back. When he continued to refuse, another officer deployed his Taser, with one barb striking the subject in the chest and the other barb only penetrating the subject's shirt in the area of his waistband. This had only a partial effect on the subject and he continued to resist. A supervisor who was on the scene directed the officer to deploy his Taser a second time and that burst did result in the subject complying and submitting to arrest. The subject was treated at the scene by Fire Department personnel and then transported to the Justice Center.

CPD Review: The foot pursuit and Taser deployment were found by CPD Command to be sound and comply with CPD policies.

Monitor's Assessment: The Monitor concurs with the findings by CPD command. The report notes an MVR tape of this incident is available but it was not included in the materials provided. There is no indication the subject was interviewed regarding the use of force.

12. Tracking Number: 2004-0615  
Date: August 11, 2004 2353 hours

Summary: Officer observed the subject involved in a hand-to-hand drug transaction. As the officer was exiting his vehicle, the subject fled on foot. The officer began chasing the subject and advised him to stop or

he would be tased. The subject continued to flee from the officer. The officer fired one burst of the Taser at the subject but it failed to connect with the subject. The officer reloaded another barb and again fired at the subject, this time striking him in the center of his back. This burst caused the subject to go to the ground. The officer then directed the subject to place his hands behind his back and the subject refused. The officer then used the drive stun on the subject's right leg and gained compliance. The subject was placed in handcuffs and put under arrest. Engine 29 of the Cincinnati Fire Department provided medical assistance. The officer removed the barbs from the subject's sweatshirt, as they did not penetrate the skin.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the officer's use of the Taser was in compliance with all policies and procedures of the CPD.

Monitor's Assessment: The Monitor concurs with the finding of the CPD. The officer provided sufficient warning as to the impending use of the Taser and medical assistance after its use. However, in reviewing the Taser log it appears that the burst striking the back of the subject lasted for a total of 10 seconds. Also, there is no indication that the subject was interviewed as part of the investigation.

13. Tracking Number: 2004-0621  
Date: August 13, 2004 0257 hours

Summary: CPD officers were in the area conducting a drug investigation when they stopped a subject for consuming an alcoholic beverage. The subject stood up and began making motions to his waistband. The officer directed the subject to remain seated while being interviewed at which time the subject fled. The officer pursued, ordered the subject to stop, and gave a warning of impending force. The subject failed to comply and the officer deployed his Taser from a distance of 10 feet striking the subject in the left side of his back and rear hip area. The subject was immobilized as a result. He was taken into custody without incident. A .9mm handgun was recovered under the subject's body.

CPD's Review: CPD determined that both the foot pursuit and Taser deployment was consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with CPD's findings. The incident and Taser Report are consistent with the Agreement.

14. Tracking Number: 2004-0627  
Date: August 15 2004 0200 hours

Summary: Subject was known to have an outstanding felony warrant and was observed by officers who recognized him. As they approached the subject, they told him he was under arrest and to not move, but the subject fled on foot. As they pursued him, he was told to stop or the Taser would be deployed. He continued to ignore the commands and the Taser was deployed from an estimated distance of five feet. The barbs struck him in the right shoulder and arm area and he was immediately immobilized by a five-second burst. He was then handcuffed without further incident and examined at the scene by Fire Department personnel.

CPD Review: The use of the Taser and the foot pursuit were determined to be consistent with CPD policy by Command.

Monitor's Assessment: The Monitor concurs with the finding by CPD command. However, there was no indication the subject was interviewed regarding the use of force investigation, nor were any interviews of the officers recorded.

15. Tracking Number: 2004-0632  
Date: August 19, 2004 1940 hours

Summary: Officer observed the subject involved in a drug transaction while sitting in a vehicle with another subject. As the officers approached the subjects, they ordered the subjects to remain in the car. The subject failed to comply with this order and instead exited the vehicle. One of the officers again ordered the subject to stop, but he refused and began to run from the scene. As the subject began to flee, the officer ordered him to stop or he would be tased. After the subject failed to comply the officer fired a burst, striking the subject in the upper back and left shoulder blade. The subject was subsequently placed under arrest. Engine 2 of the Cincinnati Fire Department provided medical assistance.

CPD Review: The investigation was conducted by a sergeant and reviewed by a lieutenant. Command found that the officers' use of the Taser was in compliance with all policies and procedures of the CPD. Command completed a subsequent report that clarified the statement of the officer concerning the command of impending Taser use. The officer indicated that he had warned the subject to stop or he would use the Taser.



Monitor's Assessment: The Monitor concurs with the finding of the CPD. The officer provided sufficient warning as to the impending use of the Taser and medical assistance after its use. However, there is no indication that the subject was interviewed as part of the investigation.

16. Tracking Number: 2004-0684  
Date: August 20, 2004 1009 hours

Summary: The CPD officers were checking a location for trespassers when they encountered a subject who provided them with false identity. As the officers were attempting to arrest the subject for trespassing, he ran. The officers gave chase and one of the officers commanded him to stop or be shot with the Taser. The subject failed to heed the warning. The Taser was deployed from a distance of 15 feet. One of the barbs struck the subject in the back, while the other became lodged in his shirt resulting in only partial effectiveness. He continued to run and was encountered by a third officer several blocks away. The officer commanded the subject to stop, and gave a warning of impending force. The subject continued to flee resulting in a second Taser deployment. Neither barb hit its intended target. The subject was apprehended a short time later, and was taken into custody on open warrants without further incident.

CPD Review: The CPD found both the foot chase and Taser deployment to be consistent with department policy and procedure.

Monitor's Assessment: The reporting fails to indicate the distance from which the second Taser was deployed. This is relevant in determining why the Taser missed its intended target. As both Taser deployments were ineffective, examining this issue is important for the CPD's review.

In assessing the deployment's compliance with the Agreement, the Monitor evaluates CPD's review of whether its use is consistent with department policy and procedure. Because the reporting in this case failed to provide all the information necessary to determine consistency with policy and procedure, the Monitor is unable to conclude compliance with respect to this incident.

17. Tracking Number: 2004-0639  
Date: August 22, 2004 0300 hours

Summary: Subject was involved in an altercation. Officers on the scene separated the combatants at which time the subject continued his aggressive behavior and started back towards the involved parties. The officers on the scene ordered the subject to stop and gave a warning of

impending force. The subject failed to heed the officer's warning and one of the officers deployed the Taser, missing the intended target. The other officer, who had also given a warning of impending force, deployed his Taser from a distance of 10 feet striking the subject in the stomach. The subject was immobilized and taken into custody without further incident.

CPD Review: CPD concluded the incident to be consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with CPD's review. The incident and Taser Report are consistent with the Agreement.

18. Tracking Number: 2004-0645  
Date: August 25, 2004 1648 hours

Summary: Officers had information from a confidential informant that the subject was in possession of illegal drugs. As the officers approached him to investigate, he walked away. They ordered him to stop and grabbed his arm but he pulled away and attempted to flee. He was advised the Taser would be deployed but he continued to pull away. The Taser was then deployed, striking the subject in the chest and abdomen, causing him to fall to the ground. Officers ordered him to put his hands behind his back, but he ignored that order and attempted to stand up. The Taser was activated a second time and the subject then complied with the orders and was handcuffed without further incident. The subject was under the influence of alcohol.

CPD Review: CPD Command determined the deployment of the Taser conformed to department policy, procedures and state law.

Monitor's Assessment: The Monitor concurs with the finding that the deployment of the Taser is consistent with CPD policy. However, there is no indication the subject was interviewed by the supervisor about the use of force.

19. Tracking Number: 2004-0667  
Date: August 28, 2004 1531 hours

Summary: Officers responded to a call of a man refusing to leave a store. They found the subject in the restroom, dressed only in shorts, soaking wet and refusing to leave. He was advised he would have to leave the store but the subject refused and charged at one of the officers with his hands raised in an apparent effort to strike him. The officer told him to step back or he would be tased and when he continued to advance, the Taser was deployed, striking him in the stomach and on the hand. He stopped advancing on the officer, but did not comply with

commands to lie down on the ground. Another cycle of the Taser was administered, but he still did not comply.

The second officer then deployed his Taser, with the probes striking the subject in the back. Subject continued to resist and was aggressive in attempting to kick the officer. Both officers cycled their Tasers repeatedly before the subject eventually complied. According to the supervisor's investigation, one of the officers cycled his Taser seven times and the other cycled his four times.

The subject was ultimately handcuffed and Fire personnel responded to evaluate the subject's medical status. He was transported to the hospital and admitted for further evaluation due to an elevated heart rate and high blood pressure.

The subject suffers from mental illness and was delusional when the officers made contact with him. The charges leveled included assault, resisting arrest and disorderly conduct.

CPD Review: CPD Command found the officers use of Tasers was in compliance with all CPD policies and procedures.

Monitor's Assessment: The Monitor concurs with the finding by CPD Command that the handling of this incident and use of the Taser is consistent with department policy and the MOA. One of the officers dispatched on this incident is a designated MHRT officer.

The Monitor did note the investigative documentation was incomplete. The download of Taser data was provided for only one of the officers involved, there were no interviews of other witnesses even though it appears others were present during part of this incident, and there was no indication the subject was interviewed by the supervisor.

20. Tracking Number: 2004-0651  
Date: September 1, 2004 1631 hours

Summary: Officers received information that the subject was involved in a drug transaction. As the officers approached the subject, he immediately began to flee. One of the officers ordered the subject to stop, but he refused and began to run from the scene falling and injuring his left elbow. As the subject again began to flee, the officer ordered him to stop or he would be tased. The subject made an overt movement to his left waistband and he was again ordered to stop or be tased. The subject again refused to comply and the officer fired a burst from her Taser, striking the subject in the back. As the subject fell to the ground a .38 caliber revolver fell out of the left side of his waistband onto the

ground. The subject was subsequently placed under arrest. Engine 3 of the Cincinnati Fire Department provided medical assistance.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the officer's use of the Taser was in compliance with all policies and procedures of the CPD.

Monitor Assessment: The Monitor concurs with the finding of the CPD. The officer provided sufficient warning as to the impending use of the Taser and medical assistance after its use. The officers showed excellent judgment and sound tactics in effecting this arrest. However, there is no indication that the subject was interviewed as part of the investigation.

21. Tracking Number: 2004-0691  
Date: September 2, 2004 0045 hours

Summary: Officers contacted subject in regard to a call of a disorderly individual banging on an apartment door. As they entered the apartment building, the subject was coming down the hallway toward them. They asked him to stop, but the subject kept advancing and made threatening statements telling them "you better be afraid of me." One officer drew his Taser and informed the subject to stop or he would deploy the Taser. When the subject continued to advance on him he deployed the Taser, striking subject in the upper chest area and his shirt. There was little visible effect and the officer cycled his Taser again, but the subject pulled the Taser darts out and remained standing.

The second officer then deployed his Taser, aiming for the subject's legs. Due to his baggy clothing neither of those darts penetrated his clothing and had no effect. That officer also cycled his Taser again, but this had limited effect.

The subject then submitted to being handcuffed but continued to be verbally abusive. Since the remaining Taser darts had only penetrated the subjects clothing these were removed by the officers at the scene. No medical attention was identified as being provided, apparently because the subject had removed the only dart that penetrated his skin. The subject was transported to the Justice Center and charged with menacing. The Taser Report notes contributing factors of alcohol and a history of violence.

CPD Review: CPD Command concluded the initial contact and encounter was consistent with CPD policy and the deployment of the Taser comports with Department policies, procedures and state law.

Monitor's Assessment: The Monitor concurs with the findings by the CPD. The officers provided adequate verbal warning regarding the impending deployment of the Taser, exercised appropriate restraint and used good judgment and tactics throughout the course of this encounter. There was no indication the subject was interviewed by the investigating supervisor regarding the use of force.

22. Tracking Number: 2004-0657  
Date: September 4, 2004 2230 hours

Summary: An officer was on the scene of a disturbance at a party when the subject became verbally combative. The arresting officer attempted to take the subject into custody, at which time she pulled away from the officer. The officer deployed the Taser and the subject was arrested without incident. The barbs were subsequently removed by Fire Department personnel.

CPD Review: The CPD found the use of the Taser to be consistent with department policy and state law.

Monitor's Assessment: The Monitor finds both the Taser deployment and the subsequent investigation to be in compliance with the Agreement.

23. Tracking Number: 2004-0673  
Date: September 8, 2004 0213 hours

Summary: Officers responded to the scene of a domestic violence call for service. Upon arrival, they observed the victim outside her house with visible injuries to her face from being kicked by her husband. The victim advised the officers that her husband was inside the house and that she wanted to press charges against him. According to the Taser Report, when the officers entered the front door of the house, the subject came charging at them with his fists balled, chest heaving and yelling at the officers to get out of the house. The officers advised the subject that he was under arrest and to turn around so that he could be handcuffed. The subject refused to comply. The officers continued to order the subject to stop and turn around so he could be handcuffed. The subject continued to refuse and yell at the officers. The officers told the subject to comply or would he be tased. The subject continued to refuse and instead continued to advance towards the officers with his fists balled and flexing his chests and arms. One officer fired a single five-second burst from her Taser striking the subject in the upper left chest. The subject fell to the ground where he was handcuffed and subsequently placed under arrest. Cincinnati Fire Department provided medical assistance to the subject.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the officers' use of the Taser was in compliance with all policies and procedures of the CPD.

Monitor's Assessment: The Monitor concurs with the finding of the CPD. The officer provided sufficient warning as to the impending use of the Taser and medical assistance after its use. The officers used sound tactics and judgment in the deployment of this use of force. There is no indication that the subject was interviewed as part of the investigation, however.

24. Tracking Number: 2004-0697  
Date: September 14, 2004 1716 hours

Summary: Officers responded to an address for an unknown trouble call for service. Upon arrival, they were met by the mother of the subject who indicated that the subject had become violent and struck her in the left shoulder and had damaged the garage door. The officers determined that the subject should be arrested and charged with domestic violence. As an officer was placing handcuffs on the subject he pulled his arm away from the officer and stated "F\_\_ this, I've gotta go to school" and began walking towards a closed fenced lot where a German shepherd was penned in. The officer then ordered the subject three times to stop or he would use the Taser. The subject continued to refuse and walk towards the lot. The officer fired one five second burst from the Taser with the barbs striking the subject in his upper middle and lower back. The subject fell against the fence and subsequently to the ground. As a result of the fall the subject sustained injuries to his lip, scratches to the right side of his face, a minor cut to his right elbow, and a chipped tooth. The subject was handcuffed and placed under arrest. Fire Department personnel responded and treated the subject and removed the barbs from his back. The subject was transported to Children's Hospital for further treatment.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the officers' use of the Taser was in compliance with all policies and procedures of the CPD.

Monitor's Assessment: The Monitor concurs with the finding of the CPD. The officer provided sufficient warning as to the impending use of the Taser and medical assistance after its use. There is no indication that the subject or his parents were interviewed as part of the investigation, however.

25. Tracking Number: 2004-0728  
Date: September 18, 2004 0205 hours

Summary: While working an off-duty detail, an officer observed the subject charge towards another individual and attempt to strike him with closed fists. The officer told the subject to stop, but the subject continued to assault the man. The officer told the subject he would use his Taser, but the subject did not stop. The officer deployed his Taser, striking the subject in the back. There was one five second burst that incapacitated the subject, causing him to fall to the ground, where he was taken into custody without further incident.

The officer removed the barbs and called the Fire Department to evaluate the subject's condition. The subject did not sustain any injuries. The Report notes that alcohol was a contributing factor.

CPD Review: The CPD found the deployment of the Taser to be consistent with Department policy and state law.

Monitor's Assessment: The Monitor concurs with the findings by CPD Command. The officer gave verbal notice the Taser would be deployed and used it only after the subject refused to comply with his orders. There was no documentation of an interview of the subject or other witnesses by the supervisor.

26. Tracking Number: 2004-0705  
Date: September 18, 2004 2144 hours

Summary: CPD officers heard what appeared to be a vehicle accident and went to investigate. As they arrived near the scene, they observed the driver of one of the involved vehicles exit the car and begin to run from the scene. One of the officers gave chase, ordering the subject to stop or be shot with the Taser. The subject continued to flee and the Taser was deployed at a distance of 12 feet. Both barbs struck the subject in the back resulting in immobilization. He fell to the ground and was taken into custody without further incident.

CPD Review: CPD found the initial contact, foot chase, and Taser deployment to be consistent with department policy and procedure.

Monitor's Assessment: The Use of Taser Report and the download report indicate that the Taser was deployed for eight seconds. The narrative does not indicate whether or not the subject failed to come into compliance during the initial five-second cycle, thus warranting the additional three-second cycle.

If the subject complied during the five-second deployment, continuing the Taser deployment would not be consistent with CPD policy. On the other hand, if the subject failed to respond to the effects of the Taser during the initial deployment, or continued to resist beyond the initial deployment, those facts should have been clearly articulated in the reporting, or somehow resolved in the subsequent review of force.

27. Tracking Number: 2004-0740  
Date: September 24, 2004 2310 hours

Summary: A subject was observed engaged in what appeared to be a drug transaction. The subject ran as the officers approached in an effort to investigate. One of the officers pursued and observed what appeared to be a bag containing drugs in the subject's hand. The officer ordered the subject to stop or be shot with the Taser. The subject continued to run and the Taser was deployed from a distance of 15 feet. Neither barb struck its intended target. The subject was not apprehended.

CPD Review: The CPD found that the officer's initial contact was consistent with department policy and state law, noting that the officers had an affirmative duty to stop and investigate the criminal activity that they observed. In addition, CPD determined that the foot chase was short in duration, and presented no appreciable hazard to the officer or suspect. It also determined that use of the Taser was within department policy and state law, and was the least amount of force necessary to make the arrest of this subject.

Monitor's Assessment: The Monitor concurs with the CPD's review, and finds the incident and Taser Report to be consistent with the Agreement.

28. Tracking Number: 2004-0735  
Date: September 21, 2004 1858 hours

Summary: Officers observed the subject standing on public property, engaged in turbulent behavior, yelling, and screaming profanity. Officers ordered him to leave the area and to calm down; however, the subject then took a fighting stance and stated: "If you M.F.s Taser me, I'm going to F--- you up." The subject then began to flail his arms and clinching his fists. The subject also grabbed and attempted to knock the Taser from one of the officer's hands. This officer then fired his Taser striking the subject in the left breast area and delivered two, five second bursts. At the same time, the second officer fired his Taser with only one of the barbs making contact in his left upper back. The second officer also fired his Taser for two separate bursts. The subject



was then placed under arrest without further incident. The subject received a one-inch laceration to his left elbow from where he fell to the pavement after the deployments of the Taser. Engine 3 from the Fire Department responded and removed the barbs and treated the subject on the scene.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the officers' use of the Taser was in compliance with all policies and procedures of the CPD.

Monitor's Assessment: The Monitor has several concerns related to this use of Taser. Specifically:

- It appears that the officers approached the subject with their Tasers already drawn and readied to fire. While this may be a sound tactical decision in some instances, in this case it may have exacerbated the subject's hostility, and he immediately took an offensive stance.
- There does not appear to have been any verbal warning given to the subject about the pending use of the Taser. Drawing and displaying the weapon is not sufficient warning of its use.
- What would the affect on the subject have been if both officers had successfully deployed the weapon and simultaneously fired bursts into the subject? While one officer deployed his weapon with a five second burst, the second officer fired an 11 second burst. The officers' simultaneous deployments raise questions about the soundness of the tactics.
- The report only lists an injury to the subject's elbow sustained when he fell to the ground; however, the photos clearly show an open bleeding cut where the barb entered the subject's left chest.
- There is no indication that the subject was interviewed as part of the investigation.

29. Tracking Number: 2004-0746  
Date: September 26, 2004 0022 hours

Summary: Officers had escorted a juvenile arrestee to a police vehicle and were about to search him when the subject, later identified as the arrestee's brother, approached them from behind and began interfering by demanding his brother be released. Several times the officers ordered the subject to back away, but he refused to do so. One

officer told him he was under arrest and then took hold of his arm to effect the arrest when he pulled away and assumed a fighting stance. The second officer warned the subject he would deploy his Taser and then did so, striking him in the chest. One barb struck his T-shirt and the other barb missed. The first officer then deployed his Taser, striking him in the chest and abdomen. This immobilized the subject and he went to the ground.

The officers ordered the subject to put his hands behind his back but he refused to do so. The first officer then cycled his Taser a second time and that immobilized the subject again. A third cycle was applied when the subject attempted to raise himself on his hands and knees and he then complied with being handcuffed.

An effort was made to canvas the area for witnesses. Several individuals were located who said they observed the incident but they refused to be interviewed.

CPD Review: CPD Command found that the initial contact, arrest and Taser deployment all complied with CPD policy.

Monitor's Assessment: The Monitor concurs with the findings by CPD Command that the Taser deployment was within policy. While the supervisor attempted to interview witnesses, there was nothing to indicate the subject and/or his brother were interviewed regarding the use of force.

30. Tracking Number: 2004-0751  
Date: September 28, 2004 2043 hours

Summary: Officers stopped the subject based on a description of a person seen buying drugs by undercover officers. When the arresting officers approached the subject they observed him attempt to throw something away with his left hand. One officer grabbed his hand and told the subject that he was under arrest. Subject attempted to pull his hand away from the officer in an attempt to flee. During a brief struggle, the officer used joint manipulation to put the subject on the ground. The subject was told numerous times to place his hands behind his back, but he continued to refuse and flail his arms. The officer struggling with the subject disengaged from him and the second officer ordered the subject to place his hands behind his back. When the subject continued to refuse the officer fired a burst from his Taser at the subject. This burst did not take affect since the barbs struck the subject's heavy sweatshirt. The officer then leaned in and drive-stunned the subject using the same Taser cycle.

The subject was then placed under arrest and charged with drug paraphernalia and resisting arrest. The fire department responded and evaluated the subject. The barbs became dislodged from the sweatshirt during the struggle.

CPD Review: The investigation was conducted by a sergeant and reviewed by a captain. Command found that the use of Taser was consistent with department policy. The review included all required forms and interviews with officers involved.

Monitor's Assessment: The Monitor concurs with Command's assessment of the incident. The basis for the stop was justified based on the lookout provided by the undercover officer. The use of the Taser was in compliance with the policy of the CPD with the exception that the officer did not give the subject a warning. While the subject was given numerous commands to submit to arrest, the investigation never states that he was told that non-compliance would result in use of the Taser. During this incident, there does not appear to be any type of exigent circumstances that prevented the officer from giving the required warning. There is no indication that the subject was interviewed as part of the use of force investigation.

### **C. Canine Bite Investigations**

1. Tracking Number            2004-0677  
Date:                            August 9, 2004    0216 hours

Summary: An off-duty Hamilton County Deputy observed a subject breaking into a church with a crowbar. Upon the officer's approach, the subject fled into a wooded area. A CPD District Three Sergeant authorized canine support, and a canine handler and his partner responded to the scene.

The handler gave two verbal warnings, and a tracking search commenced. Approximately 30 minutes later, the canine engaged the subject that was secreted under a pile of brush. The subject was ordered by the handler to show his hands. When the subject complied with the handler's directive, the canine was immediately recalled and disengaged. The subject sustained a bite wound to the thigh area, received treatment for his injury, and was taken to the Justice Center for processing.

CPD Review: CPD determined the use of the canine and the subsequent engagement to be consistent with CPD policy and law. Notwithstanding the finding, the following issues were raised:

- The investigating sergeant was counseled by his lieutenant with respect to leading questions during his interview with the involved officer.
- The importance of using a cover officer in situations where the canine is pursuing a potentially armed combatant was addressed with the handler.
- The lieutenant reinforced the importance of following up with the involved subject, even if he refuses to cooperate with the on-scene/preliminary investigation.

Monitor's Assessment: The subject was observed by a sworn law enforcement officer to be engaged in a felony breaking and entering with a crowbar. Upon the officer's approach, the subject fled into a wooded area and secured a tactical advantage over the officers by concealing himself under brush. Supervisory authorization was given for deployment and the handler, prior to initiating the on-lead track, gave two warnings.

The canine located the subject as he concealed himself under heavy brush. The engagement served to neutralize the suspect's tactical advantage that he possessed by virtue of his concealment. Upon ensuring the subject was not armed, a verbal command to the dog was given and the Canine disengaged and returned to the handler without incident.

The incident and the investigation are in compliance with the Agreement.

2. Tracking Number: 2004-0478  
 Date: January 18, 2004 1600 hours

Summary: CPD officers were searching an area for a robbery suspect when they encountered a subject who fit the description. Upon approaching the subject, he fled on foot discarding a loaded .9mm pistol as he ran. Having lost sight of the subject in a specific area, officers requested canine support, and a District supervisor gave authorization for canine deployment.

A track was initiated using a 30-foot lead, and the subject was located attempting to conceal himself behind an air-conditioning unit. Prior to engagement, the subject kicked at the canine, after which the dog bit the subject on the thigh. The handler commanded that the subject show his hands. Upon the subject's compliance with those commands, the handler recalled his canine partner and the subject was taken into custody without further incident.

In addition to the weapon that was discarded by the subject, he was found to be in possession of narcotics, currency, and a radio frequency transmitter. It was also determined that he was not the robbery suspect, but did, in fact, fit the description.

CPD Review: The Special Services Section Commander reviewed the investigation after the lieutenant conducted a review of the incident. The captain's review consisted of a review of witness and officer statements, documents, and photographs.

The lieutenant determined that the incident, including the foot pursuit, was consistent with CPD policy and state law. The captain noted, however, that because the District supervisor authorized the deployment, it was not appropriate for him to participate in the follow-up investigation of the incident. This was discussed with the supervisor through his District Commander.

Monitor's Assessment: The Support Services Section Commander correctly identified the supervisor's violation of CPD policy and the MOA, and appropriate corrective action was taken. Aside from the District supervisor's participation in the investigation, the incident and the investigation are in compliance with the Agreement.

3. Tracking Number: 2003-0609  
Date: December 2, 2003 0216 hours

Summary: CPD officers were attempting to locate two subjects who had fled from a stolen vehicle that had been pursued by the officers. Canine officers were summoned to the area, and deployment was authorized by a District supervisor on the scene. One of the Canine officers initiated a track using a 30-foot lead, while the second Canine officer served as a cover officer. An initial announcement was given prior to initiating the track, and was repeated numerous times as the track led through several back yards.

After several blocks, one of the subjects was located hiding beneath a parked mini-van. The Canine engaged the subject for a period of approximately 10 seconds. The initial engagement to the subject's head was not observed by the handler or cover officer as it occurred under the van. The officers did, however, observe engagement to the leg and right arm as the subject resisted the canine and attempted to push it away. The handler gave numerous commands to the subject to stop his resistance and surrender. Eventually, the subject obeyed the commands and was taken into custody without further incident. He was treated for his injuries at the hospital ER and later released. He was then transported to the Justice Center for processing.

The subject alleged that the canine engagement was excessive and that one of the officers made the statement, "Dude, hell ya- get him boy." A Citizen Complaint form was initiated at the direction of the Support Services Commander.

CPD Review: The Special Services Commander conducted the review of this incident. He concluded that the incident was consistent with department policy and state law. He based his conclusion on the following.

- CPD officers were investigating a felony crime and were in pursuit of subjects wanted for that offense
- Supervisory authorization was given for a Canine Deployment
- Warnings were provided throughout the track
- The engagement that took place was only that necessary to overcome the suspect's resistance
- Despite the fact that the handler was using a 30-foot lead, it was never more than 15 feet out, thus ensuring control of the canine during the track. The track was very long and very difficult
- Use of a cover officer was a tactically sound decision on the part of the handler, particularly in light of the difficult terrain that this track presented
- After the subject complied with the handler's commands, the canine was recalled and immediately returned to the handler
- A fire company was immediately notified to assist with treatment of the subject's injuries. He was later transported to the hospital Emergency Room for treatment

Additionally, the Support Services Commander requested that the subject's complaint of excessive force be closed without further inquiry based on the following:

- The involved officers deny the allegation
- Both officers indicate that the entire engagement lasted only 10 seconds

- Both officers indicate that they were giving the subject commands to stop resisting
- The language that was allegedly used by the officers (“Hell ya, get him boy”) is not a command the canine would recognize and respond to, as the handlers give their commands to the canines in German, not English.

IIS also reviewed the case and determined the allegation of excessive force to be unfounded. As to the allegation that one of the officers made the statement, “Hell ya’ -get him boy,” there was insufficient evidence to either confirm or dispel that allegation, thus it was deemed “not sustained.” The findings were reviewed and approved by the Police Chief.

Monitor’s Assessment: The Monitor concurs with the CPD’s review of the incident, and finds both the incident and subsequent investigation to be consistent with the Agreement.

4. Tracking Number: 2003-0847  
Date: December 19, 2003 0303 hours

Summary: A St. Bernard Police Officer observed a subject standing by a soda machine located on the property of a closed gas station. When the officer approached, the subject entered a truck and began to quickly exit the lot. During the course of his departure, the subject attempted to ram the officer’s marked cruiser with the truck to get out of the lot. A vehicle pursuit ensued and the pursuit ended when the subject entered a commercial building site. Along the way, the subject abandoned the truck on a railroad crossing, even though a train was scheduled momentarily.

A Cincinnati Police Canine Unit was dispatched under the authority of the Night Commander pursuant to a Mutual Aid Agreement. The handler was briefed by a supervisor on the scene regarding the pursuit of the subject into the commercial building. Authorization was given by the supervisor to deploy the canine. Prior to deployment into the building, two verbal warnings were given.

After approximately 40 minutes of searching the building, the canine located the subject hiding between two large bales of paper. The canine engaged the subject and the subject began to actively resist by fighting the dog. After approximately 30 seconds, and multiple orders to stop fighting the dog and show his hands, the subject complied without further incident.

CPD Review: The Commander of the Special Services Section found the use of the canine to be consistent with department policy and state law. In reaching his conclusion, the following factors were appropriately considered:

- The fleeing subject broke into a large commercial building in his attempt to escape apprehension.
- His behavior during the course of his flight from the officer (i.e. attempting to strike the officer's cruiser with his truck, abandoning his truck on the railroad tracks) evidenced the subject's propensity to violence.
- The handler prior to initiating an off-lead search of the property gave two verbal warnings.
- The use of an off-lead search was deemed appropriate due to the subject's demonstrated risk, the size of the building in question, and the presence of multiple hiding places where the subject could maintain a tactical advantage over the handler and his canine partner.
- A cover officer was used to assist during the course of the search (a good tactical judgment when initiating a high risk search of this type).
- The handler immediately recalled his canine partner when the subject complied with the handler's commands. The canine promptly disengaged and returned to the handler.
- Good arrest tactics were used in the final approach and handcuffing of the subject using the assistance of the cover officer.

Monitor's Assessment: The incident and the investigation that followed are in compliance with the Agreement. Proper authorization was given to deploy the canine and warnings were given prior to initiating the search of the property. The fact that warnings were not given periodically as the team advanced through the building was reasonable in light of the high risk the subject posed to the handler and his canine partner. Upon engagement, the subject actively resisted and fought the canine. After several seconds, he complied and the canine returned to his handler on voice command.



Although the subject's audio statement was inaudible, as it was either recorded or copied on the wrong speed, the subject's explanation (as described by the investigating supervisor) of having been asleep in the building for several hours is inconsistent with the officer's account. While the subject states that he was not the suspect wanted in connection to the offense, the Monitor has no verifiable information that supports that statement.

5. Tracking Number: 2004-0479  
Date: February 15, 2004 2347 hours

Summary: CPD officers were dispatched to an alarm call at a church. Upon their arrival, they found an open front door. A supervisor authorized canine deployment, and a canine team responded to the scene. Two verbal warnings were given before an off-lead search of the property was undertaken. The first floor was searched with negative results. Before proceeding further, a third verbal warning was given. The team proceeded to the second floor with the canine immediately in front of and within sight of the handler.

A short time later, the canine went to the left of the handler into a stairwell and was briefly out of sight. The handler heard a "thumping" sound, went into the stairwell, and observed that the canine had engaged the subject by the right foot. The canine complied with verbal command to disengage, and returned to the handler. Several commands were given for the subject to get on his stomach and place his hands behind his back to be handcuffed. The subject refused, stood up, and faced towards the officer. Fearing that the subject would advance, and still not being able to see the subject's hands, the handler dispatched his canine partner for a second engagement. The canine immediately engaged the subject on the left thigh, knocking him to the ground. The subject surrendered and the canine returned to his handler on voice command. The subject was arrested without further incident. Medical assistance was provided for injuries sustained as a result of the bites.

CPD Review: The Special Services Section Commander found the deployment to be consistent with department procedure and state law. In doing so, he considered the following factors:

- Officers were investigating an in-progress Breaking and Entering of a church
- Canine warnings were given prior to entering the structure and before advancing to the second floor

- Off-lead deployment was a prudent course of action due to the size of the building, remote darkness, and multiple hiding places
- The canine responded immediately to a verbal command to disengage when given by the handler
- The handler's decision to re-deploy his canine partner was reasonable based on the subject's behavior and the handler's perception that by standing and facing the officer, the subject may have been preparing to advance on the officer. Further, the handler gave the subject ample time to comply and advance warning prior to re-deploying his canine partner.

Although supervisory authorization was given prior to deployment, a review of the CAD records indicate that the supervisor was not on the scene at the time authorization was given. This is in conflict with CPD policy and procedure. The appropriate District Command was notified and supervisory counseling was provided to the sergeant. Further, all CPD Canine Unit personnel have been reminded not to deploy their canine partners until such time as a supervisor is on the scene, assesses the need for deployment, and provides authorization.

Monitor's Assessment: A review of the subject's audio statement evidences his belligerence towards the investigating sergeant, and his unwillingness to cooperate with the investigation. His injuries, as articulated by the treating physician, support the events as described by the handler.

Multiple warnings were given prior to deploying the canine and advancing through the building. The subject had an opportunity throughout the event to surrender without incident. His unwillingness to do so indicates his intent to conceal himself from the police.

In this situation, the handler did not use a cover officer. While use of a cover officer for a canine deployment is recommended as a tactically sound approach, and in this case, may have proven helpful, the lack of a cover officer does not render the incident out of compliance. The incident and the subsequent investigation are in compliance with the Agreement.

6. Tracking Number: 2004-0481  
Date: March 31, 2004 0250 hours

Summary: A CPD Canine Team was called to the scene of a search for a subject wanted for Aggravated Automobile Robbery in which property was taken from the victim at gun point. Supervisory authorization was given for the deployment of a canine. An initial warning was given prior to initiating the track, and the track was conducted using a 30-foot lead. During the course of the on-lead track, the subject was located attempting to conceal himself in thick brush. The canine bit the subject in the area of the buttocks, and he surrendered without incident.

CPD Review: The Special Services Commander found the incident to be consistent with CPD policy and state law. In doing so, he considered the following factors:

- The subject was wanted for an armed and violent felony
- The track was conducted skillfully by the handler, who had to traverse a variety of surfaces in very low light conditions
- Once noting the engagement, which lasted about two seconds, the handler recalled his canine partner. The dog responded immediately.
- The subject was taken to a medical facility to receive treatment for a minor hand injury sustained while climbing a fence

Additionally, the Commander recommended that a copy of any and all offense reports be included in the investigative packet to be reviewed. He also noted that a photograph should have been taken of the location where the subject was found by the canine team.

Monitor's Assessment: The Monitor concurs with the CPD's assessment of the incident. The deployment was initiated in an effort to locate a violent felon. The handler's decision not to provide additional warnings as the track progressed was prudent and consistent with policy. The handler maintained control of his canine partner throughout the track. The engagement of the subject, who was actively concealing himself under thick brush, appears in compliance in light of the circumstances presented (e.g., the subject was potentially armed and did not make any attempt to surrender). The engagement was brief, and the canine responded immediately when commanded to disengage.

According to the subject's audiotaped statement, the canine did not make contact with his skin, but rather held his clothing. The subject further noted that the handler maintained full control over the canine during the course of the engagement. The deployment and the subsequent investigation are in compliance with the Agreement.

7. Tracking Number: 2004-0482  
Date: April 13, 2004 2243

Summary: CPD officers were investigating a drug complaint when a subject began to run, firing one round at the officers from a sawed off shotgun. The officers returned fire and gave pursuit, losing the subject in a residential area.

A canine deployment was authorized, and the handler initiated an on-lead track. A large area was searched with the assistance of a cover officer. At some point, the team returned to the location where the track had been initiated. The canine alerted to an area under a porch, and immediately bit the subject. The subject began fighting with the canine and grabbed the animal's head. The handler gave the subject numerous verbal commands to stop fighting the dog. He eventually stopped his violent actions, and the canine was recalled to the handler. The subject had to be pulled from under the porch by several officers, and was subsequently taken into custody without further incident.

CPD Review: The review consisted of several interviews that were conducted by the CPD Homicide Unit, investigation by the Parks Unit lieutenant, and a review by the Inspections Unit. The Park's Unit lieutenant found the deployment to be consistent with department policy and state law.

The deployment and subsequent track was conducted in an effort to apprehend a violent felon who had fired against the police. The handler used an efficient search pattern, and used a cover officer due to the dangerous nature of the search.

Although the engagement was reasonable in light of the circumstances described, the lieutenant noted that another option would have been to wait for additional resources (e.g., SWAT) before initiating removal of the subject from under the porch.

Monitor's Assessment: The Monitor concurs with the CPD's findings. Both the deployment and the subsequent investigation are consistent with the Agreement.

8. Tracking Number: 2004-0676  
Date: July 28, 2004 0124 hours

Summary: CPD officers were investigating a robbery that had just occurred. A canine unit responded and a deployment was authorized resulting in an on-lead track of the area. A subject who, according to the CPD, fit the description of one of the suspects in the robbery case was among a group of persons standing on a corner, not too distant from where the robbery had occurred. As officers attempted to secure identification, the subject ran. Officers gave chase but lost the subject in a wooded area.

A second canine officer responded to assist. Believing that the subject who had ran into woods was the suspect wanted for the robbery, a canine deployment was initiated. Two warnings were given prior to the canine being released into the area for an off-leash search. The subject was located hiding in the brush and was engaged in the right shoulder area. The canine was immediately recalled to the handler. The subject was taken into custody and the robbery victim was brought to the area for a possible identification. The victim was unable to make certain identification. The subject advised officers that he ran because he was wanted on outstanding warrants.

CPD Review: The Parks Unit lieutenant noted two issues regarding his assessment of this incident.

- The investigating sergeant did not interview the original canine handler who responded to the robbery call and was involved in the initial track. Although not directly involved with the second track and engagement, he witnessed the initial foot pursuit. His observations should have been taped.
- The officers who approached the subjects on the corner used poor tactics when one of them returned to their vehicle to run a query, thus allowing a suspected armed felon to be un-secure and in a position to pose a threat to the officers and others.

These issues were addressed with the appropriate supervision. Notwithstanding, the CPD determined the incident to be consistent with CPD policy and state law.

Monitor's Assessment: The Monitor notes that there probably should have been supervisory authorization for deployment of the second canine into the woods to search for the subject who fled from the corner, although this is not an issue of non-compliance. While the officers who

communicated with the second canine officer had a good faith belief that the subject who fled was the same subject wanted for an armed and violent felony, supervisory assessment and authorization at that point seems appropriate. Nonetheless, the Monitor determines that the deployment and investigation are in compliance with the Agreement.

#### **D. Use of Chemical Irritant on Restrained Persons**

1. Tracking Number: 04-136 (IIS No.)  
Date: April 30, 2004 2301 hours

Summary: Subject was arrested for burglary. During the course of the officer's investigation of the incident, the subject became belligerent to the homeowner and began screaming at her in an attempt to intimidate her and prevent her from talking to the officers. One of the officers ordered the subject to stop his actions or be sprayed with chemical irritant. The subject continued yelling and the officer delivered a one-second burst to his face. The subject became compliant.

CPD Review: The District Commander determined that the officer's use of force was not consistent with department policy and state law. Although both officers contend that the subject's actions interfered with their ability to conduct their investigation and interview the crime victim, there is no information to suggest that the subject made any threatening advances towards the officers or the victim, which would have made the use of chemical irritant reasonable.

When the supervisor noted the option of removing the complainant from the scene to the officer's vehicle, parked just five spaces away, both officers felt that the distance was too far to remove the subject. Command disagreed and determined the officers' explanation was not sufficient to make this option unreasonable.

A department hearing board was held for the officer who deployed his chemical irritant. The hearing board found that the excessive force violation was valid, and discipline of fifty-six hours suspension from duty was recommended. The Chief of Police approved the recommendation.

It should be noted that the involved officer had eight prior disciplinary issues within the reckoning period: seven involved missed court and one pertained to a Failure of Good Behavior.

Monitor's Assessment: The Monitor concurs with Command that the use of chemical spray was inconsistent with CPD policy, and with the MOA. The Monitor finds both the investigation and the subsequent disciplinary action to be in compliance with the Agreement.

2. Tracking Number: 2004-0485  
Date and Time: July 3, 2004 2119 hours

Summary: The subject was in custody for assault. As officers walked the subject to the police car, the subject began to resist and tried physically to pull away. Before the officer administered a three-second burst of chemical irritant to the subject's face, the subject was warned of the officer's intended use of the chemical spray. The subject continued to struggle and was given another two-second burst of chemical irritant. The subject finally stopped struggling and was arrested without further incident.

CPD Review: Three officers interviewed stated that the subject repeatedly disregarded verbal commands. The subject was handcuffed in the back and was being escorted to the police car when he attempted to charge at the victim. The first burst of the chemical irritant was not effective and the subject was still trying to charge the victim. The second burst was effective. The victim stated that the subject was violent and tried to fight the officers. The officers unsuccessfully tried to calm the subject. The victim said that the officers did not do anything wrong. A civilian witness also saw the subject handcuffed and charge at the victim. This witness described the subject as combative. This witness also heard the officers repeatedly tell the subject to stop resisting. An unsuccessful attempt to interview subject was made. Subject used several expletives and the interview was concluded. The District Commander found the officers' conduct consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with the CPD's assessment and findings. However, there was a fourth officer who was also escorting the subject to the police car, who was not interviewed by the investigating supervisor. Also, there is no documentation regarding the subject's ability to decontaminate after the chemical irritant was deployed.

3. Tracking Number: 2004-0514  
Date: July 21, 2004 1305 hours

Summary: CPD officers were dispatched to a call for domestic violence. Their investigation resulted in the arrest of a male and female. While attempting to escort the female from the premises to the patrol car, she attempted to break free from the officer and return inside. The officer deployed a three-second burst to the facial area from one foot away.

When the subject sat down and refused to get into the patrol car, a second three-second burst was deployed, striking the subject in the facial area. She complied without further incident.

CPD Review: A District Four sergeant found the initial deployment of irritant to be consistent with department policy and procedure, noting that the sudden nature of the subject's movement, indicating her intent to escape the officer's hold, made a verbal warning impractical. However, the sergeant determined that the second deployment of irritant was unwarranted, and thus outside of policy. Remedial training was provided and an ESL entry was made, noting the remedial training and supervisory counseling.

Monitor's Assessment: The Monitor concurs with the CPD's review. While the supervisor's investigation of this incident is consistent with the Agreement, the actions of the officer with respect to the second deployment were not. Chemical spray may be used on a restrained individual only when the subject, the officer, or another person is likely to suffer injury, or the subject is likely to escape, absent the use of spray. Also, the audiotaped statements provided were difficult to hear and provided little value to the review of this incident.

4. Tracking Number: 2004-0591  
Date: August 29, 2004 0351 hours

Summary: The subject was placed under arrest for two counts of domestic violence. When the subject was placed in the police car, the subject attempted to escape by trying to get out of the restraint and kicking the police car door. The officer warned the subject, but the subject continued to be combative. The officer then applied one three-second burst to the subject's face. The subject was then transported without further incident.

CPD Review: The District Commander found the incident consistent with department policy and state law. Upon questioning by the investigating supervisor, the subject stated that the reason she was sprayed was because she was not cooperative. The subject also noted that after she was sprayed she was cooperative and no further use of force was taken against her. One of the officers stated the subject was quite combative and would not put her hands behind her back. The subject was placed in custody at the house and it took two officers to get her into the police car due to the subject's resistance. The subject was in handcuffs when she was placed in the police car. Upon being placed in the police car, the subject broke out of the seatbelt mechanism and became combative. The subject was warned by the officer at least twice and then sprayed with the chemical irritant. The subject later became



cooperative after being sprayed with the chemical irritant. A second officer stated that when the officers attempted to use the restraining bar in the police car, the subject began kicking and resisting.

Monitor's Assessment: The Monitor concurs with the CPD's assessment and findings. Based on the officers' account, the chemical spray was used to prevent injury in placing a resisting subject into the police car. Furthermore, the officers made an effort to decontaminate after the chemical irritant was deployed. When compared to the written narratives, the audiotapes proved helpful in reviewing the arrest.

5. Tracking Number: 2004-0679  
Date: August 31, 2004 0015 hours

Summary: A subject was taken into custody on an open arrest warrant, and was placed in the rear of a police car. Once inside, the subject began to strike his head on the Plexiglas partition. Without warning, one of the officers deployed a two-second burst of chemical irritant to the facial area. The subject came into compliance without further incident.

CPD Review: District Command review of the incident found that the subject should have been properly restrained using the lap harness, and that a verbal warning of impending force should have been given prior to the deployment.

Monitor's Assessment: A review of the audiotaped statements showed that the subject denied striking his head on the Plexiglas. This statement is inconsistent with CPD's findings and the officer's account.

The subsequent investigation is consistent with the Agreement. However, insufficient facts were documented to justify a lack of a warning of impending force.

6. Tracking Number: 2004-0680  
Date: September 6, 2004 0456 hours

Summary: A subject was arrested for disorderly conduct, and refused to get into the back of a police vehicle. Officers advised the subject of a warning of impending force, yet the subject continued to resist the officers. A three-second burst of chemical irritant was deployed to the subject's facial area resulting in compliance. He was permitted to decontaminate, and was transported to the jail without further incident.

CPD Review: CPD determined that the officers used the least amount of force necessary to achieve compliance, thus finding the incident to be consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with the CPD's review. Both the incident and subsequent investigation are consistent with the Agreement.

7. Tracking Number: 2004-0752  
Date: September 19, 2004 0124 hours

Summary: A subject was arrested for disorderly conduct, and was placed in the back of a police car. She managed to break free from the lap harness restraint, and began to violently thrash about the rear of the car. Fearing that the subject would cause injury to herself, the officer gave several warnings of impending force. The subject failed to heed to the warnings, so the officer opened the rear door of the vehicle in an effort to restrain the subject.

The subject continued kicking and banging her head on the Plexiglas. The officer deployed a three-second burst of chemical irritant to the subject's face with little to no effect. The subject continued her aggressive actions resulting in the officer deploying a second burst of irritant that proved effective. The subject refused any efforts to decontaminate.

CPD Review: The CPD found the initial contact with the subject and the use of chemical irritant to be consistent with department policy and state law. Notwithstanding, the District Commander made an ESL entry in the officer's file for opening the back door, and thus exposing himself to potential injury.

Monitor's Assessment: The Monitor concurs with the CPD's review. Both the incident and subsequent investigation by Command are consistent with the Agreement.

#### **E. Use of Chemical Irritant (Non-Restrained)**

1. Tracking Number: 2004-0487  
Date and Time: July 10, 2004 0110

Summary: A detail officer in uniform for a local bar observed the subject and two others removed from the bar for fighting. The officer immediately removed his chemical irritant in anticipation of attempting to control all three people. The other two people immediately turned and began to leave as the subject became disorderly. After repeated warnings

the officer sprayed the subject once. The subject then fled on foot and the officer discontinued the pursuit when he lost sight of the both the subject and the other detail officer assisting in the pursuit.

CPD Review: The District Commander found the incident consistent with department policy and state law.

Monitor's Assessment: It is not clear from the officer's account as to whether the use of the chemical irritant was necessary to effect an arrest of an actively resisting person, protect against harm, or prevent escape. The CPD account suggests we draw the inference either that the subject was behaving such that he posed a threat to the safety of the officer (advancing towards the officer, taking a fighting stance, clenching his fist and verbalizing threats, etc.), or the officer intended to arrest the subject for disorderly conduct and the subject was failing to comply, perhaps even resisting arrest. From the Use of Force Report, however, there was insufficient information to support either inference. Therefore, the Monitor is not able to determine compliance.

2. Tracking Number: 2004-0483  
Date: July 3, 2004 0220 hours

Summary: The subject was involved in a fight. The officer ordered the parties to break up the fight. The subject refused to comply. After advising the subject several more times and warning him of the use of the chemical irritant, the officer administered a one-second burst of chemical irritant to the subject's face. The subject immediately quit fighting and was arrested without further incident.

CPD Review: A District Commander reviewed the incident and found it consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with the CPD's assessment and findings. The use of chemical irritant was appropriate and had the desired effect. The officer used the chemical spray only after verbal commands were ineffective and the subject failed to comply. However, there is no indication that the subject was given the opportunity to decontaminate.

3. Tracking Number: 2004-0574  
Date and Time: August 6, 2004 2154

Summary: The subject was sitting in a parked car for investigation of an open container. The subject exited the car and fled on foot. The officer chased the subject. The subject ultimately slipped in wet grass and fell to the ground. The officer pinned the subject to the ground

using his body weight and verbally commanded the subject to stay on the ground and put his hands behind his back. The subject tried to get up and flee. The officer then deployed his chemical irritant in the subject's face. The subject was not warned of the impending use of chemical irritant. After the chemical irritant was deployed, the subject allowed himself to be handcuffed. A fire company responded to decontaminate the subject.

CPD Review: The MVR tapes were reviewed. The subject was interviewed and it was noted in the supervisor's written report that the subject said he ran because of pending traffic charges against him. The subject further stated that he slipped in the grass and the officer had to spray him. A District Commander reviewed the incident and found it consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with the CPD's assessment and findings. The use of chemical irritant was appropriate and had the desired effect. While it appears that a verbal warning was not feasible because of the exigency of the circumstances, this should have been noted by the investigating supervisor.

4. Tracking Number: 2004-0590  
Date: August 15, 2004 115 hours

Summary: CPD officers were attempting to obtain information from an intoxicated subject who had called police to report an assault to which he provided various accounts. During the course of their investigation, the subject assaulted a firefighter who was on the scene. Officers intervened and the subject assaulted one of the officers by striking him with his fist in the face. The officers used balance displacement and took the subject to ground. One of the officers deployed a three-second burst of chemical irritant. The subject was taken into custody without further incident.

CPD Review: District Command found the incident to be consistent with department policy and state law.

Monitor's Assessment: It is unclear whether or not the balance displacement and take down were sufficient to bring the subject into compliance, thus negating the need for the use of chemical irritant. Furthermore, it seems that use of chemical irritant in these circumstances posed the risk of contaminating the other officer on the scene. If the balance displacement and take down were not sufficient in securing the subject and the struggle continued, a verbal warning of an impending use of force may have been feasible.

While additional inquiry and explanation may resolve these issues, the Monitor is unable to discern compliance based on the information provided.

5. Tracking Number: 2004-0486  
Date: July 5, 2004 0357 hours

Summary: CPD officers were detaining a subject after he was involved in what appeared to be a hand-to-hand drug transaction. During the course of the detention, the subject kept making motions toward his pocket. The officers advised him several times not to reach into his pockets. He failed to comply with the officer's direction and a struggle ensued. A three-second burst of chemical irritant was deployed to the subject's face resulting in immediate compliance. Search incident to arrest revealed a small quantity of marijuana and crack cocaine.

CPD Review: The CPD found the incident to be consistent with department policy and state law.

Monitor's Assessment: Neither the Form 18CI or the attached reporting indicate whether a warning of impending force was given. The facts described suggest a rapidly evolving set of circumstances, including active resistance and biting, that may have reasonably precluded a warning of impending force. However, it is the responsibility of the involved officer and the reviewing supervisor to expressly raise and resolve this issue in accordance with the Agreement. Further, the 18CI indicated that when the officer approached, the subject immediately went to his waistband at which time the officer grabbed his hands and a violent struggle ensued. However, the attached Arrest and Investigation Report and the Trial Preparation Report indicate that upon being approached by the police the subject kept placing his hands in his pockets. After being warned several times to keep his hands out of his pockets, the subject was advised that he was going to be patted down for weapons. It was at that time that a struggle ensued.

These inconsistencies should have been identified and addressed upon review of the incident. While the inconsistencies may not be material as to whether or not the officer was justified in conducting a pat-down, they call into question the subsequent investigation and review of this incident.

Based on these facts, the Monitor cannot conclude compliance.

## **F. Injury To Prisoner Investigations**

1. Tracking Number: 2004-0489  
Date: July 6, 2004 1630 hours

Summary: While on patrol on a police mountain bike, an officer observed a subject assaulting a female. He was hitting her with his right hand while also carrying a ten pound dumbbell in his left hand. The officer chose to stop the assault by employing a rolling dismount technique from the bike, wherein he grabs the subject by the shoulders while riding past him and uses his momentum to take the subject to the ground.

The officer used this technique to subdue the subject and then handcuffed him. He noticed a cut on the subject's lip afterwards, which was documented in an "Injury to Prisoner" form. The report indicates it was unclear how the subject cut his lip as he initially stated he received the cut during a basketball game prior to the contact with the officer.

The following day the subject filed a complaint alleging that excessive force was used in the arrest and the officer either punched or elbowed him in the mouth, causing the cut to his lip.

CPD Review: An initial investigation was conducted on the day of the original incident by the Sergeant who responded to handle the Injury to Prisoner Report. Photos were taken of the subject at that time and the injury was documented in the report. The Sergeant determined the actions of the officer complied with CPD policies.

The following day when the complaint was filed, the supervisor who accepted the complaint conducted an investigation and indicated he tape-recorded the interview with the subject. During that interview, the subject admitted the officer did not ask him to lie about the injury, nor was the story fabricated by the officer. As a result, the supervisor recommended the complaint be unfounded.

Monitor's Assessment: Based on the initial documentation provided at the time of the incident and the immediate disclosure of the injury to the prisoner, the Monitor concurs with the findings and recommendations from both investigations.

However, there were some concerns noted with the investigation. Although the initial supervisor interviewed the subject, the officer and some witness officers, those interviews were not recorded. Also, no mention was made of any effort to either identify or interview the victim of the original assault who also would have been a witness to the use of

force. Finally, the second supervisor who accepted the complaint stated he did tape his interview with the subject, but that recording was not included in the materials provided to the Monitor.

2. Tracking Number: 2004-0515  
Date: July 1, 2004

Summary: Officers received information about a subject selling drugs on a corner. Responding officers observed a subject that matched the description and attempted to stop him and question him. While the officers were explaining to him why he was being stopped, the subject attempted to flee. One of the officers grabbed the subject's shirt and arm and was able to pull the subject towards him. The officer then used his weight to force the subject to the ground where he could be placed in handcuffs. The subject suffered abrasions to his right elbow when he struck the ground.

CPD Review: A lieutenant conducted the investigation, as the arresting officer was a sergeant. A captain reviewed the investigation. The CPD determined that the actions of the officer complied with CPD policy, procedures, and State law.

Monitor's Assessment: The Monitor concurs with the finding of the CPD. However, in reviewing the investigative package (Form 181) concerning this incident, we noted that there is no indication that the subject received any medical treatment for the injury. The photos of the subject show that the injury was an open wound. Paragraph 26 of the MOA requires that supervisors ensure that the subject receives needed medical attention.

3. Tracking Number: 2004-0519  
Date: July 27, 2004 1659 hours

Summary: Subject was observed purchasing illegal drugs by officers who were working in an outside employment capacity. An officer attempted to contact the subject and stop him through the use of verbal commands, but the subject walked away and simultaneously placed something in his mouth. When the officer approached him, the subject stated "I already got it down" as he bent over at the waist. The officer attempted to grab hold of him and use the subject's momentum to take him to the ground. In doing so, the subject's face struck the pavement and this resulted in a broken jaw bone and abrasions to his left cheek.

The subject was arrested for drug possession, tampering with evidence and resisting arrest. He was transported to UC Hospital for treatment and detention, but fled that location while he was being held

on the above charges. An additional charge of escape was added and a warrant was issued.

CPD Review: The supervisor who conducted the investigation interviewed the officers involved, another witness officer and an independent witness. He indicated their statements corroborated the officer's statement and recommended that the initial contact and force used by the officer be deemed to be consistent with state law and Department policy. CPD Command personnel concurred with this recommendation.

Monitor's Assessment: The Monitor does concur that the initial contact was appropriate and consistent with CPD policy. However, a determination regarding the level of force used is not possible because no specific statements were included from any of the witnesses that would clearly corroborate the officer's statement (the interviews were not taped). Additionally, there is no indication the subject was interviewed. Given the nature of the injury and the absence of specific information in the report regarding how it was incurred, it is not possible to ascertain whether or not the force used was appropriate.

4. Tracking Number: 2004-0552  
Date August 2, 2004 1510 hours

Summary: A subject was observed inside a vacant building known for drug trafficking. During the course of being questioned by officers, he began showing signs of nervousness and made motions to his waistband. He was placed in handcuffs while the officers continued their investigation. A bag of suspected heroin was found in the subject's pocket. As one of the officers was removing the contraband, the subject broke away and ran from the officers. One of the officers gave chase and ordered the subject to stop. The officer reached and grabbed the subject's shirt, resulting in balance displacement that caused the subject to fall forward to the ground receiving minor injuries to his hand. He was taken into custody without further incident.

CPD Review: The CPD found the incident to be consistent with department policy and state law.

Monitor's Assessment: While there appears reasonable suspicion to support initial contact with the subject and a subsequent pat down for weapons (based on the subject's nervousness and furtive motions to his waistband), it is unclear how the officer's actions evolved into a more intrusive search of a pocket in the subject's shorts, thus revealing the heroin that was discovered. While it is possible that the officer may have been searching for a bladed weapon that could have been hidden in the



waistband, the MOA requires the reviewing supervisor to evaluate and consider the basis and scope of a search, as part of the use of force investigation.

It does not appear, based on the information in the file provided to the Monitor, that it was considered by the reviewing supervisor or Command when conducting their assessment. The Monitor, therefore, is unable to find compliance with respect to this incident.

5. Tracking Number: 0576  
Date: August 9, 2004

Summary: While attempting to arrest a subject for theft, the subject attempted to pull away from the arresting officer and flee. The officer placed his arm around the subject and used his weight to take him to the ground. The subject landed on his left shoulder. Subject was placed under arrest without further struggle or injury. Cincinnati Fire Department Engine 14 responded and treated the subject on the scene. The injury was to the subject's left shoulder.

CPD Review: The CPD determined that the actions of the officer, including the basis for the contact and the use of force, complied with CPD policy, procedures, and State law.

Monitor's Assessment: The Monitor concurs with the CPD review. However, in reviewing the investigative package (Form 18I), we noted that the report lists two independent witnesses as having given statements that corroborate the statement of the officer. There is no mention of the witnesses or what they observed in the summary investigation, however. Including the statements of the independent witnesses in the investigation summary would have made it quite clear as to what occurred during the arrest of the subject.

6. Tracking Number: 2004-0580  
Date and Time: 8/16/04 1217 hours

Summary: Officers responded to a call involving the subject breaking into an ex-girlfriend's home. They located the subject and, having probable cause to arrest him, advised him he was under arrest. He was told to stand up and place his hands behind his back but he attempted to flee. As he tried to run past the officers, one of them grabbed him by the shirt. The subject's momentum caused him and the officer to fall down a flight of steps, which resulted in a laceration to his elbow, an abrasion to his knee and another abrasion to his lip. The officer was also injured, receiving bruises and abrasions in the fall.

CPD Review: The supervisor's investigation did not provide any recommendation concerning a finding or determination as to whether the officer's actions complied with policy. The report was signed by various individuals in the chain of command, but no recommendation or finding was articulated.

Monitor's Assessment: Based on the circumstances described, it appears the officer's actions were reasonable and appropriate and the subject was responsible for his own injuries. However, the report did not clearly address this. It is unknown if there were independent witnesses who could have been interviewed. None of the statements were recorded and there is nothing to indicate whether the subject was interviewed during this investigation.

7. Tracking Number: 2004-0720  
Date: September 22, 2004 2034 hours

Summary: The CPD SWAT Team was performing an entry for the execution of a search and seizure warrant. A subject inside the dwelling ran into a rear bedroom and closed the door. Officers entered and forced the subject to the ground with a push. The subject suffered a cut to his lip.

CPD Review: The CPD found the matter to be consistent with department policy and state law.

Monitor's Assessment: The Monitor concurs with Command's review of the incident.

8. Tracking Number: 2004-0490  
Date: July 8, 2004 1330 hours

Summary: CPD officers were attempting to locate a wanted subject. He was located by one of the officers, and fled on foot. The officers pursued him, and one grabbed him from behind knocking him to the ground. The subject received minor injuries to his knees and elbows. He was taken into custody without further incident.

CPD Review: The CPD found that the responding officers acted appropriately in engaging in a foot pursuit to apprehend a wanted felon. Further, that the officers used the least amount of force necessary to apprehend the subject, thus concluding that the incident was consistent with department policy and state law.

Monitor's Assessment: The incident and subsequent investigation are in compliance with the Agreement.

## **II. Complaint Investigations**

### **A. IIS Investigations**

1. Tracking Number: 02-129  
Date and Time: May 17, 2002 0102 hours

Summary: The complainant reported that on May 29, 2002, while she was stopped at a traffic light, she observed officers arresting an individual. While watching them place the subject in handcuffs one of the officers walked up to her pickup and told her to move along. The complainant informed the officer that she could not move along due to traffic on the cross street in front of her. The officer again told the complainant to "move now." The complainant informed the officer that she wasn't going to put her life in jeopardy because he wanted her to leave. This officer then approached the driver's door and told the complainant to get out of the vehicle. When she asked "Why?" the officer attempted to open the door. However, the complainant was able to lock the door and prevented the officer from gaining access. The officer instructed the complainant to exit the vehicle or he would mace her. The officer reached in the open window, unlocked the door, opened and arrested the complainant. As the vehicle was a manual transmission, other officers had to secure the vehicle to keep it from rolling into other vehicles. The officer charged the complainant with (1) slow speed; (2) obstructing official business; and (3) resisting arrest. The complainant informed the officer while in the back of the patrol car that he had hurt her arm and that the handcuffs were too tight. She alleges the officer ignored her and did not offer any medical assistance.

The complainant filed an excessive use of force complaint with the CPD. In addition, on June 12, 2002, the complainant stated that while she was standing in front of a café, the same officer drove by and gave her the "finger." The complainant stated to other people standing with her, "Is that Officer -----?" The officer turned the vehicle around, approached the complainant and asked why she called his name. The complainant asked why he gave her the finger. Complainant states the officer drove away and never answered the question.

IIS Investigation: IIS conducted the investigation concerning the conduct of the officers involved in the incident. There was a delay in the completion of the investigation due to one of the officers being activated to military duty and being deployed overseas.

The IIS interviewed the complainant and all witnesses to both of the incidents involving the complainant. The criminal charges against the complainant were dropped. The IIS investigator asked the

prosecutor's office if the charges were appropriate with the behavior of the complainant. The prosecutor's office indicated that the charge of obstructing official business and resisting arrest were both inappropriate with the level of actions by the complainant. The prosecutor indicated that based on the information he had available, the complainant neither obstructed official business nor resisted arrest.

The officer in his statement indicated that the complainant never complained or indicated to him that she had been injured or that the handcuffs were too tight. The officer and his partner indicated that the complainant was loud, abusive, and used racial slurs. The officer indicated that the complainant was so abusive that the MVR was turned on to tape her comments. The IIS investigator viewed the MVR recording and heard the complainant state three separate times that her arm hurt and that the handcuffs were too tight.

The officer further indicated that he never drove by the complainant and gave her the finger. He indicated that he was the driver of the patrol vehicle, while the witness indicated that the passenger gave her the finger.

IIS determined that the allegation of excessive force and discourtesy (giving the finger) were not sustained. The IIS sustained the allegation that the officer did not have probable cause to arrest the complainant and sustained-other the allegation that the officer failed to get medical attention to the complainant.

Monitor Assessment: The Monitor concurs and finds that the CPD's investigation is in compliance with the Agreements. All relevant witnesses were interviewed.

While the CPD notes that the investigation took more than 90 days to complete due to the officer being activated for military duty in 2003, statements from civilian witnesses were obtained at the time of the incident in May and June 2002. The CPD officers also could have been interviewed earlier.

2. Tracking Number: 04-060  
Date and Time: January 2, 2004 2032 hours

Summary: Three plain-clothes officers observed what they believed to be was a hand-to-hand drug transaction between a person in a vehicle and a subject on the street. The officers approached the subject and identified themselves as officers. The subject appeared to discard some object underneath the vehicle and began to walk away. The subject was asked to stop and instead became aggressive and assumed a fighting

stance towards the officers. One of the officers recovered a pill from underneath the vehicle that the subject had thrown down. As the officers attempted to get the subject to place his hands behind his back the subject continued to refuse to comply with the commands. One of the officers then used his weight to force the subject to the ground by grabbing the subject around the waist. The subject was again ordered to place his hands behind his back and he continued to refuse. Instead the subject placed his arms underneath his body against the ground and refused to allow the officers to handcuff him. One officer then applied a three-second burst of chemical irritant to the subject's face that had no effect. The subject continued to refuse to comply and resisted the officers attempt to gain control of his arms. One of the officers then stated that the subject was attempting to gain control of his service weapon and the officer applied five to seven palm strikes to the subject's head and face. The subject at that point let go of the service weapon, but still refused to comply with the commands of the officers to put his hands behind his back. A second officer then applied five knee strikes to the subject's ribs and he stopped resisting and he was handcuffed and placed under arrest. The subject was charged with Aggravated Robbery, Drug Possession (2 counts) and tampering with evidence.

The subject was treated by the Fire Department on the scene and transported to the hospital for treatment. At the hospital, medical personnel observed a plastic bag in his mouth; the bag had contained heroin, which the subject ingested.

The wife of the subject filed a complaint against the officers alleging excessive force. The complainant alleged that the officers beat her husband while he was handcuffed and not resisting.

IIS Investigation: IIS conducted an investigation and obtained taped statements of all persons involved in the incident, including non-involved civilian witnesses. The subject's wife was not on the scene and did not observe the incident and only had second-hand information as to what occurred.

All of the witnesses corroborated the statements of the officers as to what occurred and the combativeness of the subject. None of the witnesses observed the officers strike or kick the subject while he was handcuffed or while complying with the officers. The IIS investigator recommended that the allegation of excessive force be unfounded.

Monitor's Assessment: The Monitor concurs and finds the investigation to be in compliance with the Agreement.

3. Tracking Number: 04-005  
Date: January 8, 2004 1619 hours

Summary: Complainant alleged that two officers pointed their firearms at her and her daughters during the course of a traffic stop. Complainant also alleged that the officers did not provide timely assistance to her daughter, who had an asthma attack.

Officers observed a vehicle with an expired tag. When the officers ran the tag, they received information alerting them that there was a warrant attached to the vehicle tags. Upon stopping the vehicle, the driver (complainant's daughter) was identified, taken into custody, and placed in the officer's patrol vehicle. She was determined to be operating on a suspended license, and was wanted on two outstanding traffic capias. The occupants of the vehicle, the complainant and her other daughter, began a debate with the officers as to their probable cause. A supervisor was called to the scene and attempted to explain to the subjects the basis for the stop. The complainant alleged that the officer's actions were racially motivated.

During the course of the situation, the arrestee had what appeared to be an asthma attack. Medics were called to the scene and the complainant refused treatment. She was transported to the Justice Center for processing. The vehicle was towed from the scene and the passengers were transported to their home.

CPD Review: IIS investigated the complaint and interviewed the involved parties, reviewed the MVR tape, and reviewed department reports prepared during the course of the incident.

While the complainant initially refused to be interviewed, she eventually responded to IIS and provided investigators with a taped statement. The information captured on the MVR tape contradicts various aspects of the complainant's account regarding both her allegation that the officers pulled their weapons, and their failure to provide her daughter with medical treatment. Neither the arrestee nor her sister responded to the Department's efforts to contact them regarding this incident.

The allegations of racial profiling, pointing of a firearm, and failure to provide medical treatment were deemed unfounded. The officers' and supervisor's statement are consistent and support the findings reached by the investigators.

The Chief Prosecutor's Office was contacted with regard to pursuing a false report charge against the complainant. The prosecutor

determined there was insufficient evidence to pursue criminal prosecution.

Monitor's Assessment: The Monitor finds the investigation to be in compliance with the Agreement.

4. Tracking Number: 04-059  
Date: February 25, 2004

Summary: This complaint was originally filed with the CCA on February 26, 2004, and forwarded to CPD for their investigation on February 27, 2004. Interviews with the complainant and officer took place in March of 2004.

Complainant and a companion were originally observed by an officer as they were crossing a street within 50 feet of a marked crosswalk on February 25, 2004. The subjects crossed the street to approach a group of women and a conversation ensued. During this time, the officer was engaged in a phone conversation while in his vehicle.

When the officer completed his phone call, he was approached by one of the women in the group who complained about being harassed by the two men the officer had initially observed. The officer then contacted the two men and had them take a seat in his patrol car while he investigated the complaint. The woman decided not to pursue the matter, but the officer elected to issue citations to the complainant and his companion for the pedestrian violations he had originally witnessed.

The complainant maintains he was racially profiled by the officer because other "white people" were also jaywalking. The officer said the complainant did raise this issue with him at the time of the incident and he told the complainant he could only do one thing at a time.

CPD Review: The IIS investigators found no basis for the allegation of racial profiling. The actions taken by the officer were not based on singling out the individuals based on their race. The initial contact by the officer stemmed from a complaint of harassment by one of the women the complainant and his companion had approached. The citation issued was for a violation of the Cincinnati Municipal Code the officer had observed. The complainant did acknowledge this during the interview and in his "nolo contendere" plea in court. IIS recommended the complaint be unfounded.

Monitor's Assessment: The Monitor concurs with the finding and recommendation by the CPD.

5. Tracking Number: 04-037  
Date and Time: February 10, 2004

Summary: The complainant stated that two officers stopped him after he parked his car in the parking lot and he was walking into his house. The complainant stated that he was angry with the officers and accused them of racially profiling him. Complainant gave the officers his social security number and acknowledged that he didn't have a valid permit. He stated that while speaking with the officers, the male white officer stated to the complainant "You young niggas think you tough." The officers then told complainant that they had made an error while running his tag and incorrectly believed that the car's tag had been registered to another car. The officers told complainant that they had transposed the numbers and had incorrect information. The officers apologized to complainant and released him without arresting him for operating after suspension.

The complainant then responded to the Third District and filed a complaint against the officer for using the racial slur. He also alleged that he had been told by a Third District Sergeant that if he made a complaint, he would be charged with driving after suspension

IIS Investigation: IIS completed taped interviews of each of the officers involved, the complainant who was stopped, and the complainant's mother who was on the scene. The mother indicated that she was not at the patrol car when the officer allegedly used the racial slur. The subject officer stated he did not say that, nor has he ever used those words. The officer's partner stated she did not hear the alleged comment from her partner.

IIS recommended the allegation be not sustained. IIS did identify a "sustained-other" violation because the officers failed to notify Police Communications Section that they were out of service doing an investigation.

Monitor's Assessment: The Monitor concurs with the IIS investigation, and determines that the investigation is in compliance with the Agreement.

6. Tracking Number: 04-068  
Date: February 11, 2004 1623 hours

Summary: CPD officers were conducting a pre-planned buy-bust operation when the target subject fled into a vehicle. He started the vehicle and drove it a short distance before it stalled. The subject locked



the vehicle and refused commands to surrender. The officers attempted to extract him from the vehicle by verbal commands, but he refused to comply. After a sergeant on the scene attempted to break the car window, the suspect unlocked the door, but would not get out. One of the officers opened the car door and attempted to pull the subject from the vehicle. He resisted and attempted to start the vehicle. The sergeant displayed his Taser and gave a warning of impending force. The subject continued to defy commands and the Taser was deployed from a distance of eight feet. One of the barbs struck the subject on his jacket, while the other barb missed its intended target. The subject attempted to exit the vehicle and flee, but was taken to the ground by one of the officers. He continued to resist, and a drive stun to the subject's buttocks was initiated. It, too, was unsuccessful in immobilizing him. A second drive stun was initiated to the calf area. It was successful in immobilizing the subject, and he was taken into custody without further incident.

The subject received a cut above his eye, and scrapes to his knee, and complained of excessive force. He admitted jumping in the car and trying to escape. He stated he was pulled from the car, kneed, and thrown to the ground, at which time he banged his head. He also stated that one of the officers told the others to get off him, at which time he was hit with the Taser. He claimed he was trying to put his hands behind the back to comply at the time. The officers paused for a moment, got one cuff on but could not get his other arm out. He then stated he was hit with the Taser a second time.

Several family members appeared on the scene after he had been taken into custody. Upon questioning the officers as to what took place, they were simply advised that the subject was being arrested and charged. They subsequently made a complaint that the supervisor on the scene who had spoken to them was rude and belligerent.

CPD Review: In addition to the initial use of force investigation, an administrative inquiry was conducted by IIS. The Use of Taser report, Taser Diagram, Citizen Complaint form, Arrest and Investigation report, Trial Preparation Report, and a series of taped interviews of the involved parties were reviewed and were part of the investigative file.

The use of force investigation determined that the subject had fled from the officers and failed to comply with commands to surrender. Consequently, the Taser was deployed in an effort to extract him from a vehicle. The Taser was unsuccessful in immobilizing the subject, but did cause him to exit the vehicle and attempt to flee. He was taken to the ground and continued to resist. Drive stuns were attempted to his buttocks and calf, the second of which proved successful in allowing the subject to be taken into custody. There were no independent witnesses to

this incident that were interviewed. The District Two captain on the scene indicated in his report that there were no witnesses on the scene to support the complainant's version.

The investigation concluded that the subject's injuries were consistent with a take down to the ground. All of the officers interviewed denied striking the subject, or observing any other officer strike the subject during the course of his arrest. IIS determined the allegations to be "not sustained."

Monitor's Assessment: IIS did not conduct any subsequent interviews of any of the involved parties, nor is it clear whether the subject's family members who initiated the discourtesy complaint were interviewed at all by either the District Two lieutenant or IIS. While the family members did not witness the arrest of the subject, the supervising investigator should have obtained both their identities and a statement as to what specifically took place that gave rise to their complaint of rudeness. Inasmuch as their identity was unknown and a statement was not obtained, the facts in support of the finding appears to be based solely on the information gleaned from the officer to whom the family spoke and their written complaint. While this may provide a basis for a not sustained finding on the rudeness complaint, it is not a thoroughly completed investigation.

As to the allegation of excessive force, the facts as offered in the IIS summary, as supported by the taped statements taken by the District lieutenant, indicate an appropriate finding of not sustained.

The Monitor concludes that this particular investigation is in partial compliance with the Agreement. While the most pressing aspect of the investigation (excessive force) was thoroughly reviewed, the demeanor complaint was not reviewed with the same level of thoroughness. In addition, a portion of the taped statements were inaudible.

7. Tracking Number: 04-069  
Date: March 5, 2004

Summary: This complaint involved allegations of excessive force and threats by a police sergeant during an encounter with two juvenile boys. The complainants are parents of the two boys involved. In addition to this complaint with IIS, a complaint was also filed with the CCA (refer to CCA tracking number 04102). The review of the CCA investigation was included in the Monitor's Seventh Report.

The complaint stems from an incident that occurred on a school bus when the boys were riding home. Someone threw a piece of pizza from the window of the bus and the bus driver stopped the bus and called the police. A sergeant responded to handle the matter and the driver pointed out the boys who she believed were responsible. The sergeant contacted the boys and instructed them to exit the bus for further investigation.

One boy immediately exited the bus, but the other did not readily comply. A verbal encounter ensued between the boy and the sergeant, culminating in the sergeant taking a cell phone from him and forcing him to exit the bus. While dealing with him outside the bus, other juveniles approached the sergeant and questioned him about his treatment of the first boy. This resulted in the sergeant getting involved in a physical encounter with one of the other students.

Both subjects were ultimately released, but their parents arrived on the scene shortly thereafter and pursued the matter with the sergeant. Complaints were subsequently filed with the CCA and CPD.

CPD Review: IIS investigators interviewed one of the complainants in this matter, the bus driver, the sergeant, the juvenile boys involved and two witnesses who were on the bus. There were three allegations of possible misconduct identified and addressed in this investigation - one count of excessive force and two counts involving threats made toward each boy. The sergeant allegedly pushed one of the boys and made statements to one boy that he (the sergeant) would “kick his ass” and a statement to the other boy involving a threat to break his neck.

The descriptions provided by each of the participants and witnesses varied somewhat, but are relatively consistent with respect to the initial encounter on the bus. One of the boys was delaying and not cooperating with the sergeant’s or the bus driver’s instructions. The boy said he was going to call his mother first and then called her on his cell phone while he was still on the bus. The sergeant said he took the cell phone from the boy and told him he could call his mother after he exited the bus. The boy’s version of this was that he was already on the phone with his mother when the sergeant “snatched” the phone from his hand (the mother stated that she was on the phone with him and heard statements made by the sergeant). The boy said the sergeant told him to get off the bus and pushed him in the chest. The sergeant stated that he did eventually physically push him out the door because the boy placed his hand on the support rails and was not exiting the bus.

After they were off the bus, the boy said the sergeant again pushed him in the chest and caused him to fall into some bushes. He stated the

sergeant threatened to “beat his ass,” placed the phone near his hip and stated “reach for it.” The sergeant stated that once they were outside the bus, the boy walked toward him in a threatening manner while also cursing him. He pushed the boy back, while stating “you don’t want to go down this road.”

At about this time, other juveniles exited the bus and approached the sergeant. The sergeant said his attention was drawn to those individuals and he did not see the first boy fall over some bushes. He turned to the other subjects and told them to get back on the bus. One of them was cursing him and walked toward him, so he placed that individual up against a parked car, forced him to bend over the car and told him his actions would determine whether he would be arrested. He said the boy began crying and he decided to send him on his way.

While dealing with the second subject, the sergeant said the first boy continued cursing him and demanded his cell phone be given back to him. The sergeant said “if you are man enough to do it, come get it.” He said he eventually tossed the cell phone back to the boy. He also said he never threatened to assault him.

The second boy stated he observed the sergeant push the first boy off the bus and then push him again, causing him to fall over some bushes. He exited the bus and approached the sergeant to ask him why he had pushed the boy. He said the sergeant then grabbed him, threw him against a parked vehicle and pushed his head and neck down with his forearm while stating, “If you move, I’ll break your fucking neck.” He then let him go and threw the first boy’s phone on the ground.

The bus driver’s statements supported the sergeant’s statements about the lack of cooperation from the boy. She said she did not see the sergeant grab the boy’s cell phone or push the boy out the bus, as she was trying to keep the other students under control. She said she did see the boy “fly” out the bus and into some bushes but did not see how that occurred. She also said she saw the second boy being arrested by the sergeant and it appeared to her that this boy submitted to the arrest. She did not hear the conversations between them however.

The two other witnesses to this encounter who were interviewed were a student who was on the bus and his mother, who had pulled up to the location to pick up her son. The student said he observed the sergeant push the first boy on the shoulder while on the bus and then push him again as he was exiting the bus. He also saw the sergeant push the boy outside the bus, causing him to fall into some bushes. He observed the sergeant place the cell phone in his pocket and heard him say “if you want your phone, you’ll have to take it from me.” He also said

the sergeant told him he would “beat his ass.” He also said he witnessed the sergeant grab the second boy, turn him around, and said he was going to arrest him. When the boy kept moving, he told him he was going to “break your fucking neck.” The sergeant then let that boy go, threw the other boy’s phone in the bushes and left the scene.

The adult witness had a conversation with the sergeant and the mother of the first boy after she arrived on the scene. Shortly after the original incident, the sergeant was advised that two of the students’ parents were present at the original location and were upset about the contact. He returned to speak with the parents and words were exchanged about the appropriateness of his actions. One of the complainants advised that she was talking to her son on his cell phone when she heard him tell someone to “get off me, I didn’t do anything.” At that time she heard an unknown voice respond “If you are a man, get me off of you”.

No arrests were made at the time, but the sergeant did complete a Report of Non-compliance by a Suspect or Arrestee (Form 18NC), which is used when hard hands force is employed during an encounter.

The conclusions from IIS were that the complaint of excessive force was unfounded and the two allegations of threats were “not sustained.” Those findings were approved in the Command review.

Monitor’s Assessment: This investigation does not appear to be consistent with the MOA requirement that complaints should be evaluated “based on a preponderance of evidence standard” (§39) and that CPD will consider all relevant evidence and make credibility determinations, if feasible (§41). The IIS conclusions appear to have been based on greater credence being given to the sergeant’s statements (this is despite the requirement that there should be “no automatic preference for an officer’s statement over a non-officer’s statement” (§41). IIS cited the sergeant’s reasons for the actions he took and viewed those reasons as adequate grounds for the actions taken. Yet, the investigation also cites the sergeant as having denied making statements that were cited by two boys and corroborated by others. In addition, no documentation was provided regarding any attempt to identify and/or contact other juveniles who were on the bus or in the area who would have witnessed this incident. Also, the discrepancies noted between the statements of the sergeant and those of the other witnesses were not addressed in this investigation. Last, IIS defined the allegations in this complaint very narrowly; for example, IIS considered whether the statements were threats, while it also could have considered them as a discourtesy allegation.

It is unclear whether the City has resolved the different dispositions taken on this complaint by the CCA and IIS. If a final disposition has not been communicated to the officer, the Monitor recommends that this investigation be re-opened, pursuant to MOA ¶102, to examine and address the issues noted above.

8. Tracking Number: 04-083  
Date: March 8, 2004 2130 hours

Summary: The complainant reported that while she was driving her car she was pulled over by CPD officers, ordered to throw her keys out of the window, exit her car and kneel on the ground. After complying with these commands she was handcuffed, searched and placed in the rear of a police car. Officer's also searched her car while she was in the rear of the patrol car. The complainant was told that the reason she was stopped was that her car had been reported stolen in Alabama. The officers involved in this stop had checked the complainant's Ohio personal vanity registration through the mobile computer and the NCIC return indicated that the vehicle had been reported stolen in Alabama. It wasn't until after the complainant had been placed in the rear of the police car that the officers realized that the correct stolen vehicle was actually an Alabama registration with the same vanity tag. The officers realized their error, apologized to the complainant, and released her from custody. The complainant filed a complaint with the CPD.

IIS Investigation: IIS conducted the investigation and interviewed the complainant and officers. The officers indicated that while they were on routine patrol they had run the complainant's vanity Ohio registration through the mobile computer and had a stolen auto report from Alabama. Once the officers obtained the registration for the car they checked the return on the mobile computer and realized that they failed to note that the actual stolen vehicle was an Alabama registration and not an Ohio registration. The officers immediately released the complainant, showed her their error on the computer and apologized. The IIS investigator determined that the officers had not read the complete response on the mobile computer and missed that the actual stolen vehicle was from Alabama and registered in that state.

The IIS investigator sustained the allegation that the officers failed to completely investigate the stolen car information.

Monitor's Assessment: The Monitor concurs with the findings of the CPD. All statements were tape recorded and all relevant witnesses interviewed. The investigation was completed in a timely manner.

9. Tracking Number: 04-112  
Date and Time: April 9, 2004 1915 hours

Summary: Complainant reported that while he was sitting on a newspaper stand waiting for a bus he was stopped and improperly searched by two officers. The subject claimed that the stop was unjustified and he was a victim of racial profiling. The subject filed a complaint with the CPD making that allegation.

The officers were on routine patrol when they observed the subject sitting on the newspaper stand and believed that he looked similar to a subject who was wanted in a shooting the previous evening. One of the officers had a copy of the lookout with the name and picture of the wanted person and believed that he looked close enough to stop and interview. As the officer approached the subject, he asked the subject for his name. The subject refused to provide the information. The officer explained to the subject why he was being stopped and the officer asked the subject to get down off of the stand. The subject jumped down in an aggressive manner and immediately placed his hand in his pocket. The officer asked the subject to remove his hand and he refused to comply and began to struggle with the officer as he attempted to remove his hand from the pocket. The officer's partner removed his Taser from its holster and advised the subject to stop his struggling and listen to the officer. After getting the hand out of the pocket the officer placed the subject into handcuffs for his safety and the safety of the subject. The subject told the officer where his identification was and the officer found it and determined that he was not the wanted subject. The subject was then released from the handcuffs and the officer again explained to him why he was stopped and let him go.

IIS Investigation: IIS interviewed each of the officers involved, the subject who was stopped, and a civilian ride-along who observed the actions of the officers and the subject. The statements were similar as to what occurred and the actions of the officer. The officer stated that while the subject looked similar to the wanted person, he realized as soon as the subject got off of the newsstand that he knew it wasn't the right guy. The wanted person was listed as being 5' 8", 142 pounds, and the stopped subject was 6' 2" and 200 pounds. However, the officer continued interviewing the subject until he had identified him.

The IIS investigator asked the City Prosecutor's office whether the officer was proper in his handcuffing the subject during the stop. The prosecutor indicated that based on the felony stop, and the behavior of the subject, the officer's actions were legal and proper. IIS determined that the allegation of racial profiling was unfounded.

Monitor's Assessment: The Monitor has the following concerns relative to this investigation:

- Once the subject got down from the newsstand and the officer realized that he wasn't the wanted subject, why wasn't the stop discontinued? Why did the officer continue with the stop and handcuffing?
- When the IIS investigator spoke with the city prosecutor's office, did he include the officer's statement that the officer knew he wasn't the wanted suspect once the subject stood up? Would that have altered the legal opinion concerning the handcuffing of the subject?
- While the officer indicated that he thought the subject looked like the wanted subject, his partner indicated that he "wasn't very good at that and wasn't sure" and "my partner is better at recognizing people wanted from flyers." The civilian ride-along never saw the flyer and wasn't asked if he looked like the subject. Nor did the IIS investigator compare the flyer and photo with the subject. The taped interview of the subject was conducted by telephone. The subject's statement indicated that he looked nothing like the photo of the wanted person. At a minimum the IIS investigator should have conducted a comparison to verify one of these statements.

10. Tracking Number: 04-134  
Date: May 4, 2004 1934 hours

Summary: Complainant was stopped in a drug investigation, at which time he provided officers with false identification. A check revealed that he was wanted. The officers attempted to initiate an arrest and the complainant fled on foot (he discarded two bags of suspected crack cocaine during the pursuit). He fell while trying to go over a retaining wall, resulting in minor injuries to his elbow and hip. One of the officers pointed his Taser and gave complainant several warnings to show his hands. The complainant refused, at which time the officer holstered the Taser, and both officers used their strength to pry the complainant's arms out from under him and make the arrest. According to the officers, during the course of the struggle, one of the officer's knees, which had been placed in the center of the complainant's back, slid forward to the his neck area. The complainant was treated by medics on the scene, and was transported to the Justice Center for processing. Complainant alleged that the officer used a knee strike.



CPD Review: IIS's investigation consisted of a review of all relevant reporting, and taped interviews of the involved parties and civilian witnesses, in addition to an MVR tape. IIS concluded that the complainant's injuries are consistent with a fall to the pavement. Furthermore, the accounts offered by the independent witnesses corroborated the account of the involved officers. IIS deemed the complaint to be unfounded.

Aside from its investigative findings, District Three Command also noted several issues during the course of its preliminary investigation.

- The officers had other tools available to deal with a non-compliant subject (i.e. Taser and chemical irritant). Either of these tools would have minimized risk of injury to both the complainant and the involved officers.
- Although an initial area canvass failed to identify witnesses, investigation into the Communications Division records revealed potential witnesses who were later interviewed on their observations.
- Another unit should have been tasked with the responsibility of transporting the complainant to the Justice Center as opposed to the involved officers.
- There was a minor discrepancy in a statement made by one of the civilian witnesses, who may not have been in a position to see what she purported in her statement to see.
- During the course of the arrest and preceding struggle, one of the officer's knees slid up into the subject's neck area. Command counseled the officer with respect to the dangers associated with putting pressure on the neck area of a subject.
- Last, Command reminded the investigative sergeant responsible for the use of force investigation to be sure to take photographs of all injuries claimed, regardless of whether they are visible.

The issues raised by Command are relevant to the investigation, but they do not impact the investigative findings by IIS.

Monitor's Assessment: Notwithstanding the absence of the MVR tape as part of the review, the Monitor finds the investigation to be consistent with the Agreement.

11. Tracking Number: 04-135  
Date: May 3, 2004 1734 hours

Summary: Officers were dispatched to a commercial location for an assault in progress. Upon their arrival, they observed a male subject engaged in a struggle with two store employees. One of the officers managed to get a handcuff around the subject's wrist, at which time the subject broke free and attempted to stand. A warning of impending force was given, to no avail. The Taser was deployed at a short distance striking the subject in the back. He was immobilized and taken into custody without further incident.

The subject complained to the officer's sergeant that he had been injured as a result of the Taser deployment, and that he was beaten about the face and choked by the officers. An investigation was conducted by District personnel and reviewed by IIS.

CPD Review: A District Two sergeant conducted the investigation, consisting of a taped interview of the subject, the involved officers, and numerous civilian witnesses on the scene. The officers denied choking or punching the subject during the incident. Those present during the arrest, including civilian witnesses and two police officers from Norwood, supported the officers' account. Both District Two Command and IIS determined the allegation of excessive force to be unfounded.

Monitor's Assessment: The Monitor finds the investigation to be in compliance with the Agreement.

12. Tracking Number: 04-136  
Date: May 15, 2004 0304 hours

Summary: The complainant reported that when he was arrested, the arresting officer injured his ribs by placing his knee on his back. The complainant was a passenger in a vehicle that had been stopped for a traffic violation. The officer observed that the complainant did not have his seat belt fastened in violation of state law. The officer intended to issue the complainant a citation for the violation and was in the process of writing it as two officers from an adjoining city rode by to assist him. These other officers stated that they knew the complainant and believed that there was an outstanding felony arrest warrant for him and that he has a tendency to run from the police. The CPD officer had the other officers watch the subject in case he ran. The complainant then stated that he was sick and got out of the car and stood next to it. Before the officers could get him into handcuffs the subject fled on foot. Both of the non-CPD officers fired their Tasers at the subject missing him with both shots. The subject then fell in a vacant lot and was apprehended by the

CPD officer who placed him in handcuffs. It was at this point that the complainant stated that he was injured as a result of the CPD officer's knee being placed on his back. The complainant was treated at the hospital and released. The complainant filed an excessive force complaint.

IIS Investigation: IIS conducted the investigation and interviewed the complainant and all witnesses to the incident. Both of the outside officers stated that they observed the arrest of the subject and at no time did the CPD officer place his knee on the back of the subject. The complainant was transported to the hospital for treatment and was released after treatment. There were no visible signs of any injury to the complainant. The officer stated he never placed his knee on the back of the complainant nor did he ever strike the complainant. IIS recommended that the allegation be not sustained.

Monitor's Assessment: The Monitor finds the investigation to be in compliance with the Agreement

13. Tracking Number: 04-156  
Date and Time: May 15, 2004 0304 hours

Summary: Officers observed a subject making a pedestrian violation and attempted to stop him and issue a citation. As the officers approached the subject he immediately fled on foot with the officers in pursuit. As one officer was chasing the subject on foot and the other driving the patrol car in an attempt to pull in front of the subject, the foot officer observed the subject pull a handgun from his waistband and throw it into some woods. The officers continued to chase the subject, with the officer in foot pursuit yelling at the subject to stop or he would use the Taser. The officer gave a second warning after the subject continued to flee. The officer deployed his Taser, but the barbs did not strike the subject. The subject then began to stumble and fall and the officer was able to get closer to him. As the officer commanded the subject to get on the ground, the subject continued to try to get up and flee. The officer then drive stunned him the subject. This five-second burst had little effect, and the subject continued to try to flee. The officer drive stunned a second burst for 16 seconds. During this long burst the subject was struggling to get up and the officer never had a good connection for the Taser to be completely effective. The subject finally complied with the officer's commands and was placed in handcuffs and arrested. The weapon was recovered from where the subject had thrown it. The complainant alleged excessive use of force.

Supervisor's Review: The use of force was investigated by a sergeant and reviewed by an acting captain. Taped statements were

obtained from the subject and all officers involved. Command determined that the use of force was in compliance with all policies and procedures of the CPD. The use of force allegation was forwarded to IIS for review.

IIS Investigation: IIS reviewed the District's investigation of the use of force allegation and determined that the allegation was not sustained.

Monitor's Assessment: The Monitor finds the investigation in compliance with the Agreement.

14. Tracking Number: 04-179  
Date and Time: May 24, 2004 2110 hours

Summary: Officer responded to a call for service of a person down. Upon arrival on the scene, the officer observed Cincinnati Fire Department personnel talking with a woman lying in the grass. The officer asked the woman if she was okay or injured. The woman appeared to be intoxicated and became belligerent and verbally abusive to the officer and fire personnel. The officer directed the woman to stand up so that the medical personnel could examine her. Upon standing she became unsteady on her feet and had to be helped by the officer to keep from falling. The woman began to become verbally abusive to everyone around her. The officer advised her several times that they only wanted to make sure that she was not injured and that she needed to stop cursing and yelling. This made the woman louder and more abusive. The officer advised her several times that she needed to stop yelling and cursing or she would be arrested. She continued. The officer informed her she was under arrest and to place her hands behind her back. The woman refused to comply with these commands. As the officer tried to place her hands behind her, she pulled away from him and fought against his attempts to place her into handcuffs. The officer warned the woman that if she failed to comply, he would use his Taser. After a second warning about complying or be tased, the woman continued to resist. The officer then fired his Taser striking the woman in the chest. However, the first five-second burst failed to have any affect on the woman. A second burst of seven seconds caused the woman to sit down. At that time she was handcuffed and placed under arrest. The Taser appeared to have little affect on the woman. She continued to be loud and verbally abusive to all parties involved.

The woman refused to have fire department personnel treat her so she was transported to the UC Hospital for treatment. The barbs were removed at the hospital. There were no injuries sustained as a result of the use of Taser. The complainant alleged excessive use of force in that she was tased for no apparent reason.

CPD Review: A District Three sergeant conducted interviews with all witnesses and fire department personnel. These statements were tape recorded and corroborated the statement of the officer as to what occurred. One civilian witness believed that the Taser was used prematurely, but agreed that the complainant would have fought the officer had he not used it. The sergeant found the use of the Taser in compliance with all CPD policies and procedures.

IIS Investigation: IIS reviewed the investigation conducted by the sergeant and concurred with the recommendation that the complaint be unfounded. IIS also contacted the City Prosecutor to ascertain if the CPD could charge the complainant with making false allegation of Peace Officer Misconduct (ORC 2921.15). The prosecutor recommended that no charges be filed, as it was the complainant's perception that she was tased for no apparent reason.

Monitor's Assessment: The Monitor concurs with the IIS finding as to the allegation of excessive force. The taped statement of the complainant was instructive in demonstrating the emotion and abusive behavior of the complainant and that she was highly intoxicated and combative.

However, there are some aspects of the investigation that should be reviewed:

- In the taped statements of the civilian witnesses, the sergeant continually asked leading questions
- In interviewing the one civilian witness who questioned the use of the Taser, the sergeant asked him if he had been drinking. When told "no," the sergeant stated that he meant nothing by it but that he asked that of all civilian witnesses. However, the sergeant did not ask that question of any other civilian witnesses he interviewed.
- It is unclear why IIS asked the city prosecutor about charging the complainant with making a false allegation, as it is clear from all of the taped statements of the witnesses and complainant that she was highly intoxicated and possibly unaware of what she was doing or why she was tased. This does not rise to the level of making a false statement.

15. Tracking Number: 04-151  
Date: June 1, 2004

Summary: Complainant states he was approached by two bike officers and fled from them because he knew he had an open misdemeanor warrant. He stated he stopped when he came to a stone wall because he is afraid of heights. At that time, one of the officers was alleged to have yelled, "Freeze nigger" and then deployed a Taser which struck him in the back. This caused him to fall off the wall and resulted in lacerations to his head and arm. While lying on the ground, the Taser was again activated and he was subsequently handcuffed.

CPD Review: Interviews were conducted with the complainant, the officers and an independent witness. All interviews were recorded. The officers stated they observed the complainant engaged in a drug transaction and when they approached he fled. He threw down a bag of crack cocaine which was retrieved by one of the officers while the other officer pursued him. The pursuing officer repeatedly told the complainant to stop but the subject continued to run. The commands to stop were overheard by the witness as well as the second officer.

When the complainant came to the stone wall he jumped down, which was approximately 12 feet, striking and lacerating his head and arm. The pursuing officer saw him standing at the bottom of the wall and told him to get down on the ground or he would deploy his Taser. The complainant turned and started to flee again so the officer deployed the Taser, striking him in the lower back and leg. This caused him to collapse to the ground. After the initial cycle ceased, the officer ordered him to stay on the ground but he stood up and began pacing back and forth.

The officer again ordered him to the ground but the subject started to flee and the officer activated the Taser for another 5-second burst. The complainant fell to his knees and the second officer was able to enter the courtyard area where the complainant was and handcuff him. The officer denied having deployed the Taser while the subject was on the wall and denied using any racial epithets. The placement of the discharge chips from the Taser supported the officer's version of where he was when he deployed the Taser.

Monitor's Assessment: The Monitor concurs with the findings by CPD. The witness statements are consistent with those of the officers and the physical evidence cited supports the officers' version of this incident.

The materials provided with this investigation did not include the Taser download form so the time and duration of the discharge cycles could not be established. All other forms and appropriate documents were included.

16. Tracking Number: 04-184  
Date: July 3, 2004 0452

Summary: Complainant was being transported to the Justice Center in a police vehicle with another person arrested. The two began to fight, and the officers separated them by removing complainant and placing him in another officer's vehicle. Once inside the vehicle, the complainant became violent and kicked out the rear window. A supervisor responded to the scene and attempted to secure complainant in the lap bar. The complainant became violent and began kicking and spitting at the supervisor. The supervisor backed away from the vehicle, and another officer administered a three-to-five-second burst of chemical irritant to the complainant's face. The irritant had the desired effect and he was transported to the Justice Center without further incident.

The complainant alleged that the sergeant cursed at him and told him to put his "fucking" feet in the car.

CPD Review: The Department's review included investigations by District Three Command and a subsequent review by IIS. A District Three lieutenant interviewed the subject and involved officers. Three officers were present when the sergeant was attempting to place the subject in the lap harness. All three heard the dialogue between the sergeant and the subject. None of the three officers heard the sergeant use any profanity against the subject. The sergeant denies the allegation as well. Consequently, the District Command recommended that the matter be closed without further inquiry.

At the direction of the Chief, IIS reviewed the matter and considered all the relevant reporting, and the taped statements of the involved officers and the complainant. As there was no independent witness to confirm or dispel the allegation, IIS concluded the matter as not sustained. The Chief of Police approved the finding.

Monitor's Assessment: The Monitor finds the investigation to be in compliance with the Agreement.

17. Tracking Number: 04-191  
Date: June 23, 2004 1430 hours

Summary: Complainant was arrested and placed in the rear of the police car. He began to curse and scream at the officers. He was advised to calm down, or he would be sprayed with chemical irritant. He failed to heed the officer's warning and began to kick the rear door of the patrol car. The officer deployed a three-second burst of chemical irritant through the protective screen. The irritant had partial effect and the complainant was taken to jail without further incident.

The complainant alleges that the officer threatened to "take the handcuffs off and beat my ass." During the course of the investigation, the officer admitted he did use strong language against the complainant, believing it would get his attention. He denied threatening him with bodily harm.

CPD Review: Review of the incident consisted of a preliminary investigation and findings by District Five supervision and Command, and a subsequent review by IIS. The District Five supervisor recommended that the complaint be closed without further action, based on the following: After the subject was placed in the rear of the police car, the officer freely admits that he opened the door and advised the subject to calm down or he would "mace his ass." The subject, on the other hand, alleges that the officer said he would "beat his ass." There was no independent witness to resolve the discrepancy. When asked about use of the term "ass," the officer felt that by using such strong language with the complainant, it would have some effect. He further purports that it did, because the complainant calmed down for a brief period.

The officer was also asked why he opened the car door, rather than speak to the subject through the protective screen. The officer stated he believed he would have more success with a face-to-face encounter with the complainant, as the other officer on the scene was unsuccessful in communicating through the closed door. He was counseled by his Command that in the future he should communicate with disorderly prisoners through the protective screen and not by opening the car door.

IIS reviewed all relevant documentation and audiotaped statements, but did not do additional investigation. In reviewing those items, it concluded the matter as not sustained. The Chief of Police concurred with the IIS finding.

Monitor's Assessment: The CPD determined the use of chemical spray was consistent with policy and state law. In prior Reports, the



Monitor has commented on the use of chemical irritant on restrained subjects where the investigation failed to clearly articulate that the deployment was initiated to prevent escape or prevent injury to the subject or others. In this particular case, there is no evidence that the subject was attempting to escape. Notwithstanding his cursing and verbal abuse of the officers, it is unclear as to whether the irritant was deployed to prevent injury to the subject, or whether the irritant was deployed to prevent him from damaging the department's property. This aspect of the investigation should have been clearly resolved in the course of either the Command or IIS review.

Also, there is no indication of whether the complainant had been properly restrained in the patrol vehicle, or whether he managed to break free from the restraints. Again, this issue should have been considered in the course of either the Command or IIS review.

Last, it appears CPD accepted the officer's justification for using profanity against the complainant. It is not clear whether the Department's policies permit such an exception. This, too, is an area that should have been resolved in the course of either the Command or IIS review of this incident.

Regarding the finding of "not sustained" as it relates to the threat, the Monitor concurs with CPD's finding.

18. Tracking Number: 04-206  
Date and Time: June 28, 2004 1824 hours

Summary: While the officer was on routine patrol he observed two females fighting in the street. He immediately exited his marked patrol vehicle and told the female whom he observed throw a punch that she was under arrest. The second female yelled at the officer to get the other woman away from her. As the officer was attempting to place the first woman into handcuffs she refused to comply with his commands to place her hands behind her back. As the officer continued to grab her arm and attempt to place handcuffs on her, she continued to resist and pull away from her. The officer warned the woman to either comply or he would use a Taser on her. She continued to resist being handcuffed. The officer then pulled out his Taser and pointed it at the woman and she began to stop her struggling. The officer then reholstered the Taser and attempted to handcuff the woman. However, the woman again began to struggle with the officer and refused to comply with his commands. The officer then removed his Taser and gave the woman a five second drive stun to the back. The woman immediately complied with the officer and was handcuffed and placed under arrest. There were three civilian witnesses to the use of force and arrest of the woman.

The second woman involved in the incident filed a complaint against the officer, alleging that the use of force against the first woman was excessive and unnecessary.

IIS Investigation: IIS conducted the investigation concerning the conduct of the officer involved in the incident. The IIS interviewed the complainant and all witnesses to the incident. All of the civilian witnesses corroborated the incident as described by the officer. In the statement from the arrested individual, she admitted that she did not comply with the officer's commands because "I didn't want to make his job easy." She also acknowledged that the officer warned her to comply or he would use the Taser against her. IIS determined that the allegation of excessive use of force was unfounded. (The CCA also investigated the complaint, interviewed all of the witnesses and complainant, and determined the allegation to be exonerated.)

Monitor's Assessment: The Monitor concurs with the finding of the IIS. The officer handled the incident by himself and very well, with the minimum amount of force necessary. All of the civilian witnesses agreed that the officer gave the subject ample warning to comply and handled the incident well.

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

1. Tracking Number: 04-110  
Date: December 13, 2003 1230 hours

Summary: As part of an investigation of a sexual assault, officers went to the complainant's apartment. They gained access to the apartment from the landlord and entered the apartment. Once inside, they encountered the complainant, who was a suspect in the offense that they were investigating. The complainant was taken into custody, and alleged that the officers improperly entered his apartment and used discourteous language.

CCA Review: The CCA's investigation consisted of a review of related documents and reports, communications information, and an interview of the involved parties.

The involved officers supported their actions by stating that they entered the subject's apartment without a warrant on a belief that they had exigent circumstances that would preclude a warrant. The CCA investigation failed to support their belief. Some five hours had lapsed from the time the event occurred to the time the officers arrived at the subject's home. Any exigency that may have existed in apprehending the

subject, or the possible destruction of any evidence to the crime, had dissipated.

Regarding the allegation that one of the officers used profanity and was thus discourteous to the subject, the persons interviewed all attested that the use of profanity by this officer would have been inconsistent with her behavior. Further, the complainant's girlfriend, who was in close proximity to the officer and complainant at the time of his arrest, failed to support the complainant's assertion.

The CCA found the allegation of improper search to be sustained, and the allegation of discourtesy to be unfounded.

Monitor's Assessment: The Monitor finds the investigation to be consistent with the Agreement. However, the audiotaped statements provided are difficult to hear, and thus the Monitor had difficulty properly evaluating their content.

2. Tracking Number: 04-069  
Date: March 5, 2004

Summary: This complaint involved allegations of excessive force and threats by a police sergeant during an encounter with two juvenile boys. The complainants are parents of the two boys involved. In addition to this complaint with IIS, a complaint was also filed with the CCA (refer to CCA tracking number 04102). The review of the CCA investigation was included in the Monitor's Seventh Report.

The complaint stems from an incident that occurred on a school bus when the boys were riding home. Someone threw a piece of pizza from the window of the bus and the bus driver stopped the bus and called the police. A sergeant responded to handle the matter and the driver pointed out the boys whom she believed were responsible. The sergeant contacted the boys and instructed them to exit the bus for further investigation.

One boy immediately exited the bus, but the other did not readily comply. A verbal encounter ensued between the boy and the sergeant, culminating in the sergeant taking a cell phone from him and forcing him to exit the bus. While dealing with him outside the bus, other juveniles approached the sergeant and questioned him about his treatment of the first boy. This resulted in the sergeant getting involved in a physical encounter with one of the other students.

Both subjects were ultimately released, but their parents arrived on the scene shortly thereafter and pursued the matter with the sergeant. Complaints were subsequently filed with the CCA and CPD.

CPD Review: IIS investigators interviewed one of the complainants in this matter, the bus driver, the sergeant, the juvenile boys involved and two witnesses, one of whom was on the bus. There were three allegations of possible misconduct identified and addressed in this investigation - one count of excessive force and two counts involving threats made toward each boy. The sergeant allegedly pushed one of the boys and made statements to one boy that he (the sergeant) would “kick his ass” and a statement to the other boy involving a threat to break his neck.

The descriptions provided by each of the participants and witnesses varied somewhat, but are relatively consistent with respect to the initial encounter on the bus. One of the boys was delaying and not cooperating with the sergeant’s or the bus driver’s instructions. The boy said he was going to call his mother first and then called her on his cell phone while he was still on the bus. The sergeant said he took the cell phone from the boy and told him he could call his mother after he exited the bus. The boy’s version of this was that he was already on the phone with his mother when the sergeant “snatched” the phone from his hand (the mother stated that she was on the phone with him and heard statements made by the sergeant). The boy said the sergeant told him to get off the bus and pushed him in the chest. The sergeant stated that he did eventually physically push him out the door because the boy placed his hand on the support rails and was not exiting the bus.

After they were off the bus, the boy said the sergeant again pushed him in the chest and caused him to fall into some bushes. He stated the sergeant threatened to “beat his ass,” placed the phone near his hip and stated “reach for it.” The sergeant stated that once they were outside the bus, the boy walked toward him in a threatening manner while also cursing him. He pushed the boy back, while stating “you don’t want to go down this road.”

At about this time, other juveniles exited the bus and approached the sergeant. The sergeant said his attention was drawn to those individuals and he did not see the first boy fall over some bushes. He turned to the other subjects and told them to get back on the bus. One of them was cursing him and walked toward him, so he placed that individual up against a parked car, forced him to bend over the car and told him his actions would determine whether he would be arrested. He said the boy began crying and he decided to send him on his way.

While dealing with the second subject, the sergeant said the first boy continued cursing him and demanded his cell phone be given back to him. The sergeant said “if you are man enough to do it, come get it”. He said he eventually tossed the cell phone back to the boy. He also said he never threatened to assault him.

The second boy stated he observed the sergeant push the first boy off the bus and then push him again, causing him to fall over some bushes. He exited the bus and approached the sergeant to ask him why he had pushed the boy. He said the sergeant then grabbed him, threw him against a parked vehicle and pushed his head and neck down with his forearm while stating, “If you move, I’ll break your fucking neck.” He then let him go and threw the first boy’s phone on the ground.

The bus driver’s statements supported the sergeant’s statements about the lack of cooperation from the boy. She said she did not see the sergeant grab the boy’s cell phone or push the boy out the bus, as she was trying to keep the other students under control. She said she did see the boy “fly” out the bus and into some bushes but did not see how that occurred. She also said she saw the second boy being arrested by the sergeant and it appeared to her that this boy submitted to the arrest. She did not hear the conversations between them however.

The two other witnesses to this encounter who were interviewed were a student who was on the bus and his mother, who had pulled up to the location to pick up her son. The student said he observed the sergeant push the first boy on the shoulder while on the bus and then push him again as he was exiting the bus. He also saw the sergeant push the boy outside the bus, causing him to fall into some bushes. He observed the sergeant place the cell phone in his pocket and heard him say “if you want your phone, you’ll have to take it from me”. He also said the sergeant told him he would “beat his ass.” He also said he witnessed the sergeant grab the second boy, turn him around, and said he was going to arrest him. When the boy kept moving, he told him he was going to “break your fucking neck.” The sergeant then let that boy go, threw the other boy’s phone in the bushes and left the scene.

The adult witness had a conversation with the sergeant and the mother of the first boy after she arrived on the scene. Shortly after the original incident, the sergeant was advised that two of the students’ parents were present at the original location and were upset about the contact. He returned to speak with the parents and words were exchanged about the appropriateness of his actions. One of the complainants advised that she was talking to her son on his cell phone when she heard him tell someone to “get off me, I didn’t do anything.” At

that time she heard an unknown voice respond “If you are a man, get me off of you.”

No arrests were made at the time, but the Sergeant did complete a Report of Non-compliance by a Suspect or Arrestee (Form 18NC), which is used when hard hands force is employed during an encounter.

The conclusions from IIS were that the complaint of excessive force was unfounded and the two allegations of threats were “not sustained.” Those findings were approved in the Command review.

Monitor’s Assessment: This investigation does not appear to be consistent with the MOA requirement that complaints should be evaluated “based on a preponderance of evidence standard” (§39) and that CPD will consider all relevant evidence and make credibility determinations, if feasible (§41). The IIS conclusions appear to have been based on greater credence being given to the sergeant’s statements (this is despite the requirement that there should be “no automatic preference for an officer’s statement over a non-officer’s statement” (§41). IIS cited the sergeant’s reasons for the actions he took and viewed those reasons as adequate grounds for the actions taken. Yet, the investigation also cites the sergeant as having denied making statements that were cited by two boys and corroborated by others. In addition, no documentation was provided regarding any attempt to identify and/or contact other possible witnesses who were on the bus or in the area who might have witnessed this incident. Also, the discrepancies noted between the statements of the sergeant and those of the other witnesses were not addressed in this investigation. Last, IIS defined the allegations in this complaint very narrowly; for example, IIS considered whether the statements were threats, while it also could have considered them as a discourtesy allegation

It is unclear whether the City has resolved the different dispositions taken on this complaint by the CCA and IIS. If a final disposition has not been communicated to the officer, the Monitor recommends that this investigation be re-opened, pursuant to MOA §102, to examine and address the issues noted above.

3. Tracking Number: 04-299  
Date: June 16, 2004 1845 hours

Summary: Complainant alleged that he was stopped by an officer and subjected to a search of his person without his consent. The search included going into the subject's pocket, and protruding into his rectum. The complainant also alleged that he was ordered by the officer to sit in a puddle of water or the Taser would be deployed to gain his compliance. Last, the complainant alleged that when he questioned the officer, the officer said he could do all these things because he was the "police."

CCA Review: The CCA interviewed the involved officer, his partner, and the complainant. Despite the fact that the complainant indicated that others were present, he did not provide the investigator with the names, addresses, or phone numbers of any independent witnesses.

The involved officer acknowledged the stop and stated that he conducted a frisk for weapons based on the fact that the area was the site of previous drug related homicides. The officer's partner had a poor recollection of the events, and thus provided little corroboration.

The CCA concluded that while the stop was based on reasonable, articulable suspicion (i.e. the complainant was trespassing on the property of another), the officer did not provide a sufficient basis to justify a limited search or frisk for weapons. Therefore, the allegation of improper procedure was deemed sustained. However, the allegations of improper search (i.e. intrusion into the subject's pocket and rectum) and discourtesy were deemed "not sustained," as there was insufficient evidence to confirm or dispel the allegations.

Monitor's Assessment: A review of the audiotaped statements provided additional information with respect to a pattern of similar behavior by the subject officer.

The mother of a juvenile male who had been searched and taken into custody by the officer provided information that her son was subjected to a search very similar to that alleged by the complainant in this case (e.g., a search and a probe of the juvenile's rectum). It is unclear, however, whether this juvenile was taken into custody as part of the same incident that gave rise to this complaint, or a different incident in which the same officer was involved. The CCA report does not mention this particular interview or the information that was gleaned. While it is possible that a separate investigation might have been conducted based on this interview, the Monitor cannot determine whether this issue was ever resolved. In the event that it was not, it is critical that this

information be revisited and an appropriate investigation be conducted to confirm or dispel what appears to be a pattern of serious misconduct.

While the CCA investigation of this complaint is in compliance with the Agreements, we do raise a concern regarding the additional information that was gleaned that does not appear to have been adequately investigated and resolved. Paragraph ¶102 of the MOA directs that CPD shall reopen incomplete investigations where the Monitor determines that further investigation is necessary, if the disposition of the investigation has not been officially communicated to the subject officer. While this paragraph does not cover CCA investigation, the CPD investigation of this complaint, and the final disposition of the City Manager, may not have been officially communicated to the officer. Because this is the case, the Monitor will provide written instructions pursuant to ¶102 for reopening and completing this investigation.

4. Tracking Number: 04-053  
Date and Time: October 7, 2003 1840 hours

Summary: Officers made a traffic stop of a vehicle that had no rear tag displayed. A driver and a passenger occupied the vehicle. The two officers approached the vehicle with one officer on each side of the vehicle. The officer on the driver's side obtained the driver's information and explained why the vehicle had been stopped. The officer on the passenger side obtained the passenger's information and ran both subjects' names through the mobile computer. The officer believed the passenger had given him false information as to his name, so he again approached the passenger and asked him to exit the vehicle. The subject was then placed against the car and searched. The subject was being taken back to the police vehicle when he began to run from the officers. One of the officers pursued the subject on foot while the second officer drove the patrol car in an attempt to get in front of the subject. While the subject was running in the rear of a house he began to run up a steep hill with the officer close behind. Realizing that he could not make it up the hill the subject turned around and took a swing at the pursuing officer. The officer immediately struck the subject in his chest with his PR24 causing the subject to fall to the ground. Once on the ground the subject continued to resist being arrested or having handcuffs put on him. At this point the second officer arrived and warned the subject to comply and stop resisting or he would spray him with chemical irritant. The subject refused to comply and continued to resist being handcuffed. The officer then fired one burst of chemical irritant to the subject's face and he immediately complied and was handcuffed.



The patrol car's MVR was on during the traffic stop and recorded the initial contact and stop. The officers opened the vehicle's window's to have fresh air blow against the irritant to disperse it.

The subject filed an excessive use of force complaint against the officers.

Supervisor's Review: On the date of the incident, the officers notified their supervisor of the use of force and the sergeant initiated an investigation. At the time, the subject did not complain of excessive force. The sergeant determined that the use of force was justified and within CPD guidelines.

After the complaint of excessive force was made, the sergeant the next day again investigated the incident and identified two civilian witnesses to the incident. The sergeant considered one witness unreliable because he alleged that the African American officer struck the subject in the face with his fist; however, both of the officers were white. The second witness stated that while he was watching the incident he didn't have a clear view of what happened because one of the officers consistently blocked his view. Both witnesses observed the subject struggling with the officers. The sergeant recommended that the complaint be not sustained.

CPD's Review: Command raised several problems with the investigation and referred it back to the sergeant for clarification and ultimately to IIS for review. Command had the sergeant address the following issues that were found on the MVR recording:

- When the passenger was pulled from the vehicle the officer searched him. The officer indicated that he knew he was going to arrest the subject, but didn't want to tell him at that point, so the search was incident to the arrest.
- The audio recorder was turned off initially. The officer indicated that he had forgotten to turn the device on when he exited the car.

Command had the sergeant counsel the officer on the proper procedures in making arrests and in ensuring that the MVR microphone is turned on.

Command concurred that the allegation of excessive use of force should be not sustained. Command also addressed ancillary issues that were found during the investigation. Additionally, Command determined

that the sergeant needed additional training on conducting use of force investigations and on interview techniques and identified a plan of action to provide him with support and assistance in the future.

IIS Review: IIS reviewed the investigation and concurred that the allegation of excessive force was not sustained.

CCA Investigation: The CCA also conducted an investigation into the force allegation. The interviews of the officers were taped and recorded. The CCA determined that the complaint included the following allegations:

- Excessive use of force (chemical irritant)
- Excessive use of force (PR24)
- Excessive use of force (striking face with fists)

The CCA also determined the following two collateral issues needed to be investigated:

- Improper procedure of investigatory stops
- Improper procedure (failure to keep MVR activated)

The CCA exonerated the use of the chemical irritant and the PR24, concluding they were within CPD guidelines. It determined the allegation of excessive force with the officer's fists should be not sustained.

The CCA determined that the officers failed to comply with proper procedures when they asked the passenger for his identification in the traffic stop. This was a traffic stop and not a *Terry* stop. The driver is the subject of a traffic stop, not the passenger. Therefore, the CCA determined the officers should not have asked him for his identification. The allegation was sustained.

The CCA also determined during its review of the MVR tape that on several occasions the MVR was turned off and then back on. There is a total of 30 minutes of missing time on the tape recording. The policy of the CPD states that the MVR is to remain on during the completion of the traffic stop and, if the officer deems appropriate, when a suspect is placed in custody. The CCA sustained this allegation of improper procedures.

The City Manager concurred with the CCA recommendations.

Monitor's Assessment: The Monitor concurs with the findings of the CCA and determines that the investigation is in compliance with the

Agreements. The CCA identified all of the issues with this incident and made appropriate recommendations. The CPD Command also conducted a thorough investigation and uncovered issues that the investigating sergeant failed to address. Command also identified training issues with the sergeant and took actions to correct those in the future.

[The following CCA investigations were reviewed without the benefit of audio taped statements or photographs, due to the move of CCA's offices.]

1. Tracking Number: 04-219  
Date: May 4, 2004 1931 hours

Summary: Subject filed a complaint with the CCA alleging that a CPD officer used excessive force by delivering a knee strike to the subject's back during the course of an arrest. (See, IIS Tracking Number 04134)

CCA Review: The CCA interviewed the involved officers and civilian witnesses. Attempts were made to contact the complainant by mail and by visiting his last known address. He failed to make contact with the CCA investigator, thus his complaint was limited to those facts reported by the complainant in the IIS investigation.

The CCA's report indicates that complainant alleged in the MVR tape that he was kneed by the officer in the hip and back. According to the CCA report, the complainant also alleges racial profiling on the MVR tape ("You picked me up for nothing, this is racial profiling ..."), and alleges that the officers planted the drugs that were recovered on him ("That's not my crack, you put it on me"). These allegations were not resolved in either the IIS or CCA investigation. It also appears that the complainant did not include either of these allegations in his complaint to IIS. Rather, the focus of his concern remained on the allegation of excessive force.

Based on the statements given by the officers, and those of the independent witnesses, one of which was not in a position to actually see the full view of the complainant's body at the time of the incident, the CCA investigator concluded the matter to be "not sustained."

Monitor's Assessment: With respect to the force allegation, the CCA investigation is in compliance with the Agreements, although the Monitor notes that the IIS finding of "unfounded" (as opposed to the CCA's finding of "not sustained") can be supported by the statement of the civilian witness who was able to observe the entire incident.

With respect to the MVR statements on racial profiling and planting evidence, the Monitor can only conclude that the facts as determined by the investigators sufficiently dispelled these statements, leaving only the allegation of excessive force to be examined. However, there should have been some mention of this conclusion (which appears to be the case) in the final analysis.

2. Tracking Number: 04-202  
Date: April 19, 2004 2100 hours

Summary: A male subject reported to CCA that he was on his way home when he stopped to talk to a group of friends who were standing on the street. Without warning, the group began running from the area. The subject, too, began to run, and noticed a police officer behind him. According to the subject, he placed his hands on top of his head and got on the ground. He alleges that the officer both pulled out his Taser, and stepped on his ankle. The CCA investigated allegations of excessive force and improper pointing of a firearm (as the officer drew his firearm and not his Taser).

CCA Review: The CCA interviewed the involved officer, two police witnesses, and the complainant. CCA focused on the following three issues during its review of this incident.

- Whether or not the stop of the subject was permissible under CPD's policy governing Investigatory stops.
- Whether or not the force used by the arresting officer during the course of the arrest exceeded that was reasonably necessary to apprehend the subject or effect his arrest.
- Whether the pointing of firearm in the instance was permissible under CPD's policy governing firearms.

Regarding the stop, the subject fit the description of a person observed by a citizen engaged in an attempted theft. When officers arrived on the scene, the subject ran to avoid apprehension. The CCA found this allegation "exonerated."

The subject claims the officer stepped on his ankle as retribution for his running. The officer denies the claim and there are no independent witnesses to confirm or dispel the allegation. Therefore, the allegation of excessive force was "not sustained."

While there were discrepancies noted regarding when the officer re-holstered his firearm, the CCA investigator determined that the officer did not identify a threat of loss of life or serious physical harm that would have provided the basis for unholstering and pointing a firearm. The allegation of Improper Pointing of a Firearm was, therefore, sustained.

Monitor's Assessment: The Monitor concurs with the investigator's resolution of two of the issues raised. However, it appears that the facts as reported by the CCA investigation may not support a sustained violation for pointing the firearm. (It is unclear why the complainant thought it was a Taser, which the officer did not have.)

The involved officer pursued a subject whom he believed to have been involved in a criminal offense. The officer stated that when he apprehended the complainant, he did not get on to the ground as directed, until after the officer presented his firearm. The officer further stated that once on the ground, the subject continued to move about, including reaching into his pockets. The officer believed the subject may have possessed a weapon, and thus, posed a threat to the officer. The CCA investigator characterized the officer's fear of a weapon as "mere possibility," yet there are no facts cited to preclude the officer's fear as being reasonable, in light of the circumstances in which he found himself.

3. Tracking Number: 04-0354  
Date: July 19, 2004

Summary: A complainant reported to the CCA that a CPD officer approached him and several others who were standing in front of complainant's business. The complainant alleged that the officer took out his service weapon and pointed it, stating that he was investigating drug activity. During a subsequent interview with a witness to the incident, an allegation of discourtesy was made and was investigated by the CCA as a collateral issue.

CCA Review: The CCA review included taking statements from the involved officer, the complainant, and the complainant's girlfriend. The involved officer acknowledges being in the area and observing what he believed to be narcotic activity at the location in question. He observed three males and a female going to the rear of a business. The officer reported that he had personal knowledge of this area being a location where drug activity had occurred in the past.

When the officer went to investigate, he encountered four males, one of which was advancing towards him. The officer pulled his Taser and commanded the subject to stop. The subject, later determined to be the complainant, complied with the officer's commands. The complainant explained to the officer that he was the owner of the store and was checking on work that the other males were doing on the property. The officer explained the basis for his suspicion and left the area.

At some point in the incident, the complainant's girlfriend came from the business to see what the problem was. She alleged hearing the officer use profanity to her boyfriend. This allegation was not part of the complainant's initial allegation to the CCA, but was made a collateral issue to be resolved. The CCA investigator was unable to identify any independent witnesses to the incident.

In a later interview with the CCA investigator, complainant stated that what he observed in the officer's hand may have been a Taser and not a firearm. Thus the allegation of Improper Pointing of a Firearm was deemed unfounded. The officer denied using profanity and the CCA investigator concluded the allegation of discourtesy to be not sustained.

Monitor's Assessment: The Monitor concurs and finds the investigation in compliance with the Agreement.

4. Tracking Number: 04-342  
Date: July 30, 2004

Summary: An officer working the power shift primarily assigned to traffic enforcement in District 4 in the early morning hours, transmitted a check on complainant's license plate. The officer stated it was her practice to randomly check license plates. The information received by the officer indicated the registered owner of the vehicle had suspended driving privileges under the Financial Responsibility Law (FRA). As a result, complainant was issued a citation and his vehicle impounded under FRA Section 4510 and CPD procedure 12.270.

The complainant stated that at no time was the officer behind him long enough to check his license plate, there was no reason for her to check his license plate, and randomly doing so was a violation of his civil liberties. The complainant contended that the stop was racial profiling.

The CCA also investigated the fact that the MVR external microphone had not recorded the stop. The Daily Activity Record for the vehicle indicated the camera and microphone were operating. The officer stated she tested the MVR equipment before leaving the District and the equipment worked.

CCA Investigation: The CCA investigator interviewed the officer and the complainant. There were no reported witnesses to the traffic stop. The investigation determined that there is no CPD procedure or training related to random license plate checks, but that it is common practice of CPD Officers. Further, there was no evidence to show that the officer stopped complainant on the basis of his race or ethnicity. The allegation of racial profiling was determined to be “unfounded.” The additional issue of the MVR microphone not being engaged during the traffic stop was found to be “not sustained.”

Monitor’s Assessment: The Monitor concurs and determined the investigation is in compliance with the Agreements. Regarding the MVR microphone not recording, in light of the Daily Activity Record showing the camera and microphone working, and the officer stated she tested the equipment and it was working, it would have been advisable to obtain the maintenance records for the vehicle, requested from District 4, before the disposition of this matter.

5. Tracking Number: 04-468  
Date: September 21, 2004

Summary: The CCA received a complaint from the mother of one of two juveniles who had been in a fight. The police officer who had been directed to the scene of the fight by a citizen, ordered the two young men to stop fighting. The complainant’s son continued to be aggressive and to reach toward the other combatant, who had backed away. The officer used an arm bar to take the complainant’s son to the ground, handcuffed, searched and arrested him. The complainant alleged that the officer picked up her son and slammed him face down to the ground, then threw him over the hood of the police vehicle causing a knot on his forehead, a cut lip, and injury to his right leg. Complainant did not witness the altercation or the arrest.

CCA Investigation: The other juvenile involved in the fight and his father were interviewed. The father witnessed the altercation and arrest because the fight occurred in the street in front of his house. Both witnesses stated that complainant’s son continued to come toward the other juvenile after being ordered to stop by the officer. Both also stated the officer did not use excessive force in arresting complainant’s son. Several attempts to interview complainant and her son were unsuccessful, as they failed to attend a scheduled interview, and did not respond to telephone and written requests to contact the CCA investigator.

Both the arrest form for the complainant’s son and the Hamilton County Juvenile Detention Transporting Officer form do not list any

injuries to complainant's son. The DVD of the incident does not disclose any injury to the son's face when the officer placed him across the hood of the car to handcuff and search him. The CCA "exonerated" the officer of the excessive force allegation.

Monitor's Assessment: The Monitor finds the investigation was consistent with the Agreements. We do note that there was at least one additional witness to the fight, since the officer stated in his interview that a male citizen directed him to the scene of the fight. It is not known whether that person witnessed the handcuffing, search and arrest. There is no indication of an attempt to contact this potential witness, or any other disinterested witness (es).

### **C. CCRP Investigations**

1. Tracking Number: 04-202  
Date and Time: February 18, 2004

Summary: Complainant states that he was stopped unnecessarily and photographed by an officer while he was walking home from school. The officer stated that she stopped the complainant for a possible trespass violation. The officer later stated that she stopped the complainant because he matched the description of a subject wanted for questioning in a prior robbery offense. Additional officers who responded to the scene said that they did not have "pertinent information at that time about the reason for the stop."

There was no resolution meeting held, but there was a written record of the events. The mother of the complainant was informed of the investigation and indicated her satisfaction with the results of the investigation.

CPD Review: The supervising officer contacted the complainant regarding the facts and the disposition of the investigation on July 1, 2004, 133 days after the incident. The supervising officer found that despite the obvious age difference between the complainant and the suspect, other factors justified the officer's decision to stop the complainant. For example, the complainant was wearing a coat that was similar to the suspect's, the complainant was stopped in close proximity to the area where the robbery was committed, and the officer who stopped the complainant was the reporting officer for the robbery.

The supervising officer did find, however, that the officer did not meet department standards by photographing the juvenile without court or supervisory approval. The officer was counseled by the supervising officer.



Monitor's Assessment: While the supervising officer did rely on certain details to justify the initial stop, there was an obvious age difference between the complainant and the suspect that should have been deemed material by the officers. Also, the officer initially stated she stopped the complainant for trespassing, not for investigation of a robbery offense. Moreover, the officers that responded for back-up stated that they did not have "pertinent information at that time about the reason for the stop." We also note that the investigation was not even started within the 90 days in which investigations are to be completed, where feasible, under the MOA.

2. Tracking Number: 04-035 (04165?)  
Date: March 26, 2004

Summary: Complainant's mother and daughter allege they were treated in a less-than-professional manner by a CPD member. Complainant's daughter was involved in an auto accident while operating the motor vehicle under the influence of alcohol. Initially, the daughter was not cited, due to injuries sustained as a result of the accident.

An investigation was being conducted by a CPD member to determine the nature of the accident. Upon concluding his investigation, the CPD member cited the complainant for DUI. The citations were issued approximately five weeks after the accident.

A resolution meeting was conducted and attended by the mother, but not by the daughter, who had outstanding warrants. According to the investigating supervisor, the mother did not articulate during the meeting what acts of unprofessional conduct occurred. The supervising investigator states that the mother's real concern was that her daughter was charged with DUI, even though she did not cause the accident. According to the resolution meeting form, the officer explained how the investigation was conducted and the mother was satisfied with the explanation. The daughter requested that her complaint be closed out at her request. The complaint was closed as unfounded. The investigation was in compliance with the Agreement.

3. Tracking Number: 04-172  
Date: May 12, 2004

Summary: Complainant alleged that he was "roughed up" prior to and after being handcuffed. CPD responded to a business to apprehend complainant, a juvenile drug dealer. Upon their arrival, complainant fled the scene and a chase ensued. During the chase, a CPD member attempted to use a Taser on the complainant, but missed. The complainant surrendered by lying down on the ground and was

transported downtown. According to the officers, the only contact the officers had with complainant was when they had to lift him over a fence.

While the complainant was being interviewed, he complained of unnecessary roughness and that his left shoulder was injured. There is reference to the initial interview being taped, but the tape was not provided. No resolution meeting occurred because CPD could not locate the complainant. The matter was closed as exonerated. The sergeant who conducted the initial interview after the complainant was arrested received an ESL for failure to complete a complaint form and take photos pursuant to CPD procedures. The Monitor notes that even though the CPD finds that no use of force was used, a complaint of force should be investigated or reviewed by IIS, rather than through the CCPR process.

4. Tracking Number: 04-177  
Date: May 26, 2004

Summary: Complainant alleges discourteous treatment by a member of CPD. Complainant was involved in a vehicle pursuit and crashed his vehicle. After the crash, the complainant took off on foot, CPD officers followed and trapped complainant in an abandoned building. The Canine Unit was dispatched to search for complainant, who was found hiding under a tarp. As CPD attempted to arrest complainant, the complainant states that he said: "What are you going to do, shoot me like my cousin Michael Carpenter?" He alleges that one of the CPD officers stated: "I would have shot him 16 times instead of 14 times." Complainant is Carpenter's cousin.

No resolution meeting took place because complainant was incarcerated. The CPD supervisor interviewed complainant and reported that he was not interested in pursuing a complaint, regardless of incarceration. The supervisor states that complainant offered to withdraw his complaint if it would help reduce his pending charges. According to the investigator, complainant stated he understood that he did not help the situation by running or making the reference to the Michael Carpenter shooting. The CPD member denies responding with the alleged comment relating to the Carpenter shooting. CPD closed the complaint as not sustained. The investigation was in compliance with the Agreement.

5. Tracking Number: 04-170  
Date: May 30, 2004

Summary: Complainant called the CPD four times on May 30, 2004 regarding her concern about a possible shooting on her street. The complainant called repeatedly because she was not satisfied with the officers' responses. She became quite frustrated with the officers' responses and chose to go to the police department to complain. Shortly after her arrival, the complainant was tased twice and arrested. Her complaints are for rude and discourteous treatment on the phone, excessive force, and being arrested without cause.

The four telephone calls made by the complainant were recorded. Her first call was made because she was concerned about a rumor that there had been a shooting on her street. One officer assigned to the front desk answered phone calls one, three, and four. When the complainant asked this officer what was happening in her neighborhood during the first phone call, he replied he was busy with other things and did not know about the shooting. This officer then hung up the phone. On the second phone call, the complainant spoke with a different officer. This officer gave the complainant information regarding the shooting and ended the call when she became argumentative.

When the complainant arrived at the police department, a third officer became involved. This officer overheard the complainant shouting at one of the officers who had hung up on her. The third officer attempted to intervene and stated that he was unaware of the complainant's desire to make a citizen's complaint. The complainant was asked to leave the department. When the complainant refused to leave, she was arrested. The complainant resisted arrest and the third officer tased the complainant to "gain control."

The complainant was contacted and apprised of the results of the investigations. The complainant was satisfied. She declined to attend the CCRP resolution meeting.

CPD Review: The allegation that the first officer was discourteous was sustained and this officer was counseled accordingly by the supervising officer. The complainant's allegations of discourtesy on the part of the second officer were deemed unfounded. The supervisor concluded that the second officer identified himself and gave the complainant information and ended the conversation when she became argumentative. The investigating supervisor did sustain a violation of improper procedure against the second officer, as he failed to call a fire company to check on complainant's health after the Taser deployment.

It is not clear from the report whether a complaint was made against the third officer. The report identifies the third officer as the officer who deployed the Taser and a subject of the complaint, and describes in detail his conduct, but it does not assess his compliance with department standards in dealing with the complainant.

Monitor's Assessment: The investigation of the first officer was in compliance with the MOA. The investigation of the second officer also appears to be in compliance with the Agreement. However, under the MOA, the investigation of excessive force regarding the Taser deployment should have been investigated by IIS rather than through the CCRP process. Moreover, the Taser Report and investigation should not have been conducted by the second officer, who was involved in the incident.

6. Tracking Number: 04-166  
Date June 13, 2004

Summary: Allegations of rude and discourteous behavior. Complainant and his wife were pulled over for an improper lane change. The officers pulled over the complainant because they believed he matched a DUI suspect description. The broadcast for the DUI suspect vehicle was a Ford Ranger with numerous passengers. Complainant's vehicle was a Ford Ranger, but the only passenger in his vehicle was his wife.

The stop was confrontational, as admitted by both the complainant and the officers. The complainant alleged that an officer indicated that he was going to take complainant to jail because he did not have a proper ID. Complainant also alleged that the officer followed him after the traffic stop for no reason, except to engage in harassing behavior. A resolution meeting was held and was attended by one of the officers, but not the officer who had the most contact with the complainants. The CPD supervisor explained to complainant that he could go to jail for not having ID at traffic stop. Also, the CPD shared with complainant that he was not being followed after the traffic stop, by providing the CAD unit history which documented that the officers were in route to a family-trouble run in the same area and vicinity that the complainant was traveling. The CAD dispatches satisfied complainant regarding not being followed after the traffic stop. However, complainant still felt that the officer was rude and unprofessional for issuing a change of lane ticket. The CPD supervisor explained that the issuance of the ticket is discretionary. The supervisor determined the officers acted within their proper bounds. The complaint was closed as not sustained.

7. Tracking Number: 04-185  
Date: June 15, 2004

Summary: Complainant called the police department in reference to a telephone harassment incident. The complainant told the responding officer that he had received one phone call in which the caller had threatened his life and property and that the caller's number had been captured on his caller "ID". The responding officer told the complainant that a report for Telephone Harassment could not be taken unless additional calls similar in nature were received, and then a report could be made to the Telephone Crime Reporting Unit.

There was no resolution meeting held, but there was a written record of events. The complainant was advised of the investigation and its results and indicated his satisfaction with the results of the investigation.

CPD Review: On July 10, 2004, the supervising officer contacted the complainant to notify him that he would be investigating his complaint. On July 19, 2004, the complainant was contacted by the supervisor and apprised of the investigation's results. Complainant's allegation of lack of proper service was sustained and the officer was counseled accordingly by the supervising officer.

Monitor's Assessment: The investigation by the supervising officer was in compliance with the MOA.

8. Tracking Number: 04-184  
Date: July 21, 2004

Summary: Complainant alleges that officers were rude and refused to give their names and badge numbers. Complainant also stated that an officer attempted to intimidate him by brandishing his Taser. Complainant further alleged that the officers gave complainant's name to known drug dealers, telling the drug dealers that complainant had given the police their names as drug dealers. Complainant alleges that he was confronted by one of these drug dealers on July 21, 2004.

The complainant's statement in the audiotaped interview was articulate about what he claims happened, including the circumstances of police being present at the scene relating to an incident involving complainant and a woman from down the street. The officers indicated that they had observed the complainant being very disorderly and yelling racial slurs to people in the neighborhood. The officers stated that they have had numerous contacts with the complainant in the past and complainant knows their names. The officer accused of pointing his

Taser stated he did not do so, but only that he had it out of his holster by his side in order to calm down the complainant.

The officers told the investigating supervisor that they have had previous contacts with the complainant, and each time they provided him with their names and badge numbers. The investigator attempted to contact complainant on numerous occasions, responded to complainant's residence on three separate occasions, and left his name and phone for complainant to call him at District Three. The supervisor did receive a message from complainant indicating that he no longer wished to pursue the complaint. Upon receiving the message, the supervisor tried one more time to engage in conversation with complainant, but was unsuccessful.

The discourtesy complaint was closed as unfounded, and the improper procedure complaint was closed as exonerated. The investigation was in compliance with the Agreement.

9. Tracking Number: 04-191  
Date: July 28, 2004

Summary: Complainant alleges that her son is being harassed and threatened by police officers in District Two because he will not give them information relating to various drug dealers in the neighborhood. Complainant alleges that the harassment occurs in front of the son's work as well as his store on Stanley Avenue. Further, the complainant alleges that her son has been pulled over four or five times within a five week period.

The CPD Supervisor investigated and determined that no harassment had occurred. The supervisor spoke with a Violent Crime Squad officer in District Two who verified that complainant's son had been wired in the past, and had been utilized as a confidential informant to purchase drugs. The officer also stated that he had had recent contact with Complainant's son in person and over the phone regarding some of her son's activities, but never harassed or threatened him. According to the officer, it was the complainant's son who initiated contact with District Two in order to get some consideration on a pending violation.

The supervisor concluded that the complainant's son did not complain to the officer about harassment, nor did he file an official complaint regarding any improper procedure or misconduct. There is no indication whether or not the supervisor attempted to interview the complainant's son, to get his view of the harassment claim.

The complaint was closed as “unfounded.” Complainant was notified of the resolution meeting but did not attend. The supervisor informed her that the case had been closed by leaving a voice mail message. Given that the investigator did not interview the relevant witness, it is unclear why this complaint was unfounded as opposed to not sustained, and the Monitor cannot find the investigation in compliance.

10. Tracking Number: 04-196  
Date: August 5, 2004

Summary: Complainant alleges that a CPD officer lied to him about arrest procedure and failed to give his badge information. The CPD arrested complainant’s girlfriend for child endangerment. Before she was taken into custody, complainant requested some alternative to physical arrest. The CPD member explained that he had to effectuate a physical arrest and that there was no alternative. Complainant requested the officer’s badge and number and went to get some paper to write it down. Upon his return to get the information, the officer was gone. Complainant filed his complaint at the District and alleges he did not get timely responses from the supervisors at the District and called several times. Complainant was unable to attend the CCRP meeting due to the fact that he was on home incarceration.

The investigating supervisor, a lieutenant from the District, interviewed the CPD members involved and found that no procedures were violated. He also states that he attempted to call the complainant several times when he initially complained, but received busy signals from complainant’s phone. The CPD closed the complaint as exonerated. While the Monitor concurs with the disposition, we note that a different supervisor should have investigated the complaint, as the lieutenant was the CPD member who attempted to call complainant back.

11. Tracking Number: 04-216  
Date: August 20, 2004

Summary: Complainant alleges “discourtesy/unprofessional attitude” after he stopped at a red light and tried to engage in conversation with an officer. The complainant asked the officer “Why has a black friend of mine, who drives a white Chevrolet with several John Kerry stickers on it, been closely followed, twice, by CPD cars, for up to a half-mile, when he had not ‘broken’ any traffic laws? What’s going on with the CPD?” According to the complainant, the officer responded “To me, that’s an idiotic question.”

There was no resolution meeting held, but there was a written record of events. The complainant was advised of the investigation and its results and indicated his satisfaction with the results of the investigation.

CPD Review: The supervising officer contacted the complainant to follow-up on the complaint on September 1, 2004. Complainant's allegation of discourtesy was sustained and the officer was counseled accordingly by the supervising officer.

Monitor's Assessment: The investigation by the supervising officer was in compliance with the MOA.

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