

City of Cincinnati Independent Monitor's Fourth Quarterly Report

January 15, 2004

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

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CITY OF CINCINNATI INDEPENDENT MONITOR'S FOURTH QUARTERLY REPORT

EXECUTIVE SUMMARY

This is the fourth 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 City of Cincinnati, the Plaintiff class, and the Fraternal Order of Police. The period covered is from July through October, 2003, though we also review more recent activities from October through December 31, 2003.

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

MEMORANDUM OF AGREEMENT

General Policies

The MOA requires the Cincinnati Police Department (CPD) to create a group of specially trained officers to respond to incidents involving persons who are mentally ill. The CPD has trained 110 officers as part of a Mental Health Response Team (MHRT), and revised its policies on dealing with the mentally ill. During this quarter, approximately 80% of MHRT calls resulted in an MHRT officer being dispatched to the call. The MHRT program is highly regarded, as is the CPD's partnership with the Mobile Crisis Unit of University Hospital. Continued in-service training of MHRT officers is critical to keep them proficient in dealing with MHRT calls. Therefore, we encourage CPD to finalize and conduct its MHRT retraining program.

Our review of investigations of incidents in which there was a foot pursuit showed that supervisors in some cases have evaluated the tactical soundness of the foot pursuit, while in others, there appeared to be no review of the foot pursuit. For this reason, CPD is in partial compliance with this provision of the MOA.

Use of Force Policies

The CPD's current Use of Force policy is in compliance with the MOA. Regarding implementation, the Monitor Team reviewed a sample of chemical spray reports from the 3rd quarter of 2003. As in the prior quarters, there were several cases where it appeared that subjects were not warned that chemical spray would be used if they did not comply with the officer's commands. The Monitor Team also raised questions regarding whether arrested individuals are being properly restrained in the back of police cars (thus minimizing the need for chemical spray); and whether it is appropriate under the MOA to use chemical spray on arrested and restrained persons who attempt to damage the police car (e.g., by kicking at the windows).

The Monitor Team also reviewed CPD's use of canines for locating and apprehending suspects. During the 3rd quarter of 2003, there were two canine bites. The Monitor's review, however, was of investigations of bites that occurred in earlier quarters. Canine announcements are being made and the deployments are properly being authorized by supervisors. However, we continue to see bites of suspects who were attempting to hide. It is not clear that the handlers have been able to limit canine bites only to those situations allowed under the MOA.

Incident Documentation, Investigation, and Review

On June 1, 2003, CPD began implementing a new use of force reporting policy. Under this policy, officers self-report certain uses of force involving "hard hands" and takedowns on a new "Non-Compliant Suspect" form (Form 18NC). Our review of a sample of these incidents found that the 18NC Form does not capture sufficient information for supervisors to assess the appropriateness of the officer's use of force and tactics. We have recommended certain changes to the form and to CPD reporting to comply with the MOA.

We also reviewed a sample of investigations of more serious use-of-force incidents. Supervisors are responding to the scene and conducting investigations, including taped interviews with officers, witnesses and the subject of the use of force. Improvements in the thoroughness of some of the investigations should be made, however, and there were still investigations conducted by supervisors who had been involved in the incident or who had authorized the use of force. The Monitor Team will be reviewing the training provided sergeants and other supervisors in conducting use-of-force investigations.

Citizen Complaint Process

The CPD revised the routing and review of complaints stemming from supervisors' use-of-force investigations. The Internal Investigations Section (IIS) is now reviewing the investigation after it has gone through the Patrol Bureau, and conducting additional investigation if necessary. Our examination of IIS complaint investigations did reveal some shortcomings, including potential witnesses who were not interviewed in some cases. We do note, however, that the CPD in several instances properly identified and investigated misconduct other than the violations alleged in the complaint.

Management and Supervision

The CPD continues to develop the risk management system required under the MOA. The City's contractor is scheduled to implement the system this quarter. The CPD must complete the ETS protocol and the Data Input Plan, and it should obtain Justice Department approval for these documents before going forward with "beta" testing and implementing the system.

Training

In this next quarter, the Monitor Team will be undertaking an extensive review of the CPD's in-service training on use of force and other issues.

COLLABORATIVE AGREEMENT

CPOP

The Parties have advanced their preparations for implementing CPOP in Cincinnati neighborhoods. They have jointly developed a CPOP curriculum for training community members and police officers in the SARA¹ method of problem solving. The draft curriculum provides an explanation of CPOP, defines the roles of the Parties and describes the resources that can be brought to bear on problems. Progress is also being made on the Community Partnering Center, with a functioning Board in place and an Executive Director search hopefully coming to a successful close in the coming quarter. In this next quarter, we hope to see the Parties deliver the CPOP training and begin forming CPOP teams around specific crime problems in neighborhoods around Cincinnati.

¹ SARA stands for Scanning, Analysis, Response, Assessment.

In the meantime, improvements can be made in several areas to sharpen the Parties' problem-solving efforts. These include:

- Using the analytic and research tools available to the CPD and the Parties to identify and develop locally driven "best practices" to crime problems
- Refining the District Commanders' quarterly problem solving reports to focus more sharply on defining the problem to be addressed, using research and data to analyze the problem, developing specifically tailored responses that go beyond traditional police enforcement activities, and judging success using survey data or other quantifiable measures
- Enhancing the CPOP website to capture more details on problem-solving efforts
- Reporting problem-solving efforts separately from police-community outreach and other initiatives that support the CA

Community dialogue and interaction between the CPD and various segments of the community (paragraph 29(f)) is an area that continues to be a vital need. The Parties are planning to launch the "Friends of the Collaborative" in January, an effort to include other community, business and charitable organizations to support CPOP and community dialogue. We look forward to seeing a jointly developed plan for community dialogue. The Monitor has discussed with the Parties developing a series of community meetings and forums to discuss a range of police-community issues. These would include police use of force, alternatives to force, police response to individuals who are mentally ill or under the influence of drugs or alcohol, as well as the University of Cincinnati Vehicle Stop Study and the issue of fair and equitable policing.

Evaluation Protocol

The Parties are considering two bidders for the Evaluation Protocol contract. The Parties have obtained reduced bids for the contract by concentrating on essential components of the Evaluation Protocol. These reduced bids are still more than the City has currently budgeted for the Evaluation contract, however. This issue must be resolved and a bidder chosen in order for the Evaluation, so essential to the Collaborative Agreement, to get started. The Parties are not in compliance with the Evaluation Protocol provisions of the CA at this time.

Pointing Firearms Complaints

On November 14, 2003, the Conciliator, Judge Michael 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 weapons at individuals. The Parties are in compliance with this provision.

Fair, Equitable and Courteous Treatment

The CA calls for the City to report on its efforts pursuant to Ordinance 88-2001 to measure whether there is racial disparity in motor vehicle stops by CPD. Professors from the University of Cincinnati (UC) analyzed traffic-stop data for the period May 1, 2001 to December 1, 2001. The UC study of this data was released on November 14, along with the Monitor's analysis of the study.

The study determined that there were disparities in the extent to which black and white motorists were stopped by the police, although the disparities varied by neighborhoods. Some measure of the disparity could be explained by non-racial factors. However, other aspects of the data indicating that the disparity might be due to bias (either intentional or unintentional) could not be easily explained. The Monitor made a number of recommendations regarding the UC study and the CPD's continuing data collection efforts. These recommendations have not yet been addressed by the Parties.

With respect to collecting data on traffic stops and pedestrian stops since December 2001, the CPD continues to collect the information on Contact Cards and manually enter the data into a database. Although efforts have been made to increase the accuracy of the data input into the system, the Parties remain out of compliance with the data collection and analysis provisions of the CA. The outside contractor under the Evaluation Protocol has not yet been selected. Moreover, the CPD has not put in place procedures ensuring that officers will collect data on pedestrian stops.

Citizens Complaint Authority

Cincinnati has not yet found a replacement for Nate Ford as executive director of the Citizens Complaint Authority (CCA). Without a full-time executive director who has the confidence of the Parties and the community, it is difficult for the CCA to fulfill its mission of independently investigating citizen complaints. In the December 5, 2003, CA Status Report, Plaintiffs raise a number of concerns regarding the thoroughness and quality of CCA complaint investigations. The

Monitor is awaiting receipt of additional files of CCA investigations so that we can review these issues in the next quarter.

CHAPTER ONE. INTRODUCTION

This is the fourth Quarterly Report of the Monitor, and it reflects one year of our monitoring the Agreements. The Agreements have been in place for 18 months. Just in the last 6 weeks, Cincinnati has been shaken by the death of Nathaniel Jones during a struggle with Cincinnati police officers. The divergent reactions among members of the Cincinnati community reflect how much work remains to be done to improve relations between the police and the community and on race relations in general in Cincinnati. In our view, the controversy surrounding the Jones incident reinforces the need for the Collaborative Agreement and for the measures contained in both the CA and the MOA to take hold. At the same time, we believe the existence of the Collaborative and the changes resulting from the Agreements had a positive impact on the incident's aftermath. Despite strong feelings on all sides of the issues, there was no unrest or violence.

Investigations of the Jones matter are going forward by CPD's Homicide Unit and Internal Investigations Section. The Citizen Complaint Authority also is conducting an independent investigation. We will review those investigations in turn. We have stressed to all of the Parties the need to address issues stemming from the incident through the Collaborative. These include (irrespective of the outcome of the investigations) training on dealing with disorderly individuals, disengagement techniques, interactions with potentially mentally ill individuals, CPR and first aid. There is also a need to bring together the various segments of the Cincinnati community and begin repairing any damage to police-community relations.

A second major development in this last quarter was the release of the University of Cincinnati Vehicle Stop Study. This study addressed a core issue of Collaborative - the fair and equitable treatment of Cincinnati residents by the police, and whether there are racial disparities in police actions. The Monitor prepared an analysis of the UC study which we also released with the UC study on November 14, 2003. Both of these reports are available on the Monitor's website www.CincinnatiMonitor.org, and on the websites of the Parties.

The UC study found that there were disparities in the extent to which black and white drivers were stopped by the police, which varied by neighborhoods in the City. Given the limited data available, however, the authors of the study could not accurately determine whether the disproportionality was due to bias (either intentional or unintentional) or whether it resulted from non-racial factors. In reviewing the UC study, we evaluated the methodology it used to establish a benchmark for

measuring stop data and estimating disproportionality. While we noted a number of issues for further analysis, we found the UC study to be generally sound, and consistent with others across the country. We made a number of recommendations regarding data collection, which we also address in Chapter Three of this Report.

A. Summary of First Year of Monitoring

Compliance and implementation of the provisions of the MOA and the CA during the first year of monitoring have been mixed.

While policies and procedures required by the MOA have been drafted and disseminated, there remains significant work to be done in training on the revised policies, and ensuring that the policies and training translate into the reforms contemplated by the Agreements. Implementation and compliance under the CA has proved to be even more challenging. Despite important CA accomplishments such as formation of the Community Partnering Center, development of the CPOP website and the creation of the CCA, there remains much to do, particularly in the areas of evaluation and mutual accountability.

One of the most challenging aspects of performance under the Agreements has been the divisive public dialogue around events and activities related to issues covered by the Agreements. This first year has presented Cincinnati with extremely difficult tests of its ability to meet the requirements and aspirations of the Agreements. During this first year, we witnessed:

- The Black United Front, a signatory to the CA, withdraw as class representative for the plaintiffs
- The FOP petition to withdraw from the CA
- Disputes that flared between the City and Plaintiffs over the Partnering Center, and between the City and the Justice Department over the CPD's Use-of-Force policy
- The fatal shooting of Andre Sherrer
- The release of the Vehicle Stop Study that noted disparities in traffic stops
- The death of Nathaniel Jones

In dealing with difficult issues such as these, the Parties must avoid harsh and accusatory rhetoric. For unless the Parties' discussions are respectful and measured, it will be difficult to inspire Cincinnati citizens and police officers to develop enhanced levels of respect, trust, and accountability. The importance of dialogue cannot be understated, as witnessed by the community forum held after the Nathaniel Jones

death, where members of the community were able to express concerns and gather information from the CPD and City officials.

The same difficult issues that evidence the need for greater trust among the Parties, also demonstrate the strength of the Collaborative. Despite the occurrence of the type of events that tear at the fabric of the difficult and sensitive police/community relationships present in Cincinnati, the Collaborative has held. Work continues daily on the goals and actions required by the Agreements, and the Parties ultimately and consistently reiterate their commitment to the collaborative process. An example is the diligent efforts of all of the Collaborative partners to establish, staff, and fund (without government money) the Community Partnering Center. This effort to create an ongoing entity to ensure the participation of the community as “co-producers” of public safety is both creative and key to the success of CPOP in Cincinnati.

This Report summarizes progress made over the course of the year that we have been monitoring the Agreements. We reiterate some of our earlier findings. Important accomplishments in implementing the MOA and CA include:

- The formation and training of the Mental Health Response Team (MHRT) to deal with incidents involving persons with mental illness
- Revisions to the CPD’s Use-of-Force Procedures to comply with the MOA
- New procedures for reporting, investigating and reviewing use-of-force incidents
- Enhancing the CPD’s Field Training Officer (FTO) program
- Development of the roll-call training program and implementation of scenario training
- Contracting for and developing the Employee Tracking Solution (ETS), a risk management system
- Adoption by the Parties of the “City of Cincinnati Plan for Community Problem Oriented Policing,” a plan for coordinating CPOP efforts and forming CPOP teams
- Development of a joint CPOP curriculum (though it has not yet been implemented)

- Creation of the CPOP website
- Formation of Community Partnering Center
- Establishing the CCA
- Issuing the UC Vehicle Stop Study

At the same time, critical work remains. Police/community engagement and dialogue continues to be a vital need. The joint CPOP training that has been developed needs to be put into the field in City neighborhoods, and CPOP teams formed with the collaboration of the police department and the Partnering Center. An “evaluator” must be selected so that the Evaluation Protocol can begin, including further data collection efforts regarding traffic stops, pedestrian stops and other relevant data. The CPD must continue to improve its reporting and investigation of force incidents and misconduct complaints, and the ETS system must be implemented and then used to better manage officer and department performance.

Our Reports have emphasized the need for the Parties to embrace the reforms in the Agreements as the best way to improve policing and reduce tensions. We believe that even more so today.

CHAPTER TWO. MEMORANDUM OF AGREEMENT

I. General Policies

A. Mental Health Response Team [MOA ¶ 10]

1. Requirement

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

2. Status

As noted in previous reports, CPD trained 90 officers as Mental Health Response Team (MHRT) officers in 2002. During this quarter, an additional 20 officers went through MHRT training, which was conducted at the Police Training Institute in Hamilton County. In addition, the CPD has hosted two Citizen Police Academies for mental health professionals to provide them with a greater familiarity with police work. The CPD is still developing an in-service/recertification training program with the Mental Health Association (MHA), although the City and the MHA have not yet worked out the funding for training. In addition, CPD has included the 40-hour MHRT training in its Academy program for police recruits. This Academy training is meant to introduce the recruits to issues related to dealing with mentally ill individuals; the recruits are not certified as MHRT officers, however.

With respect to the MOA requirement that the CPD partner with mental health care professionals, the CPD works with the Mobile Crisis Unit, a unit managed by the Psychiatric Emergency Services of University Hospital and funded by the Mental Health Board of Hamilton County. The Mobile Crisis Unit is staffed by five social workers, who respond to situations involving mentally ill individuals. Two Mobile Crisis Unit staff are located in Police District 5 and District 1 headquarters, respectively. Mobile Crisis Unit staff can respond jointly with CPD officers on MHRT runs. At times, they will respond separately and will call police where necessary, or be called by responding officers. The Mobile Crisis Unit operates Monday-Friday during normal business hours (9:00 am to 5:00 pm). After hours and on weekends there is one person on call.

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

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

The CPD also tracks the deployment of MHRT officers to MHRT calls. In July 2003, MHRT officers were dispatched on 76.1 percent of the calls that were designated as MHRT calls (382 out of 502 calls). In August 2003, the percentage was 77.6 percent (351 out of 453), and in September, it rose to 80 percent (382 out of 478 calls). According to the CPD, during this three month period, there were only 23 calls for which an MHRT officer was not available (1.6%). The remaining calls were either determined not to be MHRT situations and the call was “disregarded” by a supervisor, the call was handled before the arrival of the MHRT officer, the dispatcher did not enter an MHRT code, or the calls were initially not MHRT calls but an officer on the scene called for an MHRT officer.

3. Assessment

During this quarter, the Monitor team spoke with a number of people in the mental health community about the MHRT program, including mental health care providers, consumers, and CPD personnel. The MHRT program gets very positive reviews. The individuals we spoke with believe that over time the MHRT program changes the officers’ sensitivity to mental health issues and their approach to situations involving the mentally ill. Officers are more comfortable allowing more time for the situation to be resolved and giving mentally ill persons more space. One provider suggested this could be as simple as a gentler knock on a door or initial approach. We were told that supervisors are giving MHRT officers leeway to handle the situations. By working with the social workers in the Mobile Crisis Unit, officers are also becoming more familiar with available mental health resources, and with some of the consumers in their District. While these impressions do not amount to a scientific assessment of the effectiveness of the MHRT program, the anecdotal evidence does suggest that the MHRT program is leading to better outcomes. At the same time, one of the mental health workers with whom we spoke cautioned that the MHRT program is not a cure-all, and that there will be situations where MHRT officers are dispatched to handle calls where a use of force is still unavoidable. Indeed, there were several incidents we reviewed this quarter where MHRT officers were dispatched and responded to situations involving mentally ill individuals, but where force was used.²

Statistics on the availability of MHRT officers show an improving performance this quarter, with the percentage of MHRT calls being responded to by an MHRT officer increasing each month. There were still concerns on the part of some with whom we spoke that there are not

² This individual also noted that there are veteran CPD officers who are not MHRT officers but who have excellent skills in handling mentally ill individuals.

enough MHRT officers. However, we believe that Cincinnati has complied with the MHRT provisions of the MOA. In future reports, we will continue to assess the adequacy of MHRT officer availability, and audit the CPD's statistical information. Nonetheless, given the apparent success of the MHRT program, we believe training additional officers can improve the CPD's performance in dealing with mentally ill subjects.

We also believe that having Mobile Crisis Unit staff located in the CPD Districts is beneficial. Although the Mobile Crisis Unit is not a responsibility of the CPD, we recommend that the City work with Hamilton County and the Mental Health Board to find funding for additional Mobile Crisis Unit staff that could be resident in the other Districts, or to expand the hours of operation beyond regular business hours.

Finally, although we found the initial training curriculum for MHRT officers to comply with the MOA requirements, we believe that continued in-service training is critical to keep officers proficient in dealing with MHRT calls. Therefore, we encourage the CPD to finalize and conduct its MHRT retraining program.

B. Foot Pursuits [MOA ¶11]

1. Requirement

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

2. Status

There was no change in policy or procedures during this quarter.

3. Assessment

CPD's foot pursuit policy complies with the MOA. With respect to implementation, we reviewed a number of investigations of use-of-force incidents and citizen complaints in which there was a foot pursuit. Our review indicated that in some cases, supervisors evaluated the tactical soundness of the foot pursuit and considered whether the officers properly considered the factors listed in the CPD policy. In others, there appeared to be no review of the foot pursuit. Therefore, CPD is in partial compliance with this MOA provision.

II. Use of Force

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

USE OF FORCE TABLE

	3 rd Q 2002	4 th Q 2002	1 st Q 2003	2 nd Q 2003	3 rd Q 2003
Chemical Irritant	93 (24 restrained)	117 (15 restrained)	122 (26 restrained)	155 (15 restrained)	103 (19 restrained)
Physical Force	52	67	71	79	27, plus 26 takedowns with injuries listed as "Injury-to-Prisoner" 35 non-compliant suspects
PR 24	9	7	5	3	5
Canine	5	5	2	5	2
Taser	1	1	1	2	0
Beanbag	1 (animal)	0	0	4	0
Pepper-ball	1	0	1	1	5
Firearms Discharge	0	0	1	0	0

A. General Policies [MOA ¶¶ 12-13]

1. Requirements

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

- It must clearly define the terms used in the policy
- The term "force" must be defined as it is defined in the MOA
- It must incorporate a "use-of-force model" that relates the officer's responses and use of force options to the actions of the subject, and teaches that disengagement, area containment, or calling for reinforcement may be an appropriate response to a situation
- Whenever possible, individuals should be allowed to submit to arrest before force is used
- Advise against excessive force

- Prohibit choke holds
- The term “restraining force” must be removed from CPD’s policy
-
- CPD’s revised Use-of-Force policy must be published on CPD’s website and be disseminated to community groups

2. Status

A final Use-of-Force policy, Procedure 12.545, was included in the CPD Staff Notes on July 29, 2003. This policy includes all of the changes agreed to by CPD and the Department of Justice.

3. Assessment

The CPD’s current Use-of-Force policy is in compliance with the MOA. We assess CPD’s implementation of its policy (e.g., Are officers providing suspects with an opportunity to submit to arrest? Are officers using force consistent with the use-of-force model in its policy?) in the more specific sections below.

B. Chemical Spray [MOA ¶¶ 14-19]

There were 103 incidents in which CPD officers used chemical irritant spray in this quarter. This compares to 155 uses of chemical irritant in the second quarter of 2003, and 122 incidents in the first quarter of 2003. In this quarter, there were 19 uses of chemical spray on persons restrained (in handcuffs), compared to 15 in the last quarter, and 26 in the quarter before that. There was one use of chemical spray in a crowd situation in this quarter.

1. Requirements

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

- Clearly define terms
- Limit use of spray, including against crowds, to only those cases where force is necessary to effect the arrest of an actively resisting person, protect against harm, or prevent escape
- Provide that chemical spray may be used only when verbal commands would be ineffective

- Require supervisory approval for use of chemical spray against a crowd, absent exigent circumstances
- Require a verbal warning and the opportunity to comply before using a chemical spray, unless doing so would be dangerous
- Require officers to aim at the subject's face and upper torso
- Provide guidance on duration of bursts and recommended distance
- Require officers to offer to decontaminate sprayed individuals
- Request medical response for complaining subjects
- Prohibit keeping sprayed subjects in a face down position any longer than necessary
- Prohibit use of spray on a restrained person, except to protect against harm or escape
- Use of spray against restrained persons must be investigated, including tape recorded statements of officers and witnesses. Investigations of these incidents must be reviewed by 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

In its November 12, 2003, MOA Status Report, the CPD provided a response to two issues raised by the Monitor in previous reports. The first relates to the use of chemical spray on persons who are suspected of swallowing contraband. The CPD provided the Monitor with an Inspections Section report on the use of spray on persons swallowing contraband. The CPD has concluded that its policy: is less invasive than physically trying to remove contraband from a suspect's mouth; is reasonable and would withstand legal scrutiny under the Fourth Amendment; is effective in causing the subject to spit out the contraband in approximately 50% of cases;³ and that using chemical spray in these cases is justified by the potential harm to the suspect of allowing the suspect to swallow contraband.

As part of CPD's report, the Cincinnati Law Department recommended that CPD's Use-of-Force policy be supplemented to require that:

³ According to the CPD, the Department investigated 86 cases involving the swallowing of evidence or contraband since 2000. Chemical spray was used in 50 of those cases, resulting in recovery of contraband or evidence in 24 of the 50 cases.

- Chemical irritant may only be used where there is a clear indication that the object or substance in the subject's mouth is contraband
- Chemical irritant may only be used in the presence of exigent circumstances, such as imminent destruction of evidence or medical emergency
- Chemical irritant may only be used if the officer has issued, and the subject has refused to comply with, a verbal command to spit out any contraband

We request that the CPD inform the Monitor Team if these clarifications of its procedures have been made.

Second, in response to another issue raised in our Third Quarterly Report, the CPD strongly maintains that officers are justified in using chemical spray on individuals who spit at officers. To ensure that verbal warnings are given in these situations, the CPD states that it will "take measures internally to ensure these warnings are properly documented." We will continue to examine such cases to ensure that appropriate steps are taken by CPD personnel and that chemical spray is only used on individuals resisting arrest or threatening harm to the officer.

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

In our First Quarterly Report, we raised the concern that the Use-of-Force Report, Form 18, did not reflect whether the subject had been warned that force was going to be used if the subject did not comply with the officer's commands. The MOA clearly requires such a warning in situations where the warning would not present a danger to the officer or others. We recommended changing the form to add a field "warned that force would be used." The CPD has since included this field in the "verbalization" category of the Use-of-Force Form. In reviewing the 11 chemical spray reports this quarter, however, there was no indication of

any verbal warning in either the “verbalization” field or the narrative portion of the report in six of these 11 incidents. While exigent circumstances may have been present in some or all of these cases, this fact must be documented in the Use-of-Force Report. The narrative section of the report is the best place to address these issues so that the Chain of Command (and the Monitor Team) can ensure that appropriate tactics and procedures were followed. In the remaining five incidents, a verbal warning was documented in either the verbalization field or the narrative, or both.

ii. Spray of restrained individuals

As noted above, the MOA limits the circumstances in which chemical spray can be used on an individual who is already in handcuffs. Because a number of these incidents occur when a prisoner is being transported in a police car, the MOA requires the CPD to have restraining equipment in its vehicles and to train its officers in using that equipment. In a number of the files we reviewed this quarter involving the use of chemical spray on restrained persons, there was little information that would confirm that the transporting officer used either a lap bar, seat belt, or other harness sufficient to properly restrain a subject during transport. While the CPD has suggested that officers are exposed to additional hazards while attempting to secure a subject inside a patrol vehicle using a lap bar or similar restraining device, the MOA specifically requires that officers undergo training to properly use restraining devices. The whole purpose behind this provision is to minimize the use of chemical irritant on restrained persons. Therefore, the CPD should ensure that the investigations of such incidents determine whether the subject was restrained in any way. If the subject was not restrained, the investigating supervisor should document the reason why restraining equipment was not used.

A second issue involves use of chemical irritant on subjects who have either freed themselves from restraints, or were simply not secured by restraint equipment (other than handcuffs), and attempted, and oftentimes succeeded, to kick out the police car’s exterior windows or Plexiglas partitions. More often than not, the deployment was effective in securing the subject’s compliance. Nonetheless, the issue is whether the use of chemical irritant was to prevent the escape of a subject (which is covered by the MOA), or to prevent destruction of departmental property (which arguably is not covered by the provisions of the MOA). While such uses of chemical spray could be found compliant under the rationale of preventing an escape, under most of the conditions presented in these cases, it is improbable that a handcuffed subject, even one who successfully kicked out the window of a patrol car, would be able to maneuver and jump out of the rear of the car and escape

police custody. In most, if not all of these cases, the vehicles are stopped with more than one officer present outside the vehicle. Absent further explanation or articulation of the circumstances, escape does not appear plausible and it appears the deployment of chemical irritant was more likely to stop the destructive behavior.

We recommend that CPD and the Department of Justice have further discussions to clarify what constitutes a justifiable use of chemical spray in these instances. For example, chemical spray would not be justified under the MOA where an arrested individual is being verbally abusive and simply “thrashing about.” However, where an arrested individual does become violent and kicks out a window, that person could injure himself/herself on broken glass or present a danger to officers. Thus, the investigating supervisors in such incidents must fully determine the facts of the situation to assess whether the chemical spray was justified.

C. Canines [MOA ¶20]

In the third quarter of 2003, there were 169 total canine deployments, 20 canine apprehensions (where a suspect was found and arrested) and 2 canine bites.

1. Requirements

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

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed
- Require approval of a supervisor before deployment, except for on-leash deployments
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender

- Handlers shall not allow their canines to bite a person unless the person poses an imminent danger, or is actively resisting or escaping
- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries
- CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System

2. Status

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

	<u>Bite Ratio</u>
January 1, 2003 – June 30, 2003	8.6% (7 bites in 60 finds)
February 1, 2003 – July 31, 2003	14.3% (8 bites in 56 finds)
March 1, 2003 – August 31, 2003	13.3% (8 bites in 60 finds)

Each of these bite ratios is below the 20% ratio in the MOA that would trigger a review of the Canine Unit. The CPD also calculated bite ratios for each handler/canine team. There were three individual teams that had a bite ratio exceeding 20% for at least one of these six-month periods. According to the CPD, each of the canine bites involved were “reviewed carefully and discussed with the handlers. The review showed their bite percentages are not related to any improper pattern of tactics or behavior.”

In our Third Quarterly Report, we noted that the CPD was not able to complete investigations for the five canine bites that occurred during the second quarter of 2003. Therefore, we were unable to assess compliance with the MOA provisions relating to canines in that Report. In this quarter, the CPD has provided us with two investigations of canine bites from the 1st quarter of 2003 and two investigations of the five canine bites that occurred in the 2nd quarter of 2003. We assess those investigations in Chapter Four and summarize them below. However, the CPD did not provide us with investigations of three bites that occurred in the 2nd quarter of 2003, nor has the CPD completed its

investigations of the two canine bites that occurred in this quarter, in July 2003.⁴

3. Assessment

a. Policy

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

b. Review of Investigations

Based on the four canine bite investigations and a sample of 16 canine deployment forms from the 3rd quarter of 2003 for deployments in which suspects were apprehended without a canine bite, we reviewed the following issues relating to the MOA canine provisions:

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

Of the four canine bites fully investigated, one off-leash deployment was a commercial building search, meeting the MOA criteria. A second off-leash deployment was a "running apprehension," where the canine handler dropped the lead while tracking a stolen car suspect. The CPD found this deployment to be out of policy, because it was not an offense of violence, and because of the risk of innocent third persons or officers being bitten. The remaining two were on-lead tracks. One of these involved a stolen vehicle suspect and the second a suspect in a drug transaction. We also reviewed a sample of deployments that led to apprehensions without a canine bite. Of these deployments, six were off-leash deployments. Four were for commercial building searches that met the MOA criteria and two were off-leash searches of residences. One of these was search for a wanted felon and the second for a burglary in process. Because the deployment forms do not provide additional information regarding whether the individuals sought were suspected of being armed, or whether the felon was wanted for an offense of violence, we cannot say that these deployments were consistent with the MOA criteria.

⁴ The canine bite investigations from the 2nd quarter that we do not have are 2003-0469, 2003-0470 and 2003-0471.

The MOA provision limiting off-leash deployments also applies to “other instances where there is otherwise a significant risk of a canine bite to a suspect.” If a canine is on a leash and the handler has control of the dog, and can determine whether or not the canine will bite/engage a subject, then the MOA off-leash criteria limiting deployments is not applicable. However, in our review of canine deployments over the last year, there appears to be a significant risk of a canine bite when handlers deploy their canines on 30-foot leads and the canines have the ability to bite subjects before the handlers can get to the encounter. This is especially true at night, where it is more difficult for the handler to keep the canine in sight. Because this is the case, if bites continue to occur on these types of deployments (because the dogs are trained to engage without a further command from the handler), the Monitor may in the future determine that the more restrictive criteria governing off-leash deployments also applies to these on-lead tracks using 30-foot leads.

ii. Were canine announcements made?

Canine announcements were documented in each of the four fully investigated incidents we reviewed, although in one case the announcement was made by patrol officers while they were waiting for the canine team to arrive. Announcements were also documented on six of the 16 deployment forms in our sample of deployments without a bite. For the other deployments (mostly tracks), it was unclear from the deployment form whether an announcement had been made. While it may be that the CPD is complying with this MOA provision, we recommend that CPD amend the canine deployment form to specifically document whether a canine announcement has been made, and if not, the reasons why not.

iii. Was authorization from supervisor obtained?

Supervisory approval was obtained in each of the four bite investigations we reviewed. However, in one of the cases, the supervisor did not respond to the scene, but instead provided the authorization over the radio. This conflicts with CPD’s policy, and the CPD counseled the involved sergeant. Authorization of a supervisor was also documented on all of the deployment forms from deployments that did not lead to a canine bite. CPD is in compliance on this MOA provision.

iv. Thoroughness of investigations

The Monitor has found the investigations conducted by the Canine Unit supervisor and the Special Services Section Commander to be

among the most complete investigations of use-of-force incidents we have reviewed. However, the timeliness of CPD canine investigations is clearly an issue that the CPD needs to address.

v. Were bites consistent with MOA provisions?

Paragraph 20(e) of the MOA requires handlers to allow a canine bite only where the suspect is believed to be armed, actively resisting, or escaping. In two of the incidents reviewed this quarter, the suspects were attempting to escape. In the other two however, it appears that the suspects were attempting to hide (one against a deck and the second underneath a counter in a commercial establishment). The CPD's canine policy states that for persons concealing themselves officers may not allow a canine to bite if there is a reasonable likelihood that the suspect could be apprehended using less forceful means. The Monitor has faced this question in previous quarters; officers (and the Monitor) can not evaluate whether less forceful means of apprehension might be effective, if the canine bites the suspect before handler realizes the suspect is hidden. CPD dogs are not trained in the find and bark methodology. Rather, if they encounter a suspect hiding, they will bite the suspect unless the handler commands them not to. Given this type of training, the MOA requires that dogs be under control of the handler in order to be in compliance with MOA 20(e), except in those situations where suspect is believed to be armed.

D. Beanbag Shotguns [MOA ¶¶ 21-23]

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

There were no beanbag shotgun deployments in the third quarter of 2003. There was one beanbag deployment from the second quarter of 2003 that was investigated in this quarter, however. This deployment is reviewed in Chapter Four. While that deployment appears to be consistent with the CPD policy in effect at the time, it is unclear whether it was consistent with the MOA beanbag criteria. Moreover, our review of that incident has raised a question of whether CPD patrol officers and managers are aware of and recognize the change in the CPD's policy made in June 2003. Given this concern, we believe it is imperative that officers and supervisors using beanbag weapons be reminded of the change of policy and provided additional training.

III. Incident Documentation, Investigation

A. Documentation [MOA ¶¶ 24-25]

1. Requirements

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

2. Status

a. Hard Hands and Takedowns without Injury

On June 1, 2003, the CPD began implementing its new Use-of-Force policy worked out with the Department of Justice. Under this policy, officers self-report certain uses of force involving "hard hands" and takedowns on a new "Non-Compliant Suspect" form (Form 18NC). For these types of incidents, supervisors do not need to respond to the scene and conduct an investigation, but they do need to review the completed Non-Compliant Suspect form and assess the appropriateness of the officer's use of force and tactics. For other types of force, such as chemical spray, hard hands and take-downs with injuries, physical strikes, taser, beanbag or pepperball deployments, supervisors continue to respond to the scene and complete a Use-of-Force Report (Form 18).

More specifically, in a letter to the Department of Justice dated April 25, 2003, the City of Cincinnati stated that where the force used is "hard hands" or a takedown "and there is neither an obvious injury to the subject, a complained of injury, nor an allegation of excessive force the officer would be required to do three things:"

- “First, the officer would be required to notify his supervisor of the incident.”
- "Second, the officer would be required to complete an arrest report, and in doing so, provide a written narrative account of the incident. The officer's narrative would include a description of the type of resistance the subject engaged in and the specific tactic the officer used to overcome that resistance.”
- “Third, the officer would be required to complete an Officer's Report of Non-Compliance. This report would require the officer to identify events leading up to the use of force and to describe the type(s) of force used. A first-line supervisor would review the form and provide written comments on the appropriateness of the officer's tactics. Thereafter, Inspections Section would review the report for tactical errors, legal issues, policy and training issues, and issues relating to the supervisor’s review of the report.”⁵

The Department of Justice and the CPD agreed that this new reporting protocol would be implemented “for a trial period of six months” during which time the Monitor would review the CPD’s implementation of the protocol.

b. Hard Hands and Takedowns with Injuries

In the same letter to the Department of Justice, Cincinnati described the reporting protocol for takedowns and “hard hands” that resulted in injury. Where the force used is “hard hands” or a takedown “resulting in an obvious injury, complained-of injury, or allegation of excessive force, the same procedure that applies to any other use of force would govern. Specifically, a supervisor would be summoned to the scene and an investigation would follow, including but not limited to obtaining audio-taped statements of those involved.”

c. Tasers

In our Second Quarterly Report, we noted that the CPD was not audio-taping subject, witness and officer statements in investigations of police use of the taser. Indeed, the CPD’s Use-of-Force policy is inconsistent with respect to this issue, stating in one place that taser investigations should include audio-taped statements, while stating in another section that they need not. Since our Second Quarterly Report, the manufacturer of the taser used by CPD officers has been bought by a

⁵ In the CPD’s Use-of-Force Procedures, 12.545, the table on use-of-force reporting repeats the requirements laid out above.

competing manufacturer, and the tasers previously used by CPD have been removed from service.

The CPD is now considering an expanded deployment of new tasers. It has received a \$750,000 federal grant for the purchase of approximately 750 tasers.⁶ The Monitor has had several conversations with the Parties regarding the deployment of tasers. Prior to any deployment, the CPD has agreed that the following issues will be addressed, and that CPD will consider the input of the Parties on these matters:

- CPD policy for deploying tasers, including procedures for reporting and investigating taser use;
- Training of officers on use of the taser;
- Incremental deployment; CPD is considering which officers should pilot the taser deployment (SWAT, field supervisors, or MHRT officers);
- Public demonstrations of tasers and discussion of their use.

3. Assessment

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

The Monitor Team sampled 17 Non-compliant Suspect Forms (Form 18NC) and associated arrest reports. Our review revealed that the forms were not providing sufficient information about the incidents. As an initial matter, it is not apparent that officers are notifying supervisors at the time of the incident, rather than later. There is no place on the form for the officer to document that he or she notified a supervisor of the use of force. Second, the 18NC form has no space for a narrative, so there is no place for the officer to identify the events leading to the use of force or to describe the force used; nor do the officers' arrest reports contain the narratives required by the MOA and CPD policy. Third, the 18NC Form contains only a signature line for supervisors. None of the 17 forms we reviewed included any written comments of supervisors on the appropriateness of the officer's tactics. Finally, the Non-compliant Suspect Forms provide a signature line for the Inspections Section. Again, however, in none of the incidents did the Inspections Section comment on or require any changes relating to its review of tactical

⁶ The City is providing funding for an additional 250 tasers.

errors, legal issues, policy and training issues, and issues relating to the supervisor's review of the report.

Without adequate documentation, it is not possible for CPD supervisors to determine whether these incidents were in compliance with CPD policy and state law. The reports, as currently filled out, also do not meet the requirements of the MOA, as modified by the agreement between the CPD and the Department of Justice in June 2003. Therefore, the Non-compliant Suspect Form (Form 18NC) should be revised: (1) to add documentation that the supervisor was notified when the incident occurred; (2) to add space for the officer's narrative; and (3) to provide a section for the supervisor's written comments and any comments resulting from the Inspection Section review.

b. Takedowns with Injury

As noted above, when a takedown or the use of "hard hands" results in an obvious injury, complaint of injury or allegation of excessive force, a supervisor is required to respond to the scene to conduct a use of force investigation. That investigation should include audio-tapes of involved officers, witnesses and the subject of the use of force, and it should be documented on a Use-of-Force Report, Form 18F. For the third quarter of 2003, however, the CPD reported takedowns and hard hands with injuries as an "Injury-to-Prisoner Report" (Form 18I). Injury-to-Prisoner Reports, however, are designed to document injuries that were not the result of police use of force (e.g., a suspect trips during a foot pursuit and cuts his leg). While an Injury-to-Prisoner Report does require the supervisor to respond to the scene and complete a form, it does not involve the same level of investigation as a Use-of-Force Report. For example, there are no audio-taped statements taken. In addition, by characterizing the incidents as injuries to prisoners, the CPD is not able to accurately track the number of takedowns and analyze use of force trends (at least not without manually going through each Injury-to-Prisoner Report to determine if it involved a use of force). For this reason, we believe that the CPD must change its procedures to treat these incidents as use-of-force investigations in order to comply with 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

In response to concerns raised by the Monitor in the last Report, the CPD reports on use-of-force incidents by officers engaged in secondary employment. For the first 9 months of 2003, 9% of chemical sprays and 13% of physical use-of-force incidents involved officers working secondary details. The CPD notes that officers on details act to

stop crimes in progress, and that suspects “caught in the act” often react with a “fight or flight” response. The CPD notes that suspects caught while buying or selling drugs also often engage in the same behavior and that these arrest situations also generate a significant number of use-of-force incidents. Data that would be useful to examine, therefore, would be the percentage of arrests that involve uses of force for officers on details, compared to the overall percentage of arrests involving force for on-duty officers. Similar data for officers making drug arrests could be compared as well. We believe the CPD should continue to monitor this issue and analyze its force statistics regarding officers on secondary details.

3. Assessment

a. Policy

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 27 investigative files depicting use-of-force incidents. As in previous quarters, we have found that some of these investigations have been complete and thorough, while others have been less so. In particular, some investigating supervisors do an excellent job of interviewing involved officers, subjects and witnesses, in order to elicit the relevant information. Other investigating supervisors, however, miss relevant areas of inquiry or limit their interviews to asking “Tell me what happened” and “Is there anything else you would like to add?” This highlights the need for training on conducting use-of-force investigations. The CPD will be providing the Monitor Team with its in-service management training class for all sergeants and above on this issue.

Other observations include:

- In this quarter, there were fewer instances where the supervisor investigating the use of force was involved in the incident or authorized the use of force, but this did occur in two of the force incidents we reviewed.
- Most of the Use-of-Force Reports were accompanied by a written analysis of the incident by a lieutenant or District Commander. There were three incidents, however, where the investigative file included only the Use-of-Force Report, and no apparent review by

a CPD supervisor at the rank of lieutenant or higher, as required by paragraph 31 of the MOA.

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

1. Requirements

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

2. Status

There were no firearms discharges in the third quarter of 2003.

3. Assessment

The CPD's policy on critical firearms discharges complies with the MOA. The CPD's implementation of these provisions for the three firearms discharges since April 2002 complied with the MOA.

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), CCA, Human Relations Commission referred to IIS within five (5) days

2. Status

Pursuant to the MOA and the CA, all citizen complaints, regardless of where they are initially filed, are to be directed to the CCA. In prior Reports, we raised concerns about the time taken for complaints that were filed with CPD to be referred to the CCA. Many complaints were not referred to CCA until after they had been fully investigated by IIS. In response to these concerns, CPD changed its procedures to ensure that complaints made to CPD personnel in the Districts would be faxed to IIS by the end of the shift, and would then be sent to CCA. In its November 12, 2003, MOA Status Report, the CPD reports that IIS and CPD have addressed the routing of complaints as one of the issues discussed in their regular meetings. CCA has been added to the police interdepartmental mail routing system to ensure the timely transfer of information. CCA also has now been provided access to the IIS complaint database. With the exception of those complaints that are criminal in nature, CCA personnel can now review the record of all complaints received by the CPD.

In the third quarter of 2003, there were 47 cases that were referred from the CPD to the CCA. While there is no minimum time set for this referral, the MOA does require that any complaints filed with the CCA or another City agency be referred to the CPD within five days. Thus, it is not unreasonable to expect that complaints made to CPD be referred to CCA within a similar timeframe. For the 3rd quarter of 2003, the time between when the complaint was made to the CPD and when it was referred to CCA is reflected in the following table:

0-5 days	7 cases
6-20 days	11 cases
20-60 days	16 cases
60-100 days	6 cases
Over 100 days	2 cases

For citizen complaints received by CPD in August 2003, the range of days it took to refer a case to the CCA was five (5) to 28 days. In September 2003, that range was one (1) to 12 days. Thus, it appears that the new procedures have been put into place, and that the cases are being sent to CCA more promptly than before.

3. Assessment

As required by the MOA, the CPD accepts complaints in any format – including in person, by mail, from the CCA or stemming from a supervisor’s investigation of a use of force incident. Our review of complaints in this quarter did not reveal barriers to filing a complaint or discouragement by officers of persons seeking to make a complaint against a member of the CPD. In our future Reports, we will continue to assess the timely referral of complaints to CCA.

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

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

1. Requirements

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

- CCRP complaints will be investigated by chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
 - a. tape all interviews with complainants, involved officers, and witnesses
 - b. interviews at convenient times
 - c. prohibit group interviews
 - d. notify supervisors of complaints
 - e. interview all appropriate CPD officers, including supervisors
 - f. collect and analyze all appropriate evidence, canvass scene for witnesses, obtain medical records
 - g. identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis
- Investigation to be complete within 90 days, absent exceptional circumstances.

2. Status

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

3. Assessment

The Monitor Team reviewed six IIS citizen complaint investigations and eight CCRP field investigations of citizen complaints.

- IIS is now reviewing District use-of-force investigations.
- In most of the investigations, involved officers were identified and interviewed on tape. In at least two investigations, however, potential witnesses were not interviewed.
- In one of the CCRP investigations, the supervisor conducting the investigation was involved in the incident being investigated.
- In several of the investigations, the CPD properly identified and investigated misconduct other than the violations alleged in the complaint.

The Monitor also reviewed the amount of time taken to investigate citizen complaints. For IIS investigations, there were a total number of 54 cases that were closed in the 3rd quarter of 2003. Fifteen of those

cases were received and closed between 0-30 days; six cases were completed between 31-60 days; nine cases were completed between 61-90 days; and 23 cases took longer than 90 days. For one investigation, the dates were not apparent.

With respect to CCRP cases, all of the investigations were completed within 90 days of being assigned to an investigating supervisor. However, there was great variation in the period of time between the incident being complained about and the assignment of an investigator. In some cases, this delay may have been due to delays by complainants in bringing the complaints to CPD's attention, but at least some of the time is likely attributable to a delay in assigning investigators at the Districts. There were 25 cases that had a time lapse of 0-30 days, seven cases that took between 31-60 days to assign an investigator, ten cases with a delay of 61-90 days and 11 cases took more than 90 days to assign the investigator.

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

1. Requirements

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

2. Status

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

The CPD reports that there were 59 CCRP complaints investigated and closed in 3rd quarter of 2003. The results of the investigations were as follows:

Sustained	14
Sustained Other	2

Exonerated	9
Not Sustained	13
Unfounded	20
No Complaint/Court Issue	1

The CPD also reports that there were 54 investigations closed through IIS in the 3rd quarter of 2003. Those cases were closed as follows:

Sustained	26
Sustained Other	1
Exonerated	3
Not Sustained	8
Unfounded	16

Of the 26 sustained IIS cases, one was for ethical conduct, 20 were for improper procedure, three for discourtesy, and one for off duty conduct. The “sustained–other” finding was for a law violation. Of the other findings, the breakdown by type of allegations was as follows:

- 16 Unfounded -- 6 were for excessive force; 4 were for law violation by an officer; 4 were for improper procedure; 2 were for “other”
- 8 Not Sustained -- 1 for improper procedure; 1 for off-duty conduct; 6 for excessive force
- 3 Exonerated -- use of force

3. Assessment

The City is in compliance with the MOA provisions relating to adjudication of investigations.

Our review of CCRP files revealed that CPD District supervisors generally were complying with the MOA provisions requiring that CCRP cases be fully investigated; that a determination be made of the appropriateness of the officer’s actions; and that the investigation be concluded prior to, and be independent of, the resolution meeting. Two concerns were raised by our review, however. First, as in prior quarters, there were complaints alleging discrimination which were handled as CCRP cases, and not investigated by IIS. Under the MOA, IIS is responsible for investigating these complaints. Second, there was one case where the failure of complainant to come to the CCRP resolution meeting may have influenced the closing of the investigation and the investigator’s finding. In this case, several calls to the complainant went

unanswered, and a chance meeting on the street was the only contact between the investigator and the complainant. The investigation appears to have been closed without an interview of the involved officer.

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

1. Requirements

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

2. Status

In this quarter there were 81 cases that were processed by the CCA. The MOA requires that all cases be received and closed within 90 days. Of the 81 cases closed this quarter, 45 were closed within 90 days.

3. Assessment

During this quarter, we requested that CCA provide copies of a sample of 14 CCA investigations. We received four of those files in the third week of December and await receipt of the remaining ten. We will therefore review the compliance of CCA investigations with MOA requirements in the next quarter.

We do note one observation with respect to the cases we have received. A preliminary review of the findings in those cases reveals

some confusion over the appropriate use of the finding “exonerated.” Under the MOA and CPD policy, an “exonerated” disposition should be used where a preponderance of the evidence shows that the alleged conduct did occur, but did not violate CPD policies, procedures, or training. An exonerated finding, therefore, should not be used where a complainant has alleged excessive force, but the investigating entity determines (based on a credibility determination, independent witness statements, or other evidence) either that the force alleged did not occur, or that force was used, but that it was necessary and appropriate to effectuate an arrest.

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
- CPD must develop a plan for inputting historic data now in existing databases (Data Input Plan)
- 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

As reported by the CPD, Megg Associates is in the process of designing all the various modules to be used in the CPD’s risk management system, known as the Employee Tracking Solution (ETS). In October, Megg delivered most of the modules to the Police Department for review. The CPD continues to review the system and is in the process of submitting any additional requests or modifications. Megg Associates also conducted an on-site visit in October. During that visit, CPD discussed the system’s analysis tools, triggers, and requirements and provided Megg with its draft specifications. Megg has requested remote access to the ETS server to place additions and changes directly on the ETS test server without having to perform the operation on site. With the assistance of the Regional Computing Center (RCC), a remote access solution was developed which allows Megg simply to dial into the server.

In November 2003, CPD held a conference call with the Monitor and the Justice Department to discuss the ETS protocol and the triggers that it will use in identifying officers for further review. The Justice Department and the City agreed that the Data Input Plan and the ETS Protocol required by the MOA should be developed together. The Justice Department also agreed to a delay in CPD's submission of the ETS protocol and Data Input Plan, subject to CPD proposing an acceptable timetable for their submission. The CPD proposed an ETS timetable in December, which is described below.

- 11/24/03 Megg to deliver draft versions of data modules to CPD to review. CPD to approve or return for revisions
- 12/31/03 Data Input Plan completed and forwarded to CPD. If approved, forwarded to the Department of Justice and the Monitor. Revised system protocol also submitted to the Department of Justice by this date.⁷
- 1/16/04 First conversion process into the system. Conversion to include all data prior to March 2003.
- 1/31/04 Beta version operable. CPD to review and if satisfied to begin training.
- 6/01/04 Total implementation achieved. Completion of data conversion for all data entered after March 2003.

According to the CPD, Megg Associates did deliver many of the modules to CPD in November. Corrections need to be made to the modules, however, and they have been returned to Megg. To date, Megg has not provided the CPD with the Data Input Plan. A draft ETS Protocol has been prepared, and is awaiting review by senior command staff. The CPD expects that the Protocol and the Data Input Plan will be ready and submitted to the Justice Department and the Monitor in January 2004.

3. Assessment

We agreed to defer our assessment of compliance with the ETS Protocol and Data Input Plan requirements of the MOA, based on the discussions between the CPD and the Department of Justice. We will, however, assess compliance with CPD's timetable in the next quarter. We will also participate in Beta testing the system in the next quarter.

⁷ CPD's proposed timetable did not spell out what would happen if the data input plan submitted by Megg Associates is not approved by the CPD. We would be concerned if that materially extended the deadline for submission to the Department of Justice.

While the ETS system is being developed, the MOA requires the CPD to use existing databases to monitor officer behavior. As we have noted in prior reports, the CPD maintains a manual risk management system known as DRMS. This system uses existing databases and a matrix of risk factors to identify officers who are subject to an administrative review.

B. Audit procedures [MOA ¶67-69]

1. Requirements

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

2. Status

The Inspections Section also conducted its quarterly audit of the CCRP process. The audit, dated November 1, 2003, consisted of a review of the following criteria:

- Were the complaints logged into the CCRP database, and was the proper documentation completed?
- Did each District/Section/Unit have complaint forms and feedback forms accessible to the public?
- Were complaint forms and feedback forms in Department vehicles?
- Were complainants notified of the outcome of the CCRP process, including whether corrective or disciplinary action was taken?

According to CPD, the audit found that all Districts/Sections/Units were complying with Department procedures regarding the CCRP process.⁸

As reported in our Third Quarterly Report, CPD met with City and County prosecutors in August 2004. One of the recommendations from that meeting was to include in the 2003 in-service training a presentation by the City Prosecutor on current case law relating to criminal charges of Obstructing Official Business, and on the elements of probable cause and reasonable suspicion. CPD states that these issues will be addressed in the Legal Update portion of in-service training for 2004.

⁸ The Monitor has not yet received a copy of the November 1 audit.

3. Assessment

The CPD is in compliance with these requirements.

C. Video Cameras [MOA ¶¶ 70-72]

1. Requirements

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

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

2. Status

The CPD is in the process of purchasing digital camera equipment to supplement and then replace the current video camera equipment in its police cars. The City has received funding in the amount of \$371,000 to purchase 62 DVD units with the supporting hardware and equipment. The funding is in the form of a line-item appropriation from the United States Department of Justice. Additional federal funds have been requested in an attempt to outfit all marked CPD vehicles with digital camera equipment. In addition, the Department will be purchasing 16 DVD readers to compliment its current IT hardware.

3. Assessment

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

- Not all vehicles have cameras yet; complete outfitting of police vehicles with MVRs will depend on additional digital camera purchases.

- The CPD appears to be following its procedures for supervisory random review of videotapes. The Monitor has reviewed logs of these reviews from the various Districts. What is not evident from these logs is whether the random reviews have prompted any substantive outcomes – changes in tactics, training, counseling of officers, or other results.
- There were several investigations we reviewed this quarter where the MVR equipment was either not working, or the audio microphone was not activated when it should have been. To its credit, the CPD sustained procedural violations in those instances.

One type of incident in which officers are required to activate the MVR “to the extent practical” is when transporting violent prisoners. In our review of cases where spray is used on prisoners in back of the police car, only a few of these incidents have been captured on the MVR tapes, and those have only captured the audio of the incident.

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

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

E. Discipline Matrix

A study of the discipline imposed on officers for sustained cases was scheduled to be completed by the University of Cincinnati in November 2003. To date, the CPD has not received the completed study.

VII. 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

The Training Academy staff oversees the review and assessment of all training needs as well as the development and administration of the training curriculum. They are responsible for ensuring that all training curricula and activities comply with the applicable mandates, legislative changes and court decisions.

During the Training Committee meeting conducted on June 25, 2003, the committee reviewed the use-of-force curriculum that is being taught in recruit and in-service training. This training involves physical skills, legal considerations, ethics, communications, agency policies and procedures, and tactical and decision-making scenarios. Officers have been receiving 16 hours of firearms training/qualifications annually since 2002.

The Training Committee was scheduled to meet again on October 15, 2003, but the minutes from that meeting have not been received. The Training Section was also scheduled to begin a one day Management Training program for CPD supervisors on November 17, 2003. According to the tentative proposal, the following topics will be included in this training:

- Critical Incident Review
- Legal Issues Update
- Information Technology Issues
- MOA Policy and Incident Management
- Firearms Simulations Familiarization
- Tactical Skills

Use-of-force training is routinely provided during roll call sessions, most notably in the form of scenario based training sessions. These scenarios are based on written lesson plans developed by training staff and are often culled from actual experiences within the CPD as well as other agencies. Firearms familiarization training and qualifications sessions are also being conducted monthly.

3. Assessment

The Monitor Team did not attend any training sessions this quarter. The team will be doing an extensive review of use-of-force training in 2004, starting in first Quarter. The review of the scheduled roll call and in-service training records reflects the CPD is making a diligent effort to honor the provisions of this requirement.

B. Handling Citizen Complaints [MOA ¶82]

1. Requirements

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

2. Status

Training in the handling of citizen complaints is provided as part of new supervisors' training and lesson plans have been developed in support of this. In addition, IIS conducts training on citizen complaints for recruits in the Academy.

3. Assessment

The Monitor Team has not yet been on-site at the same time these training sessions have been conducted. An effort will be made to schedule a site visit to coincide with this training or observe video-taped training sessions in the future.

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

Nothing to report this quarter.

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

Nothing to report this quarter.⁹ In the next quarter, the Monitor will be seeking additional information from both the Department of Justice and the CPD about how other agencies, including the Metropolitan Police Department in Washington, DC, use the “handler-controlled alert curriculum.”

⁹ The CPD notes that the Canine Unit participated successfully at the United States Police Canine Association (USPCA) regional competition held in Sterling Heights, Michigan, in August 2003 and again in the national competition held in Atlantic City, New Jersey, in October 2003. After scoring well enough in the regional trials to proceed to the national competition, members of the CPD Canine Unit claimed first place in the Department Team category, capturing the USPCA national Tim Jones Memorial Award.

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

As noted in Section A, above, scenario-based training is routinely conducted during roll call sessions. Many of the scenarios are based on actual encounters and incidents experienced by CPD officers, along with scenarios drawn from other agencies and training sources. Each one includes an examination of critical issues involved, legal and tactical considerations, options to weigh and discussion points. Written guidelines are provided to ensure consistency in the presentations and discussions by the supervisors.

The Police Academy develops a master calendar of the roll call training activities each month for use by the Districts. Recent subjects have included foot pursuits, courtesy/profiling, Code 9 (MHRT) calls, use of force, and less than lethal options. The Districts document the number of officers participating, the time committed, and the scenarios used. Each relief has a training sergeant responsible for roll call training.

3. Assessment

The documentation provided by the CPD reflects strong progress in this area and the CPD is in compliance with this provision. The Monitor Team will continue to conduct on-site observations during future site visits to confirm ongoing compliance with this requirement.

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

1. Requirements

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

2. Status

Nothing to report this quarter.

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 this quarter.

H. FTO Program [MOA ¶88-89]

1. Requirements

The MOA requires the CPD to develop a protocol to enhance the Field Training Officer (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 this quarter.

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 Department's training records show that monthly firearms familiarization and qualification training is taking place at the Target Range. Between the months of July and September, 699 officers attended these sessions.

There were no on-site reviews conducted of the firearms training activities during this quarter.

3. Assessment

The CPD is in compliance with those elements of paragraphs 90-91 that the Monitor Team has been able to observe thus far or that have been documented through training records. However, there are aspects of this training that must be observed in future site visits and through records audits that will take place following the end of the calendar year. Future site visits will review training records, scenario and night training, and evaluation criteria for firearms training and re-qualification certification.

CHAPTER THREE. COLLABORATIVE AGREEMENT

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

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

3. Assessment

As noted in our prior report, the City continues to make progress in this area and is in partial compliance of this section of the CA. As all departments and agencies are now on-line, the upcoming quarter should allow 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. In some of the POP cases documented in the Department’s CPOP website (at <http://cagisperm.hamilton-co.org/cpop>) officers relied on other city agencies to assist with problem properties and problem hot-spots. When the Parties next report on 29(a), it would be helpful if the Parties describe how the inter-agency collaboration has worked in practice to assist CPOP efforts (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?).

1. Requirement 29(b)

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

2. Status

The Department's CPOP website at <http://cagisperm.hamilton-co.org/cpop> remains in draft form. Police Training Liaisons received a three-hour training in CPOP and problem-solving documentation. CPOP officers in the pilot areas have been trained in its use and initially populated the website's tracking system with eight problem solving initiatives. There are now 13 cases in the tracking system, an addition of five CPOP cases in this quarter. The Partnering Center's interim outreach workers have not as yet been trained in the use of the website, but are interested in joint documentation of community problem-solving efforts.

The website now also contains the first District Commander quarterly problem-solving reports, as well as the Community Oriented Policing (COP) Coordinator's "Community Involvement" report. In addition, the website contains multiple links to other agencies and organizations, as well as some problem-oriented resources.

3. Assessment

The Parties are in partial compliance of this section of the CA. The Parties established a CPOP Curriculum Workgroup, a subcommittee of the CPOP Committee, to develop joint CPOP training for the community and the police, including a segment on the Department's website. It is anticipated that this curriculum will contain adequate information on using the website for research on best practices. Research will entail searches of linked sites for literature on the problem being addressed, and approaches in other places to similar problems. Research will also entail searches of Cincinnati's own problem-solving cases for locally-driven, best practice approaches to similar problems. As we noted in the Monitor's Second and Third Reports, compliance with this CA section will depend on use of the system as a research tool in effective problem solving. We do have a concern that the problem-solving cases put on the website by the CPD (CPOP cases, District Commander cases, COP Coordinator cases) do not indicate any research of practices from other places.

1. Requirement 29(c)

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

2. Status

In the late summer and early fall, the CPD provided website training for CPOP pilot team officers and District Commanders, populated the CPOP website with several projects and programs, and in this last quarter, offered landlord training for owners of problem properties.

3. Assessment

The City has made progress on this CA requirement and is in partial compliance of this section of the CA. In the upcoming quarter, we look forward to seeing continued training with a problem solving emphasis for crime analysts, website training for the Partnering Center staff, and training in researching best practices for CPOP officers.

In the December 5, 2003, CA Status Report, the Plaintiffs noted that they were unaware of the landlord training the CPD offered, and seek to review the curriculum. Plaintiffs now have a copy of the PowerPoint presentation that the Drug House Task Force (DHTF) used in the training. Plaintiff should provide their input to CPD in a timely manner. Also, we note that the U.S. Department of Justice has funded a National Landlord Training Curriculum. The full version of that curriculum is downloadable free from <http://www.cdri.com/pdfftp.html>. It has been revised numerous times since its initial creation in 1989. We recommend that the Parties review the full curriculum to determine if it is a desirable model (as it is well-tested).

1. Requirement 29(d)

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

2. Status

The CPOP Committee suggests a timeline ending in April 2004 for research and dissemination.

3. Assessment

To facilitate compliance, we recommend that the CPOP Committee develop a research and best practices plan in conjunction with appropriate experts in the field. We encourage the Parties to refine their collection of best practices to those that have been evaluated. It is these that will most assist the website's users in tackling specific crime and safety problems. In the interim, the CPD and the Parties can cull websites for specific, successful approaches that show quality analysis, tailored responses, and valid assessments.¹⁰ These "best practices" should then be cited on the CPOP website (perhaps under a "best practices" heading). It would then be clear to users that these should be reviewed when engaging in problem-solving.¹¹

In our last report, we recommended that Plaintiffs contact several well-known community organizations for examples of community-driven problem-solving. One of those organizations, the Chicago Alliance for Neighborhood Safety, no longer exists. In response to requests for other recommendations, we suggest that the Parties review the web-linked sites of community organizations listed at www.aecf.org/tarc/resource/ddown1a.php?type=example&topic_id=17 (an Annie E. Casey Foundation technical assistance site) for other organizations that may have examples of analytic community problem-solving.

1. Requirement 29(e)

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

¹⁰ A good place to start is the Herman Goldstein International Award in problem-solving winners and finalists, all available free from www.popcenter.org.

¹¹ Another way to encourage users to look at best practices is to add a field in the analysis section of the website's problem tracking system with a prompt that reads "Have you researched best practices for this type of problem?"

2. Status

The Parties' Curriculum Workgroup, a subgroup of the CPOP Committee, has developed a draft CPOP curriculum. A workbook will accompany the curriculum.

In addition to developing the CPOP training curriculum, the Parties are also moving forward with plans for the Community Partnering Center. The Partnering Center Board has been engaged in a search for an executive director and has completed its interviews. An executive director is expected to be chosen in the beginning of the first quarter of 2004.

3. Assessment

The draft curriculum (Parties' Status Report, attachment 9) appears close to completion. It provides an explanation of the history and application of CPOP, defines the roles of the Parties, and describes the resources that can be brought to bear on problems. We commend the Parties for their progress and hope to see delivery of the training begin in the coming quarter. It will be helpful to infuse the curriculum with specific examples of commonly resolved problems (e.g., drug sales in an apartment complex, prostitution markets, problem property owners). Good examples can be found among the Goldstein problem-solving award winners (at www.popcenter.org) and community organization websites.

1. Requirement 29(f)

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

2. Status

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

The CPD provided the Monitor with a copy (in English and Spanish) of the brochure "What To Do When Stopped By The Police" prepared by the Baptist Minister's Conference of Cincinnati, United Churches Active in Neighborhoods, Sentinal Police Association, CPD,

National Black Police Association, and the City of Cincinnati Prosecutors Officer. Cincinnati also provided a copy of a video entitled "Do It Right" developed by the Cincinnati Human Relations Commission. We would like information from the CPD and the Parties regarding how these materials have been used (e.g., to what audiences has the video been shown, is there a lesson plan or other presentation guidance that goes along with the video, where have the brochures been distributed) and what the reaction has been to these materials. We would also request that the Parties inform us how these materials will be incorporated into any future community dialogues.¹²

The Parties are also developing plans for launching the "Friends of the Collaborative" in January 2004. This is an effort to include other community, business, and charitable organizations in work to support CPOP and community dialogue.

Finally, we note that the CPD plans to include documentation of police-community interaction and outreach efforts on the CPOP website (see August 22, 2003, memo to Chief of Police regarding CPOP reporting). We recommend that the Parties maintain separate categories on the CPOP website for problem-solving activities and other initiatives supporting collaboration, such as community outreach efforts. In this way, problem-solving reports will be more focused on cases having robust problem identification, analysis, tailored responses and measures of assessment; while non-problem solving activities will not need to be shoe-horned into the problem-solving SARA reporting format.

3. Assessment

We look forward to seeing a jointly developed plan for community dialogue/interaction. As the Parties no doubt realize, it is in the interest of the entire Cincinnati community, given the events of the past two months, to begin this quickly and we hope that a plan can be agreed to before June 2004. As noted by the Plaintiffs, the release of the traffic-stop study offered an opportunity for the Parties to jointly present the results of a data-driven analysis, even though none of the four hypotheses posed could be eliminated. As part of the Monitor's Report on the UC Traffic Stop Study, we recommended, and the Parties agreed to, a series of forums on the study and the issue of fair and equitable policing.

More recently, with the death of Nathaniel Jones, the importance of community dialogue has been even more starkly illustrated. The

¹² To the extent that the video has not yet been provided to the FOP and Plaintiffs, we ask that the CPD do so.

Monitor has discussed with the Parties developing a series of community meetings and forums to discuss a range of police-community issues. These should include police use of force, the revised use-of-force policies under the Memorandum of Agreement, alternatives to use of force, police response to the mentally ill, and police response to those under the influence of drugs or alcohol. The Monitor will press the Parties to move forward on this effort in our January all-Parties meeting.

1. Requirement 29(g)

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

2. Status

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

3. Assessment

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

1. Requirement 29(h)

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

2. Status

As we noted in prior reports, CPD policies and procedures are accessible from the City website and will be available on the CPOP website. The Parties, through its CPOP Committee, will develop a communications plan with a target timeline of early spring.

3. Assessment

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

The Monitor still awaits (after three requests) a copy of the communications audit, a draft of which was completed early in 2003. The Parties are not in compliance with this section of the CA.

1. Requirement 29(i)

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

2. Status

In the Monitor's First Quarterly Report, we noted the establishment and staffing of a Community Relations Unit (CRU). The CRU is a division of the Police Relations Section. The CRU Manager reports to the Executive Manager of Police Relations, S. Gregory Baker. Mr. Baker's responsibilities include being the Compliance Coordinator for the MOA and for implementation of the CA. The CRU Manager assists Mr. Baker in coordinating the implementation of the CA.

3. Assessment

The City remains in compliance with this 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. The CA established August 5, 2003, as the deadline for completion of the annual report. The Parties and the Monitor agreed to extend the deadline to September 5, 2003.

2. Status

We received the Parties' Annual CPOP Report in early September. The annual CPOP report catalogued efforts prior to August 2, 2002, as well as efforts in the year since. The documentation of efforts prior to August 2002 provided a baseline for comparing measures taken after the approval of the CA. The CPD distributed the Annual Report to a wide array of community organizations and individuals. Plaintiffs and the FOP should coordinate with the CPD to ensure that those wishing hard copies of the annual CPOP report receive them.

3. Assessment

With the submission of the Annual Report in September, the Parties are in compliance with this CA requirement. For the next annual report in August 2004, the Parties should coordinate the number of hard copies needed to ensure adequate dissemination to those who would like copies.

1. Requirement 29(k)

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

2. Status

This quarter, the CPD issued (and posted on its website) the first of the District Commanders' quarterly problem-solving reports. The District Commander quarterly reports follow the SARA format (Scanning, Analysis, Response, Assessment), and were prepared pursuant to the format developed by the CPD in the prior quarter. The website also includes a "Community Involvement Report" for each District compiled by the COP Coordinator. According to the website description, this is a "quarterly report to the Police Chief describing current concerns voiced by the community, potential problems that have a bearing on law enforcement activities, and recommended actions that address previously identified concerns and problems."

3. Assessment

We recognize that these quarterly reports are the first ones that have been posted to the website, and therefore represent the CPD's preliminary efforts. We also understand that because the Community Partnering Center has not begun full operations and CPOP teams have not been formed (beyond the pilot sites), the problem-solving efforts

described in these quarterly reports do not reflect the level of community participation that is anticipated once CPOP is implemented.

Nonetheless, we believe it is important for the Parties to have an agreed understanding of what kinds of efforts should be characterized as “problem solving” and included in the CPOP website as such.

In defining the problems addressed, some of the District Commanders cited specific addresses where the problem was occurring or the specific number of complaints, incidents or the number of different types of calls for service at the location.¹³ This level of specificity is important; otherwise, it is unclear where within a neighborhood the problem is occurring, how specific a location it is (a building, a block, a neighborhood), and the nature of the problem. Defining the problem only by identifying a general crime classification (drugs, prostitution, violence, assaults, curfew violation) within an entire neighborhood hinders the ability of those engaged in problem solving to analyze the problem in depth and develop specifically tailored responses.

In addition, many of the District quarterly reports describe traditional police enforcement activities such as arrests, sweeps, and directed patrols. Where, for example, the quarterly reports describe a crime series and the subsequent arrest of suspects, this is simply good investigative work. Problem-solving efforts under CPOP, however, will reflect the role played by those affected by the problem in analyzing and responding to it.

Similarly, in assessing problem-solving efforts, future reports should rely on survey data, reduced number and type of specific incidents, or other quantifiable measures beyond just impressions, to judge success. The Monitoring Team is available to meet with Command Staff to discuss specific reports submitted, if further clarification is desired.

The COP Coordinator’s report lists a series of problems by neighborhood and one-line “bullet” action points under the general heading of “crime prevention.” We are uncertain how these relate to either the District Commander reports or the CPOP cases. Are they the same or distinct problems? Will they be CPOP cases, and if so, do they have CPOP case numbers? In a number of different neighborhoods, several problem types recur: speeding, commercial burglary and drug

¹³ The problem solving reports that listed specific addresses were in District 4: 2525 Victory Parkway, the Alms Apartments; 870 Blair Avenue; 3724 Reading Road; and in District 5: Mitchell Avenue/I-75 overpass and the green-space west of overpass; junk vehicles, car sales, un-permitted work at 2634 W. North Bend Road.

problems. We believe that the problem-oriented policing guides on these subjects (see www.popcenter.org) may be of assistance if these projects are intended to be problem-solving efforts.

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

CPD problem-solving should strive towards the “careful, in-depth study” that Herman Goldstein describes as the signature of problem-oriented policing.¹⁴ As examples, the Monitor includes below two problem-solving reports from two jurisdictions. They describe how officers in other cities previously responded to a problem and how that changed under a problem-oriented policing approach. Analysis is multi-tiered, responses are tailored to the results of the analysis, those affected are engaged in the solutions, and several measures of impact (assessment) are used.

¹⁴ “Problem-Oriented Policing is an approach to policing in which discrete pieces of police business (referred to as problems) are subject to careful, in-depth study in hopes that what is learned about each problem will lead to discovering a new and more effective strategy for dealing with it.”

Police and Business Owners Creatively Tackle Prostitution Problem in San Diego

Faced with a prostitution problem on a business strip in the Midway/Rosecrans area of San Diego, police initially tried to curtail the activity through undercover arrests of the "johns" and the prostitutes. Although hundreds of johns were arrested, the number of men that solicited prostitutes in the area did not drop. Frustrated by their lack of progress, police officers used a problem-oriented approach. The officers gathered information about the exact nature of the prostitution problem by looking at several years of calls for service, community complaints, interviews of each prostitute, and interviews of each store's owner along the strip. They learned that many of the prostitutes were "circuit girls" -- staying in San Diego only as long as it was profitable for them. There were 69 prostitutes who operated on the 3-block long strip.

As conventional efforts had only short-term effect, the officers believed they needed to find solutions with that would have longer term impact by focusing on reducing the amount of money the women could earn on the strip. The officers decided to try civil court (rather than criminal court) seeking temporary restraining order (TRO) against the prostitutes who frequented the strip. A local judge agreed to the TRO, which prohibited the defendants (a list of 69 known prostitutes) from flagging down motorists, loitering on corners and engaging in other solicitation behaviors within 100 yards of the plaintiffs. (The plaintiffs were local business owners at every corner, who worked with the police to obtain the TRO.) Violations of the order were to result in an immediate five days in jail and a \$1,000 fine.

In the first month after the TRO was obtained, the prostitutes disappeared from Midway. Now, johns no longer cruise Midway drive. Officers monitored the area and even after several years did not see a return of the prostitutes. After the TRO was obtained, every business on the strip reported increased revenues. One of the hotels in the area reported its profits had increased 15 to 20 percent, because families began staying in the hotel for more than one night once the prostitutes had left the area.

Partnership Tackles "Street Drinking" in Portland, Oregon

Due to public consumption of alcohol by problem street drinkers, Portland's downtown residents and business were experiencing a high level of disturbances, assaults, loitering, panhandling, disorderly conduct and other criminal activity. Before taking a problem-solving approach to the problem, officers typically arrested the drinkers, issued citations or referred the problem drinkers to social service programs. Police made more than 3,000 detoxification holds annually in this one area. Since these responses did not significantly reduce the crime problems, the police decided to take a different approach.

They coordinated the formation of a group of citizens, police officers and city government workers tasked with developing a survey to assess the impact of the street drinkers on the community. From information gathered through the survey and other sources, the task force learned that the beverage of choice of the street drinkers was 40-ounce containers of malt liquor, each of which was the equivalent (with respect to alcohol content) of a six-pack of regular beer. When two stores that sold the 40-ounce beers came up for liquor license review, the police and license bureaus asked the stores to stop selling the large containers of beer. Those stores refused, but six other major retailers agreed to a voluntary ban. The ban helped reduce complaints about the drinkers, and police were able to persuade another 40 downtown businesses to participate in the ban. As a result, detoxification holds declined by half to 1,500 and drinking-in-public calls also declined by nearly 50 percent. Businesses in the area wishing to sell alcohol must now adhere to this "good partner" agreement. The number of calls for service regarding disturbances, assaults, loitering, panhandling, and disorderly conduct declined significantly, beyond that of other nearby neighborhoods. Citizens and merchants in the area consistently reported a better quality of life in the downtown area as a result of this effort.

A resource the Parties may find useful is a publication entitled **Problem-Solving Tips**, from the U.S. Department of Justice. It briefly describes each step of the SARA model along with examples (downloadable on-line from www.usdoj.gov/cops/). District

Commanders and officers can use this publication to hone their problem-solving efforts. It is particularly helpful in distinguishing between problem-solving and more conventional policing in both the response and assessment stages of SARA.¹⁵

1. Requirement 29(l)

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

2. Status

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

3. Assessment

While the Parties are not in compliance with this section of the CA, the Monitor expects Plaintiffs and the FOP to meet with District Commanders and audit some courses in the first quarter of 2004. As we noted in our last Report, Plaintiffs' Advisory Board would like to participate in this process.

1. Requirement 29(m)

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

2. Status

Thirteen problem-solving reports are now in the system, up from eight last quarter, and available for review at <http://cagisperm.hamilton-co.org/cpop/default.aspx>. In September, the tracking system contained one report from District 1, two from District 2, one from District 3, three from District 4, and one from District 5. Now the tracking system contains one additional report from District 1, (no additional reports from

¹⁵ By way of example, in a number of CPD problem-solving reports from this quarter, officers/commanders detail the number of arrests and seizure amounts as assessment measures for success in their project. Arrest numbers and seizure amounts are more an indication of police activity than whether the problem has gone away. For a further explanation on this point, see Problem-Solving Tips at www.usdoj.gov/cops/.

District 2 or District 3), one additional report from District 4, and 2 additional reports from District 5.

3. Assessment

To date, the Parties have not coordinated the write-ups that are included in the CPOP website. As we have in previous Reports, we commend CPD for developing this site and for developing the format for problem solving reports. However, as we have noted above and in our prior Reports, continuing efforts need to be made to refine and improve both the Parties' problem-solving efforts and the reporting of those efforts.

In our last Report, we made a number of suggestions for changing the tracking system to improve the quality and usefulness of the reports. The Parties have not yet incorporated those suggested changes, nor did the Parties address these recommendations in their December 5, 2003, Status Report. Therefore, we repeat the suggestions here:

In the Scanning menu, several additional reporting fields would be useful:

- The type of property where the problem is occurring (e.g., a convenience store, gas station, a privately owned apartment building)
- The type of place the problem is occurring (e.g., the sidewalk in front of the property, inside the property, behind the property, in the property's parking lot)
- The name of the owner(s) of the property
- The property manager (if any) of the property
- Contact information for the owner and the property manager

Throughout the tracking report are boxes titled "comments." For the most part, these are left blank or the information in them is very generic. Changing the title of these boxes to "Give Specifics" or "Provide Examples" may guide users to input more solid evidence, increasing the likelihood of quality problem solving.

We also note here that the website should reflect the collaborative nature of the CA. The website's home page has several statements about CPOP and its goals that should be more inclusive, to match the goals of

the CA. For example, the website homepage, as of January 1, 2004, states:

- “The goal is to form working partnerships between residents and the City of Cincinnati under the direction of the Cincinnati Police Department.”
- “City employees and the community work together, under the direction of the Cincinnati Police utilizing a consistent process of Scanning, Analysis, Response and Assessment (SARA) to resolve problems.”

In each case, the Parties may want to reference the Partnering Center and the Parties to the CA.

1. Requirement 29(n)

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

2. Status

In prior reports the CPD stated that it regularly reviews staffing to match workload requirements with resources. However, as we noted in earlier reports, the CPD has not provided the details of how it does these reviews and the results of these reviews. The Monitor has made several requests that the CPD share the current formula it uses to determine district staffing, along with the numbers that accompany application of the formula in each of the five districts.

In the current Status Report, the Parties state their intent to form a Human Resources Workgroup, as part of the CPOP Committee, to review staffing and other personnel matters such as revised job descriptions.

3. Assessment

In order to monitor this section of the CA, the Monitor again asks for the current staffing formula (Personnel Deployment Reports, or PDRs), and copies of all material the Human Resources Workgroup will consider in assessing staffing alignment. These documents should be forwarded directly to the Monitor’s lead person on CPOP issues as the Workgroup convenes over the course of the next quarter.

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 CPD Human Relations Section is engaged in an effort to learn what other police agencies and resources have done in the way of developing job descriptions and performance appraisal systems that reinforce community policing and problem solving expectations. They have developed a list of agencies and contact persons, and are obtaining materials to assist them with the modifications and improvements they are considering. A list of proposed CPOP criteria has been developed to incorporate into the CPD job descriptions. In addition, the Parties state that a committee will be established to examine CPD's performance evaluation system.

3. Assessment

The Parties are in the early stages of addressing the CPD's job descriptions and personnel evaluation system. Coordination among the FOP, CPD and the Plaintiffs is essential if reforms of performance measures are to be successful. The Parties are not yet in compliance with this provision.

1. Requirement 29(p)

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

2. Status

As noted in our prior reports, the City states that it expects to meet this provision through the acquisition of a new Records Management System (RMS) and Computer Aided Dispatch (CAD) system, as the current systems cannot produce repeat offender, victim and location information. The City contracted with Gartner Consulting and is reviewing design specifications for a Request for Proposal (RFP), with expected publication now expected in the first quarter of 2004.

CPD will provide the Monitor with a list of system capabilities in the coming quarter, as well as a draft RFP for a new system. Once the Monitor provides feedback the City will issue the RFP.

3. Assessment

As a new system is unlikely to be in place for some time, the CPD must make the most of current systems. It is clear that the CPD should use its existing analytical tools to address the hundreds of repeat locations already identifiable in its current systems, and that Patrol officers (not just CPOP officers) must be full participants in problem-solving.

Problem-solving takes place at many different levels in an organization (line officers tend to focus on beat-level problems; managers tend to focus on problems that extend beyond beats) and current call hot-spots reveal certain repeat types of problems across a number of Districts that could benefit from broader engagement of CPD administrators.

Cincinnatians encounter a tremendous number of street level drug markets on the sidewalks and corners in front of private properties such as retail stores. When drug sales occur on private property there is an array of remedies available that typically involve engaging the property owner in providing effective countermeasures. However, when sales occur, not on private property but on the public sidewalks and corners, constitutional issues, such as freedom of assembly, add a greater level of complexity to the issue requiring additional attention from CPD administrators. Rather than individual beat officers trying to separately address each of these markets, the CPD should invest administrator time in understanding the extent of the problem and possible alternatives to sweeps and directed patrols, as these drug markets have remained resilient over time despite these responses. The City Attorney's Office, Plaintiffs, and FOP should also participate to determine if other legal approaches are available for closing these markets.

1. Requirement 29(q)

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

2. Status

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

3. Assessment

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

II. Evaluation Protocol [CA ¶¶ 30-46]

1. Requirements

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

The Evaluation Protocol must include the following components:

- Surveys
 - of citizens, for satisfaction and attitudes
 - of citizens with police encounters (neighborhood meetings, stops, arrests, problem-solving interactions), for responsiveness, effectiveness, demeanor
 - of officers and families, for perceptions and attitudes
 - of officers and citizens in complaint process, on fairness and satisfaction with complaint process
- Periodic observations of meetings, problem-solving projects, complaint process; with description of activity and effectiveness
- Periodic reporting of data to public, without individual ID, but by age, race, gender, rank, assignment and other characteristics. The data, to be compiled by the City’s 52 neighborhoods, are to include arrests; crimes; citations; stops; use of force; positive interactions; reports of unfavorable interactions; injuries to citizens; complaints
- Sampling of in-car camera and audio recordings; database of sampled recordings; study of how people are treated by police

- Examination of hiring, promotion and transfer process
- Periodic reports that answer a number of questions, including:
 - Is safety improving?
 - 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?

2. Status

Four bids were received in response to the City's RFP for a contractor to perform the tasks in the Evaluation Protocol. The bids were received from the following vendors:

- Crossroads Center, a non-profit local organization
- Lamberth Consulting, with the University of Cincinnati Center for Law and Justice
- Rand, consultants headquartered in Santa Monica, California
- The University of Cincinnati College of Education, Division of Criminal Justice

An Evaluation Committee, with representatives of each of the Parties, met several times to discuss the bids, along with the Deputy Monitor and the Parties' consultant on the selection process. Each Party scored the bids based on an agreed-upon scoring grid. In October 2004, the Evaluation Committee narrowed the competition to two bidders, Rand and the University of Cincinnati, and asked each bidder to provide a revised (and reduced) bid more consistent with the amount of funds likely to be available for an Evaluation contract. Those revised bids were received in November 2003.

3. Assessment

In considering the bids for the Evaluator contract, the Parties have moved closer to a consensus on which elements are essential components of the Evaluation Protocol. By concentrating on these elements, the Parties have been able to obtain bids that have been significantly reduced from their original amounts. In addition, the Monitor and the Parties have agreed on a revision to the schedule for escrow payments of the Monitor's costs that will free up additional funds so that these funds will be available to pay for other costs associated

with the Agreements, in particular the Evaluator contract. Even with these additional funds, however, the cost of the Evaluator contract may be more than the City has currently budgeted. These issues must be resolved and a bidder chosen in order for the Evaluation, so essential to the Collaborative Agreement, to be started.

While there has been progress in selecting an Evaluator, it will take some time before a contract with the Evaluator is negotiated and actual work is begun on the Evaluation Protocol. The Parties are not yet in compliance with the Evaluation provisions at this time.

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

- Arrests

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

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

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

- the number of vehicle occupants
- characteristics of race, color, ethnicity, gender and age of such persons (based on the officer's perception)
- nature of the stop
- location of the stop
- if an arrest was made and crime charged
- search, consent to search, probable cause for the search; if property was searched, the duration of search
- contraband and type found and
- any additional information

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

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

2. Status

a. Traffic Stop Data

On November 14, 2003, the Monitor released the results of the study of vehicle stops conducted by Professors John Eck, Lin Liu and Lisa Bostaph of the University of Cincinnati. This study looked at six months of data from traffic stops conducted between July 1, 2001, and December 31, 2001. The University of Cincinnati study provided estimates of disproportionality between the racial percentages of persons stopped compared to miles driven by white and black drivers. It then examined four hypotheses for explaining the disproportionality in police vehicle stops:

1. Racial bias against African Americans by white officers;
2. Bias stemming from the perception of police officers, both black and white, that African Americans are more likely to be involved in criminal conduct, traffic offenses, or other violations;
3. Disproportionate involvement by African Americans in traffic offenses, criminal conduct, or other violations, brings them to the attention of the police with greater frequency than whites;
4. Policing strategies relying on vehicle stops to prevent or suppress criminal activity have the effect of increasing disproportionality.

Eck, Liu and Bostaph determined that from the data collected and analyzed, they could not eliminate any of these hypotheses. There were disparities in the extent to which black and white motorists were stopped by the police, although this varies by neighborhoods. Some measure of the disparity could be explained by non-racial factors. However, other aspects of the data supporting the bias hypotheses could not be easily explained. Because we do not know the causes of the disparities, “we must live with the uncertainty,” as the professors put it.

In addition to examining who was stopped by the police, Eck, Liu and Bostaph also analyzed data relating to what happened during the stop. This included the duration of the stop, whether a search was conducted, the reason for the search, and whether any contraband was found.

The Monitor also prepared and released an analysis of the UC study. We concluded that the UC methodology was a reasonable method to establish a benchmark against which to measure stop data, and to estimate disproportionality between stops of white and black drivers. While we pointed out uncertainties inherent in the methodology, we concluded that the analysis was consistent with those used elsewhere, and made suitable attempts to limit the uncertainties as much as possible given the data available.

As part of the Monitor's Report on the UC Traffic Stop Study, we made the following recommendations:

1. The City must continue to collect and analyze data on all vehicle stops. Similarly, the City must collect and analyze data on all pedestrian stops. The results of these efforts should be incorporated in the Evaluation Protocol of the Collaborative Agreement, and reported in the Monitor's Reports. The Parties to the Collaborative should work together with the Evaluator to agree on the methodology to be used in these analyses. This is especially true for pedestrian stops, for which no analysis has yet been done.
2. The Police Department must make efforts to ensure that the data for future analyses are up-to-date and as error-free as possible. There should be mechanisms to audit whether contact cards are completed for all stops made by officers, and to audit the data on the contact cards.
3. Cincinnati should consider whether there are additional data fields that should be collected for future analysis.
4. To the extent possible, future analyses should use the findings of the UC study as a benchmark, so that the Parties can assess what changes have occurred over time.
5. The City of Cincinnati and the Parties to the Collaborative need to put information on vehicle stops in the context of the larger Evaluation Protocol, including the analysis of other data by race, such as arrests, crimes and drug calls, and uses of force.
6. The Cincinnati community should organize a series of community forums on the UC study and the issue of bias-free policing.
7. The UC study should be examined to assess whether there are any changes in police practices, procedures or strategies that are warranted by the results. To the extent that the data shows

disproportionality in traffic stops, what actions can be taken that might reduce this disproportionality, regardless of the cause?

b. Pedestrian Stop Data

The question of when officers are required to collect data (e.g., fill out a Contact Card) on pedestrian stops has not been decided. The City's Ordinance 88-2001 covers only vehicle stops. Under paragraphs 38 and 39 of the CA, however, the statistical compilations required under the Evaluation Protocol include "stops of vehicles and pedestrians without arrest or issuance of a citation." These data shall be broken down by race, national origin, gender, geographical area, and other characteristics deemed appropriate. The CPD procedure that governs investigatory stops, Procedure 12.554 (A.1), states only that:

Police personnel meeting persons in the field under circumstances which justify questioning, but are insufficient to warrant an arrest, may complete a single copy of the Contact Card.

In its August CA Status Report, Cincinnati reported that the City Solicitor's Office was considering whether the CA requires Contact Cards for Terry stops that do not result in an arrest. As of January 1, 2004, the Solicitor's Office has not issued its opinion on this matter.

c. Use-of-Force Racial Data

As noted above, the CA requires the CPD to collect, and the Monitor to report, the racial composition of both officers and subjects involved in a use-of-force incident. The Crime Analysis Unit of the Planning Section prepared a sample report that linked use-of-force data from the first quarter of 2003 to data in the CPD Personnel Section containing the race of the officer. This Unit will be responsible for developing such reports until CPD's Record Management System is in place.

The Monitor will be meeting with the Parties in January to discuss a CPD timetable for sharing this data with the Parties and ensuring the accuracy of the data.

d. Data on Positive Police-Citizen Interactions

The CPD is required to collect data from citizens on positive interactions with police officers, as well as encourage citizens and city employees to report such favorable police actions. According to the Parties' December 5, 2003, CA Status Report, they have reached a tentative agreement on the content of the form to capture positive

interactions between the police and the public. The FOP and the CPD will be meeting to discuss a public awareness campaign regarding the use of this form.

e. Data on Unfavorable Citizen Interactions

The Parties have not yet implemented the required “[r]eporting by members of CPD of unfavorable conduct by citizens in encounters with police.” In our Second and Third Quarterly Reports, we reported that the Plaintiffs and the FOP were discussing the language to be used on the form for collecting data on unfavorable citizen contact. Those discussions have not yet resulted in agreement. During the September 18, 2003, all-Party meeting, the FOP circulated a revised “Cincinnati Police Mutual Accountability Report of Unfavorable Conduct by Citizens.” This revised form has been the subject of discussions in October, November, and December.

3. Assessment

a. Traffic-Stop Data Collection

The Parties are in partial compliance with these provisions. The City did collect traffic-stop data in 2001 and the University of Cincinnati released its analysis of the data in November 2003. The CPD has continued to collect data from traffic stops on its contact cards, and enter the information into an electronic database. Until an Evaluator is selected, however, the data from stops occurring after December 2001 will not be analyzed and released.

In addition, the Monitor made a number of recommendations regarding the UC study and the CPD’s continuing data collection efforts. These recommendations have not yet been addressed by the Parties.

One of the recommendations, as noted above, was to sponsor a series of community discussions on the UC Traffic Stop study and on racial profiling issues in general. As we stated in our analysis of the UC study, statistics and research studies are useful for the light they can shed on real events. But statistics and social science won’t address how persons in the community are feeling. The concerns of minority residents in Cincinnati are real and need to be addressed. Through community engagement, the implementation of CPOP, and the bias-free policing provisions of the Collaborative, Cincinnati has an opportunity to improve police-community relations and increase confidence in the fairness of police actions. To do that, however, the Parties need to use the UC study as a jumping-off point for further dialogue.

b. Data Collection on Pedestrian Stops.

The Parties are not in compliance with this CA provision.

c. Favorable Interactions

The Parties are in partial compliance with this provision. A form has been agreed to, but it has not yet been implemented.

d. Unfavorable Interactions

The Parties are not in compliance with this provision.

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

In 2001, the CPD included a four-hour class on Professional Traffic Stops as part of the Police Academy basic training course. The Professional Traffic Stops training included a segment on bias-free policing. The bias-free policing training was developed in conjunction with Ohio Chiefs of Police. This training block has been repeated in Academy recruit training in 2002 and 2003. The CPD also included this training in its 2002 In-service Training for Police Officers and Specialists, and in management training in 2001 for captains and above. Thus, the CPD states that every officer has undergone this training at least once. A member of the Monitor Team attended the Professional Traffic Stops/Bias-Free Policing training at the Academy for the recruit class in July, 2003.

While in-service training on bias-free policing has not been repeated since July 2002, CPD also notes that aspects of bias-free policing training have been incorporated into other training, such as use-of-force training and roll call scenario training. In addition, CPD states that the Academy plans to develop another program which has a “heavy emphasis on bias-free policing for the rank and file” according to the most recent CA Status Report.

3. Assessment

Although the Police Academy recruit training program requires that each recruit attend the Professional Traffic Stops/Bias-Free Policing training, the level of ongoing training to all officers as required by the CA is uncertain. Further, there is no evidence of the other Parties' participation in the ongoing training and dissemination of information. As a result, the Parties are in partial compliance with this requirement.

C. Professional Conduct [CA ¶54]

1. Requirement

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

2. Status

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

3. Assessment

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

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

V. Citizen Complaint Authority

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

The City is in compliance with these provisions.

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

While the City had selected and hired Nate Ford as Executive Director in January, 2003, Mr. Ford resigned effective June 27, 2003. According to the CPD, by January 15, 2004, the City will have developed a list of candidates for the executive director position. It is our understanding that the Parties will be participating in the selection process in a fashion similar to their role in selecting Nate Ford.

The CCA currently has four investigators, rather than the required five. The CCA has been accepting resumes and interviewing candidates for the fifth investigator position, and a short list has been compiled. These candidates will shortly be reviewed by the Parties.

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

As we noted in Chapter Two, the Monitor is awaiting receipt of additional files of CCA investigations. We will review the investigations in the next quarter. In the December 5, 2003 CA Status Report, Plaintiffs raise a number of concerns regarding CCA complaint investigations. According to Plaintiffs' review, non-CPD witnesses have not been thoroughly interviewed; other potential witnesses have not been contacted; and the CCA has not made credibility determinations. We will examine these issues as part of our review of CCA files.

CHAPTER FOUR.

I. Use-of-Force Investigations

During this quarter, the Monitor Team reviewed 27 investigative files depicting use-of-force incidents. These incidents were broken down into the following categories.

- 1 Beanbag Shotgun
- 5 Pepperball Launcher
- 7 Physical Force
- 5 Canine Bites
- 11 Chemical Spray
- 8 Chemical Spray involving restrained subjects

Review of these incidents involved a thorough reading of the facts as depicted in the departmental records and related information provided to the Monitor. In addition to specific compliance with regard to the Memorandum of Agreement, Collaborative Agreement, and departmental policy, apparent departures from training were noted where appropriate. Any departures so noted should not be interpreted to mean that the force exercised was necessarily outside the Collaborative Agreement, Memorandum of Agreement, departmental policy, or was unreasonable.

As part of the Monitor's review of these incidents, we also evaluated the following options outlined in the Use-of-Force provisions of the Memorandum of Agreement, to the extent that they were applicable to a particular scenario.

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

In addition, the Monitor reviewed 17 "Non-Compliant Suspect/Arrestee" reports (Form 18NC). The majority of these reports involved restraining holds and takedown techniques that were used to control resistant suspects and take them into custody. While the involved officers completed Use-of-Force Reports and Arrest Reports, few included narrative accounts specifically describing the facts and

circumstances leading up to the use of force, and particularly the actions of the suspect that gave rise to the necessity to use force. None of the reports contained any comments or narrative from the reviewing supervisors addressing the tactics used by the officer or the appropriateness of the use of force. In addition, while the 18NC forms provided a signature line for the Inspections Section, there was no additional documentation of Inspections review, nor was the Monitor provided with any other material from the Inspections Section relating to its evaluation of the incidents or use of force trends. Without documentation, it not possible for CPD supervisors to determine whether these incidents were in compliance with the CPD policy and state law, nor is it possible for the Monitor to review compliance with the Agreements.

A. Use of Beanbag, Pepperball, and Taser

1. Department Tracking Number: 2003-0388, 5/4/03

Summary of Incident: Suspect was taken into custody during call for domestic violence. Upon their arrival, officers received information that the suspect, who was located in a back bedroom, was armed with a knife. The officers also had information that the suspect might be mentally ill. The suspect was located and found to be in a sleeping bag. Verbal commands were given for the suspect to show her hands. The suspect complied and officers approached to secure her in handcuffs, at which time she became violent and combative and bit one of the officers. Chemical irritant was deployed without effect and a decision was made to deploy the pepperball gun. Two officers attempted to control and position the suspect. A verbal command of impending force was given to obtain compliance, to no avail. The officer deploying the pepperball gun placed his foot on the suspect's back to stabilize her movement before deployment. Two rounds were fired at a distance of 18-24 inches, resulting in immediate compliance. The suspect was then secured. The subject's father witnessed the incident and corroborates the officer's account. He indicated in his statement that the first responding officer advised him in advance of the options that could be deployed to defuse his daughter's behavior. He stated that the officers did what they had to do to take his resistant daughter into custody. He further indicated that the officers took every step possible not to injure his daughter. Although admittedly unfamiliar with police procedure, he felt the officer's conduct was proper and reasonable. The involved subject

denies resisting the officers and indicated that she believed the officers violated her rights. Her contention is not supported by the officers' or her father's account.

CPD Review: Command raised and resolved a number of issues with regard to this matter, including the initial approach to the suspect, officer safety concerns regarding handcuffing of the suspect, disturbing statements made by the suspect (stemming from her mental condition and not supported by the facts), positioning of the officers with regard to the pepperball deployment, and the use of the pepperball gun in gaining compliance. Command also addressed the fact that the sergeant who conducted the preliminary investigation and interviews was involved in the apprehension of the subject, and therefore should not have conducted the interviews. The involved sergeant was counseled by Command as to this issue. District 3 Command deemed the use of force reasonable and justified and within the parameters of Department policy and state law.

Monitor's Assessment: A review of the CAD report indicates that an MHRT officer did respond shortly after arrival of the primary units. The MHRT officer was involved in the assessment of the subject and was the supervisor on the scene who directed deployment of the chemical irritant and the pepperball launcher.

A review of the reporting and audiotapes, including the statement of the subject's father, revealed a violent and resistant female who suffered from a mental disorder. The officers were investigating a complaint that she had threatened a family member with a knife. When they approached her in her bedroom, she was lying in a prone position in a sleeping bag. She was given verbal commands to which she initially complied as the officers attempted to gain control of her hands. However, she then became combative and refused to comply with their commands and began to actively resist by pulling her arms away and arching her back. Chemical irritant was deployed but was not effective. She continued to resist and lunged forward in an effort to bite one of the officers who was attempting to control her movement. One of the officers placed his foot on the subject's back to prevent her from lunging forward as the others continued to attempt control of her movement. Exhausting other available options, the supervisor then ordered deployment of the pepperball launcher. Two rounds were fired at a

distance of about 18 inches (within Department guidelines). Those rounds were effective and the subject was taken into custody without further incident.

Numerous efforts were made by the involved members to control a resistant and combative subject; verbal commands, arrest control techniques, chemical irritant, and ultimately the pepperball launcher. Although designed in part to deploy chemical irritant, the pepperball launcher is also an effective impact weapon that appeared to be useful in this particular case in de-escalating and bringing the situation under control. We also note that the subject's father was present during the escalation of events and commented that he believed the officers took steps not to unnecessarily harm his daughter.

2. Department Tracking Number: 2003-0540, 7/2/03

Summary of Incident: The subject's residence was the location of a high risk search and seizure warrant. Once officers had gained entry, the subject was initially responsive to their commands and took a prone position when directed to do so. During the course of the protective sweep to secure the remainder of the premises, a pit-bull terrier attacked the police. The officer being attacked fired 4-5 pepperball rounds at the dog. At this time, the subject became resistant and began to get up off the floor. He was placed back on the floor by officers but refused to show his hands when told to do so. Concerned that he may be in possession of a weapon, an officer deployed four pepperball rounds striking the subject in the right arm and back. The subject's resistance stopped and he became compliant.

CPD Review: No separate report was authored by Command, but there is an indication on the Use-of-Force Report (as supported by the Inspections Section memorandum) that Command determined the officer's actions to be consistent with Department policy and state law.

Monitor's Assessment: The description of the incident suggests that officers were using the pepperball gun to subdue or incapacitate a subject to prevent imminent physical harm to the officer or another. According to the officers' statements, they had information that the subject was likely in possession of a handgun that was being carried in a shoulder holster. The subject failed to remove his hands from under his body after being ordered and warned some seven times to comply. The MOA and CPD policy requires officers to provide suspects with an

opportunity to submit to arrest before using force. In this case, the suspect was given an opportunity to comply.

3. Department Tracking Number: 2003-0541, 7/10/03

Summary of Incident: Police responded to subject's residence in an effort to take him into custody on a confirmed Psychiatric Hold. The subject threatened the officers with a baseball bat and barricaded himself inside his house. The Crisis Negotiation and SWAT Teams were activated to assist in defusing the situation. Negotiations failed and a noise/flash diversionary device was deployed. Once inside, the SWAT Team located the subject, who was flailing about in an aggressive manner and refused to cease active resistance. Five water-filled pepperball rounds were launched, striking the subject in the abdomen and ending the conflict without further incident.¹⁶

CPD Review: Command review of this incident was limited to the Use-of-Force Form and a report completed by the Inspections Section. Inspections concluded the actions to be consistent with Department policy and state law.

Monitor's Assessment: In addition to the Negotiations Team and SWAT, an MHRT officer was also dispatched and was on location as one of the first responding units. While the audiotape portion of the subject's interview is not clearly discernable, his rambling and incoherent state is evident. Involved officer interviews indicate that in addition to flailing his arms and legs, the subject threatened officers on the scene with a baseball bat. As stated in the Inspections report, the officer's actions were necessary to terminate an extremely dangerous situation. Based on these factors, the incident appears in compliance with the MOA.

4. Department Tracking Number: 2003-0608, 7/22/03

Summary of Incident: Patrol officer and MHRT officer were dispatched to handle a call for a delusional paranoid-schizophrenic subject who had failed to take his medication and had become violent. Upon police arrival, the subject ran into his house and locked the door. Moments later, the subject came out of the house onto the porch. An officer attempted to grab the subject's arm, but the subject managed to pull away and fled into the street. An on-scene sergeant directed deployment of the pepperball gun. Two rounds were fired and struck the subject's torso, resulting in compliance. Once in custody, the subject

¹⁶ In this case, the pepperball gun was being used as an impact weapon, rather than a device to deliver chemical irritant.

failed to get into the patrol vehicle after several commands to do so. Chemical irritant was used and resulted in compliance.

CPD Review: Command concluded that the use of force was consistent with Department policy and state law. The Inspections review noted minor discrepancies and omissions with regard to the documentation and reporting such as:

- Absence of treating physician's diagnosis
- Absence of supervisor's signature on the Arrest and Investigation Report
- Officer who was interviewed as a witness was not listed on the reports as a supplemental witness
- Release of Medical Information field not properly completed

Monitor's Assessment: It might have been a better tactic to deploy chemical irritant at the beginning of the encounter, rather than attempt to grab at the subject and risk inability to control his movement without resorting to a higher level of force. While the facts are unclear as to whether the subject posed a threat to the officers or others when he entered the street, he did pose a threat to himself being in the roadway. With respect to the use of chemical spray to get the subject in the police car, the Use-of-Force Report indicates a warning of impending force. The warning was not noted in the narrative, however. Based on the information contained in the reporting, the use of force appears consistent with the MOA.

5. Department Tracking Number 2003-0676, 9/8/03

Summary of Incident: Patrol officers and MHRT officer were dispatched to handle a call for a violent subject who had been previously diagnosed as a schizophrenic with mental retardation. Upon the officers' arrival the subject was violent, verbally abusive, and began throwing furniture at the officers. The subject also broke out a window with the leg to piece of broken furniture. A pepperball gun was deployed to prevent the subject from hurting himself or others. Six rounds were fired at the subject, striking him in the left back and shoulder area. He was taken into custody without further incident.

CPD Review: No separate Command analysis or Inspections Report was available to the Monitor for review of this incident. The Use-of-Force Report indicates Command's finding that this incident was within Department policy and state law.

Monitor's Assessment: The sergeant's use of the pepperball gun was necessary to control and apprehend a violent subject who was presenting a danger to himself and others, as evidenced by both the reporting and taped statements. It is also clear from review of the taped statements that the sergeant was unable to get close enough to the subject to subdue him without using the pepperball gun, and that efforts through commands to cause him to cease his behavior were unsuccessful. Based on these factors, the incident appears in compliance with the MOA.

B. Physical Force

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

1. Department Tracking Number: 2003-0464, 6/3/03

Summary of Incident: Officers responded to a call for a domestic disturbance. Upon their arrival they encountered a subject who slammed the front door of the residence on them. They heard crying inside the dwelling and continued to try to gain entry by knocking on the door. The subject who had previously slammed the door, opened the door and allowed them to enter. Once inside, the officers developed probable cause for arrest for a domestic assault and attempted to arrest the subject. According to the officers, the subject resisted by pulling away from one of the officers and swinging his right hand, striking the officer in the face. A second officer on the scene deployed chemical irritant that had no effect. The officers then deployed their PR-24 batons and delivered strikes to the upper and lower arms and thighs of the suspect. Meanwhile, additional officers responded and the subject was pushed onto a couch and handcuffed without further incident.

CPD Review: District 4 Command concluded that the use of force was consistent with Department policy.

Monitor's Assessment: No verbal warning was given prior to the deployment of the chemical irritant. Although not expressly stated, the facts as presented in the investigation depict a rapidly evolving situation that may not have allowed sufficient time for a warning without creating a dangerous circumstance for the officer. Such exigent circumstances precluding a warning are contemplated by the MOA, but they must be documented and addressed in the Use-of-Force Report. The subject's

active resistance and failure to respond to the chemical irritant resulted in the escalation of force to use of the PR-24. The Use-of-Force Report indicates that the subject was photographed, but photographs were not in the file reviewed by the Monitor. Additionally, the audiotape was recorded at the wrong speed and was unintelligible. Thus, the Monitor does not have the subject's version of the incident. The Use-of-Force Report cites a female witness, but indicates that this individual was mentally retarded, and no taped statement was taken.

2. Department Tracking Number: 2003-0509 (IIS #03219), 5/3/03

Summary of Incident: Officers were investigating an altercation between a male and female in a vehicle. The male occupant was removed from the vehicle and was being questioned by one of the officers when he became disorderly. According to the officer, the subject was advised that he was under arrest and the officer attempted to apply handcuffs when the subject punched the officer in the head. The subject was immediately taken to the ground. During their effort to restrain and handcuff the subject, the officers state that they forced his face to the ground causing the subject's nose to bleed. The subject alleges that the officers punched him while he was on the ground and that was how he got a bloody nose. The female occupant (subject's girlfriend) also makes this allegation, although the officers deny punching the subject.

Because both officers were Canine officers and thus did not have the ability to transport, they requested another officer. A District 3 supervisor responded to assist. As they attempted to secure the subject in the transport vehicle, he became resistant and the transporting sergeant was unable to engage the seatbelt or leg bar. The subject lay down in the back of the vehicle and kicked out the right rear door window of the vehicle. One of the arresting officers opened the door in an attempt to extract the subject and was kicked in the chest. The transporting sergeant ordered the subject to cease or he would be sprayed. The subject continued his behavior and chemical irritant was applied ending the confrontation.

The subject, alleging that the arresting officer used excessive force, filed a citizen complaint. In a taped interview, the subject, although highly intoxicated, characterized his behavior as subdued while in the rear of the transport vehicle. He stated that he has no idea how the vehicle was damaged, although he admits to kicking while he was getting "beat up" by "someone" while in the back of the car. There is no credible information (aside from his statement) to support his contention of being struck once inside the car. While the girlfriend's account also differs from that of the officers, she indicates in her taped statement that she has 20/200 vision and couldn't identify officers standing outside the car

while she was being interviewed. Thus, she had limited ability to see the events as they unfolded.

CPD Review: District 3 command reviewed the incident and determined it to be within Department policy and state law. Command did, however, note several tactical issues regarding this matter. These included the officers' tactical approach when attempting to handcuff the subject and their failure to use chemical irritant as a first level of force when the subject became resistant during the arrest encounter. Command also addressed the tactical approach of the officers when attempting to remove the subject from the rear of the police vehicle, noting that safer tactics could have been deployed to minimize danger to the officer, irrespective of the officer's expressed fear that the subject could cut himself on the broken glass. With respect to the excessive force complaint, Command recommended a "not sustained" finding based on the varying accounts of the arrest. However, Command did counsel the investigating sergeant of the importance of taking more photographs of the subject in such instances. The supervisor also was counseled on the importance of transporting subjects for medical assistance, regardless of the subject's refusal, particularly in light of his complaints and the nature of his injuries. The field investigation was reviewed by IIS and the complaint was deemed "not sustained."

Monitor's Assessment: This incident appears in compliance with the MOA, even with the issues raised by Command in its assessment. Command's point regarding the escalation of force and the use of chemical irritant as the first level of force is well taken. However, it appears that the officer's decision to take the subject to the ground was a quick tactical reaction to the subject's assault. Because the accounts of the involved officers differ from that of the subject and his girlfriend, a "not sustained" finding was appropriate. The only independent witness to the events, the subject's girlfriend, has difficulty seeing (20/200 vision) by her own admission, and it is unlikely that she would have been in a position to clearly see what transpired because she was seated inside her vehicle during most of the encounter. The taped statement of the complainant is difficult to understand due to his intoxicated state. Although IIS reviewed the field investigations and confirmed the "not-sustained" finding, a subsequent interview by IIS of the subject and his girlfriend might have proven helpful in resolving these conflicts.

3. Department Tracking Number: 2003-0511, 6/28/03

Summary of Incident: Officers were dispatched to investigate the rape of a 13 year-old female. During the course of their preliminary

investigation, the victim's 28-year old stepbrother arrived on the scene and was identified by the victim as her assailant. He was advised that he was under arrest, at which time he fled. An officer caught up with the subject and attempted to gain control of his arm. The subject broke free and continued to run at which time the officer again caught up with him. The officer states that he administered a strike with his PR24 to the subject's right leg. Meanwhile, a back-up officer arrived and using their combined strength, they were able to take the subject into custody without further incident. The subject later alleged being struck by the officer nine times with the PR 24. A citizen complaint form was completed and a field investigation was conducted. Witness interviews indicated an account consistent with that of the arresting officers.

CPD Review: District 3 Command reviewed the matter and deemed it to be not only consistent with Department policy, but also the "best practice available to the officers in this situation." The investigation into the subject's complaint was reviewed by Command, IIS, and the Chief of Police and determined to be unfounded. This was supported by the observations of an independent witness and the lack of injuries sufficient to support the subject's claim.

Monitor's Assessment: Based on review of the available reporting, the use of force appears consistent with the MOA. The taped interview of an independent witness fully supports the officer's account of what transpired and the "unfounded" finding in the complaint investigation. Notwithstanding, the investigation should have examined whether chemical irritant would have been effective in subduing the subject during the second apprehension. While the investigating supervisor asked this question of the involved officer in his taped interview, the officer's response is unclear whether the irritant was not used because of the close proximity of other officers or some other reason, and the written Use-of-Force Report did not address the issue.

Further, the MOA and the CPD's procedures requires that "whenever an officer decides to engage, or continue to engage in a foot pursuit, a quick risk assessment must take place" evaluating the risk involved to themselves, other officers, the suspect, and the community versus what would be gained from pursuing the suspect. In this particular case, the nature of the "offense committed," one of the considerations to be evaluated when initiating a foot pursuit, is more than significant enough to make the pursuit consistent with the policy and the MOA. However, as the procedure requires an evaluation by the officer as well his supervisor, it would be helpful to any subsequent Chain of Command review and to the Monitor if the Use-of-Force Report had included some discussion of this risk assessment.

4. Department Tracking Number: 2003-0611, 7/30/03

Summary of Incident: An officer observed a traffic violation and initiated a stop. During the stop, the driver became “angry and argumentative.” While the officer was seated in his vehicle completing the citation, the subject got out of his vehicle and approached the patrol car. The officer then got out of his car and attempted to get the subject out of the roadway to further discuss the matter. According to the officer, the subject continued to “berate” the officer and grabbed at the officer’s wrist. The officer disengaged, at which time the subject grabbed the officer’s upper torso and throat. The officer states that he performed an arm sweep, simultaneously pushing away from the subject in an attempt to disengage. The subject fell backward and was arrested without further incident. He was transported to a medical facility for treatment and admitted for an unrelated medical condition.

CPD Review: Command’s evaluation concluded that the officer’s actions were consistent with Department policy and state law. Command reviewed the MVR tape and noted that the officer’s MVR microphone failed to record the verbal interaction between the subject and the officer. It was determined that while the officer checked his equipment prior to his tour, the microphone battery “apparently lost its charge, rendering a significant portion of the conversation” inaudible. Command also reminded the investigating sergeant of the importance of maintaining consistency between the taped interviews and the written narrative and to ask questions during the interviews to solicit the relevant information.

Monitor’s Assessment: The involved officer appears to have exhibited great restraint while handling this incident. With regard to the MVR microphone, the officer stated in his interview that he checked the equipment periodically during the shift, and particularly after stops, and found the equipment working during early citizen traffic contacts. For this stop, however, it appears that either the battery ran out during the course of the shift, or the external microphone was switched off. Based on the Monitor’s review, and having considered the issues raised by Command, this incident appears to be in compliance with the MOA.

5. Department Tracking Number: 2003-0641, 7/30/03

Summary of Incident: Officers were working outside employment at a licensed liquor establishment when they encountered a subject who was refusing to leave the premises after being requested to do so by the owner. The officers attempted to remove the subject from the premises, but he immediately returned. The officers then attempted to place the subject under arrest, when he began to actively resist and attempted to

take one of the officer's gun. The officers delivered multiple strikes with their PR24s. One of the strikes resulted in a blow to the subject's head (because, according to the officer, the subject lowered his head in an attempt to dive into the officer at the time he was initiating his swing). At this time, both officers were able to take the subject to the ground. Additional officers arrived on the scene incident to a call for assistance. These officers administered chemical irritant to the subject that ended the confrontation.

CPD Review: While District 4 Command determined that the actions of the officers were consistent with Department policy and state law, it identified three areas to be addressed:

- The officers should have called for back-up sooner as they had almost 10 minutes to converse with the subject and evaluate his demeanor and "truculent" behavior.
- Seeing the potential for violence, the officers should have had their chemical irritant ready and deployed it first in an attempt to diffuse the situation.
- The investigating sergeant failed to take photographs of all the areas that were determined to be struck during the confrontation.

All of these issues were raised and resolved with the officers by their Command, Districts 1 and 4, respectively. In addition, the District 1 supervisor who conducted the initial Use-of-Force investigation reported that the subject was unable to be interviewed the night of the incident as he was under the influence of Halidol. A subsequent attempt to interview the subject at his home proved nonproductive as he indicated that he was "knocked unconscious" and did not awaken until he arrived at the hospital.

Monitor's Assessment: The audio tape of the officer's statement to the investigating supervisor appears to have been recorded on the wrong speed and could not be understood. The witness interview, however, was discernable and clearly describes a continuum of force model beginning with verbal commands, arrest control techniques, and finally rising to the use of the PR-24 to bring the subject under control. Notwithstanding the issues raised and resolved during the Command review, this incident appears consistent with the use of force provisions of the MOA.

6. Department Tracking Number: 2003-0643, 8/14/03

Summary of Incident: Police officers were planning to execute a search warrant at a suspect's residence. Pre-raid surveillance revealed the suspect exiting the residence and getting into a vehicle driven by a female. A uniformed officer driving a marked vehicle attempted to stop the vehicle, at which time the subject exited and fled on foot. Officers gave pursuit and the subject was located in a rear yard. One of the pursuing officers closed on the subject and ordered him to stop and to get on the ground. As the officer came within a few feet, the subject reached into his waistband and pulled out a .38 revolver. The officer was too close to disengage and take cover and instead struck the subject with an overhand closed fist to the face. The strike dislodged the weapon and knocked the subject to the ground. Although now unarmed, the subject actively resisted being handcuffed and was brought under control only after being sprayed with chemical irritant, which was ineffective, and two knee strikes to the torso which brought the subject into compliance.

CPD Review: The Vice Control Section Commander reviewed the incident and determined it to be within Department policy and state law. The pre-raid surveillance was noted to be the kind of investigative strategy that increases the safety of the officers, bystanders, and the involved subjects. It also increases the likelihood of successfully arresting the subject by reducing confusion when reacting to a subject's actions. Command also evaluated the foot pursuit and arrest technique. It was determined that when an election was made by the officers to pursue the subject on foot, they had no knowledge that he was armed, as no one saw the gun concealed in the subject's pants. Their decision was proper based on the knowledge they had at the time. The officer's use of a closed-hand fist was also deemed appropriate by Command, as the close distance between the subject and officer did not allow time for disengagement or resort to other means such as use of the officer's own weapon, baton, or chemical irritant. Once disarmed, the subject continued to resist. Because the use of the chemical irritant was not effective, delivering two knee strikes to the subject's torso was deemed to be proper by Command.

The Vice Control Section Commander also reviewed the supervisor's investigation of this matter and found that a number of issues were properly raised, reviewed, and resolved by the investigating supervisor.

- A thorough area canvass was conducted in an attempt to identify witnesses

- A subsequent video walk-through of the foot pursuit was conducted to better evaluate and understand the complexity of the pursuit and the area that was involved
- The MVR tape was reviewed to determine whether any portions of the use of force were depicted. While the arrest was not captured on tape, violations of the Department's driving and MVR policies were noted and referred to the appropriate Command for resolution.
- Inconsistencies between statements made by two officers were resolved as merely different views based on each officer's proximity to the event in question.

Monitor's Assessment: Command's review of this incident raised and resolved all relevant issues with respect to this use of force, which appears to be in compliance with the MOA. While the Chain of Command did evaluate the officer's risk assessment on the foot pursuit, it was not initially discussed in the supervisor's report. The pursuit appears to have been within Department policy, and the factors discussed in Command's review should also have been outlined in the narrative portion of the investigating supervisor's report.

7. Department Tracking Number: 2003-0680, 8/25/03

Summary of Incident: An officer was in a foot pursuit of subject for a gambling violation. According to the officer, during the pursuit the subject stopped and took up an aggressive fighting stance. The officer commanded that the subject stop and get back, but the subject continued towards the officer ignoring his commands. The officer, who had his PR24 already in his hand, delivered one blow to the lower left side. The subject got onto the ground and was handcuffed without incident.

CPD Review: Command analysis determined that during the course of the officer's pursuit of the subject, the officer's PR24 started to fall from its holster, which was why it was already in the officer's hand at the time force was deployed. The issue as to why chemical irritant was not deployed in this incident was discussed with the officer, and it was determined that because of the suddenness of the incident and the fact that the PR24 was most readily available, the officer did not have the opportunity to replace his PR24 and obtain chemical spray in sufficient time to deploy it and terminate the threat of attack by the subject.

Monitor's Assessment: The officer's risk assessment on the foot pursuit and the factors considered were duly noted in the narrative portion of the Use-of-Force Report. The incident appears in compliance with the MOA. Again, however, the Monitor was unable to evaluate the subject's account of the incident, as the taped statement of the subject was recorded at the incorrect speed.

C. Use of Canine

i. Investigations from 1st and 2nd Quarter 2003

1. Department Tracking Number: 2003-0283, 1/24/03

Summary of Incident: The subject was operating a stolen vehicle when the police attempted to stop him. The subject stopped the vehicle, got out, and fled on foot. Communications advised responding units that they were receiving calls that the subject was running behind houses. A canine unit responded and a supervisor on the scene authorized deployment to track the subject. Shortly thereafter, police sighted the subject who continued to run, jump over fences, and eventually ran into the rear yard of a residence. While on a thirty-foot lead, the canine engaged the subject as he attempted to conceal himself against a wooden deck. The subject resisted the dog, and was bitten again on the hand and shoulder. The handler directed the subject to stop fighting the dog and to lie still. When the subject complied, the handler immediately called off the dog and the subject surrendered without further incident. The subject received lacerations of the head, right shoulder, and left hand as a result of the canine engagement.

CPD Review: Special Services Command found the deployment to be consistent with Department policy and state law. Command also noted the fact that the supervisor who authorized the canine deployment was also the investigating supervisor. This is inconsistent with policy and the MOA and District 2 Command counseled the sergeant. In addition, District 2 Command counseled a second sergeant regarding the witness interviews and the importance of ensuring that the tape recorder is placed close enough to the interviewees to capture their statement.

Monitor's Assessment: The initial deployment of the canine appears to be consistent with the MOA. The subject had just engaged in a felony and was attempting to escape police apprehension. A supervisor responded to the scene, assessed the facts and determined it appropriate to deploy the canine to track the subject. Verbal warnings were given prior to deployment. With respect to the canine bites themselves, it is not clear whether the subject was continuing to flee, or had stopped and was simply hiding under the deck. Nor can one determine from the

reports whether there was a reasonable opportunity to apprehend the subject using less forceful means. Therefore, we cannot say that this incident complies with MOA requirements.

2. Department Tracking Number: 2003-0284, 3/18/03

Summary of incident: During the course of a vehicle stop, a police canine officer became aware that the driver was wanted for escape by querying the subject's social security number. The officer requested back-up and started back towards the vehicle to engage the driver when the vehicle sped off. A brief vehicle pursuit followed until the subject abandoned the car and fled into a wooded area on foot. A supervisor, who had been monitoring the radio traffic but had not arrived on the scene, authorized deployment of the canine. A verbal warning was given and the dog was released in a "running apprehension." This means that, while the dog was on a leash, the handler dropped the leash. The canine chased the subject through the woods, briefly engaging him with a bite to the leg. The subject continued to flee and went under a parked vehicle to get away from the canine. As the handler emerged from the woods, he saw the canine circling the car. The canine was secured and the subject was ordered out from under the vehicle. He complied without further incident.

CPD Review: Command deemed the use of the canine to be inconsistent with Department procedure noting a number of factors:

- The officer's decision to re-approach the vehicle prior to the arrival of back-up (referencing the Tactical Patrol Guide)
- The sergeant's authorization to deploy the dog without first responding to the scene and assessing the facts (referencing the Canine Operations Manual)
- The officer's decision to initiate a running apprehension deployment (referencing Canine Operations Manual), citing multiple factors that should have been considered before the officer made his decision. One notable factor was the possibility of an inadvertent bite of a citizen or other police officer.

Monitor's Assessment: While the officer offered understandable explanations for the issues raised, as his Command points out "each of these decisions, regardless of the logic, increased the risks to all involved, as well as innocent by-standers." In fact, it appears from the audiotape statements that at one point during the running

apprehension, the dog was out of sight of the handler. The handler then quickly caught up to the dog as the dog circled the car.

Command did a thorough job of raising the relevant issues and concluded the officer's decisions were "contrary to common practice and organizational procedure." The officer was counseled and given supervisory guidance. For these reasons, this incident appears inconsistent with the MOA. The MOA specifically limits off-leash deployments to commercial building searches or instances in which the subject is wanted for an offense of violence or is reasonably expected to be armed. These factors were absent in this case.

3. Department Tracking Number: 2003-0467, 4/29/03

Summary of Incident: Police officers were investigating a breaking and entering at a commercial establishment. Their preliminary investigation indicated that a suspect might still be on the premises. A supervisor responded to the scene, assessed the facts, and authorized a canine deployment. The canine officer gave a loud verbal warning, waited a minute, and then deployed the canine off-lead. A subject was located as he attempted to conceal himself under a customer service counter. The canine bit the subject's buttocks and was quickly recalled by the handler. The subject sustained a whelp on the buttocks and was taken to the hospital, where he received a tetanus shot and was released.

CPD Review: Special Services Command determined that the deployment was consistent with Department policy and state law.

Monitor's Assessment: The officers were investigating a felony B&E and had reason to believe the subject was concealed inside the building. A supervisor responded to the scene, assessed the facts, and authorized the deployment. A loud verbal warning was given to no avail. Once the canine located and engaged the subject, the handler was immediately able to call off and take charge of the dog. While the initial deployment of the canine appears consistent with the MOA, there is again, a question of whether there might have been an opportunity to apprehend the suspect using less forceful means. The reports are unclear as to whether specific actions of the subject (such as sudden movement) led to the canine bite, or whether the canine simply located the hiding suspect.

4. Department Tracking Number: 2003-0468, 4/29/03

Summary of Incident: The subject had just completed a sale of \$20 worth of crack cocaine to an undercover officer, when he got into a vehicle and left the area. A description of the subject and his vehicle was

broadcasted over police radio, and a canine officer located the vehicle a short while later. A vehicle stop was attempted and the subject vehicle fled. A brief vehicle pursuit ended with the vehicle striking a utility pole and the subject fleeing on foot into a residential area. Supervisory assessment was made and authorization was given to deploy the canine. A verbal warning was given at the beginning of the track advising the subject that the dog would be deployed unless he surrendered. The canine tracked the subject to a shed, where yet another warning to surrender was given. The subject came out of the shed and the canine was called back to the handler. As the officer was positioning himself to handcuff the subject, the subject lunged at the officer, startling both the canine and the officer. The subject attempted to flee by jumping a small fence. The canine engaged the subject on the leg and was pulled over the fence with the subject as he attempted to break free. The canine continued his hold. The officer came over the fence and again commanded the subject to surrender. The subject complied and the dog immediately returned to its handler without further incident. The subject suffered three scrape marks on the leg as a result of the engagement.

CPD Review: Command's assessment was very thorough, raising and resolving all relevant issues. The handler's decision to initiate the track on lead was consistent with Department policy and appropriate due to the nature of the incident (i.e., felony drug trafficking) and the subject's behavior. Verbal warnings were given to sufficiently alert the subject that the canine would be utilized if he chose not to surrender. However, Special Services Command determined that the handler's inability to control the canine while at the shed (the officer dropped the lead, thus releasing his hold on the canine) to be inconsistent with canine training tactics. The officer was provided counseling with regard to this issue by his immediate supervisor.

Additionally, Command noted concerns over two issues with regard to the officer's first attempt to arrest the subject. The officer's decision to open the shed door in an effort to look inside after the canine had alerted on the shed was, in Command's words, "ill-advised." This placed the officer in a position where the subject could have armed himself with a tool that might have been inside the shed (shovel, pick, etc.) and the encounter could have escalated into a deadly force situation. The officer should have alerted back-up to his location and taken a safe position of distance from the shed until sufficient assistance arrived. Second, the subject should have been immediately ordered to the ground after coming out of the shed, so that the officer could have obtained a tactical advantage in this "one-on-one" encounter.

Command discussed each of these issues with the canine supervisor, who will incorporate these issues into future training scenarios. Notwithstanding the tactical errors and training issues raised by Command, this incident was deemed to be within Department policy and state law.

Monitor's Assessment: Command raises important issues with regard to tactics and training as it relates to this incident. Those issues notwithstanding, this incident appears consistent with the MOA. The handler used good judgment as to his decision not to initiate a running apprehension of the subject, noting the presence of civilians in the area. He clearly offered warning to the subject to stop or the canine would be released. It was not until he reached the shed that he dropped the lead before opening the shed. While this was not tactically sound, it is not necessarily inconsistent with the MOA.

As to the bite, the abrupt movement of the subject and his active resistance resulted in a response consistent with a canine trained in handler protection. Both the subject's resistance and his attempt to escape justify a canine bite under the language of the MOA.

ii. Preliminary Investigations from 3rd Quarter 2003¹⁷

1. Department Tracking Number: 2003-0472, 7/5/03

Summary of Incident: Subject was bitten by the canine after being tracked from the scene of a rape/kidnapping. The canine was on a thirty-foot lead when he located the subject in a thickly wooded area. Subject complied after being bitten and was arrested without further incident. Subject was subsequently treated for scrape marks on both legs.

CPD Review: Special Services Section sergeant deemed the incident to be within Department policy and state law.

2. Department Tracking Number: 2003-0473, 7/5/03

Summary of Incident: A police lieutenant was engaged in a vehicle pursuit with a subject. The pursuit ended with the subject attempting to flee from his vehicle while the vehicle was still moving. The subject's right ankle was driven over by the rear driver's side tire. Nonetheless, he managed to flee into a wooded area while attempting to reach into his right pants pocket. Due to the dense foliage and the possibility that the

¹⁷ The CPD's reviews of these incidents are not complete, and we will provide further analysis in our next Report based on the completed CPD investigations.

subject may have been armed with a weapon, the lieutenant requested a canine unit to respond. Prior to the canine unit arriving, officers on the perimeter announced that the dog would be deployed if the subject failed to surrender. Upon the canine officer's arrival, the dog was deployed into the woods on a thirty-foot lead. After several minutes the subject was located lying in tall weeds. The dog engaged the subject for a 3-5 seconds period, causing a small puncture wound to the subject's thigh. The handler called off the dog and the subject was arrested without further incident.

CPD Review: A District 1 supervisor determined the incident to be within Department policy and state law.

D. Use of Chemical Irritant

Departmental policy and the agreements clearly outline the issues that are relevant to the use of chemical irritant in a compliance action. Those issues include, but may not necessarily be limited to, the following.

- Use of chemical irritant in crowd situations
- Use which is necessary to protect officer, the subject, or others from harm
- Use which is necessary to affect the arrest of an actively resistant subject
- Use which is necessary to prevent the escape of a subject
- Use of verbal warnings prior to use and the practicality of such a warning under the circumstances
- Target area limited to torso and face
- Duration of use and the distance of deployment
- Decontamination of subject and area
- Use of chemical irritant on a restrained subject (use of restraining equipment, whether subject presents a risk of escape, or poses a threat)

Of the 19 reported incidents involving Use of Chemical Irritant, only those that involved use on restrained persons (8) are summarized individually in this Report. Six of the remaining 11 reports (not involving restrained persons) do not indicate whether or not a verbal warning was provided and it is, therefore, not possible for the Monitor to determine compliance with that provision of the MOA. The remaining five of those 11 were in compliance. The tracking numbers of these 11 reports are as follows:

2003-0512 Warning given

2003-0523- No warning documented
2003-0530- No warning documented
2003-0551- No warning documented
2003-0563 Warning given
2003-0582 Warning given
2003-0599 Warning given
2003-0615- No warning documented
2003-0629- No warning documented
2003-0650- No warning documented
2003-0659 Warning given

With regard to those cases involving the use of chemical irritant on a restrained subject, the following issues are relevant.

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

1. Department Tracking Number: 2003-0560, 7/17/03

Summary of Incident: An officer was arresting an intoxicated subject wanted for domestic violence. After placing the subject in handcuffs, he became resistant and began kicking and spitting at the officer. The officer sprayed the subject with one burst of chemical irritant and held him on the ground until back up arrived. The subject was transported to lock-up without further incident.

CPD Review: After interviewing the involved officer and the different witnesses, the District 3 sergeant resolved issues relating to scratches on the subject's face (determined to be the result of a previous altercation with his wife), the placement of the subject on the ground (particularly the technique used to get him there), and the number of times chemical irritant was deployed. With regard to the take-down technique used, the officer used a control maneuver to place the resistant subject on the ground. Once there, the officer maintained control over the subject by placing a knee in the subject's buttocks. The officer further had to hold the subject's head to one side to prevent him from spitting on the officer. Lastly, there was an inconsistency between the number of times that chemical irritant was deployed. A witness to the incident indicated that chemical irritant was applied twice; the

investigation, however, revealed one sustained burst in the target facial area. The victim refused to be interviewed further by the police with an interpreter and stated that on the day of the incident he was intoxicated and doesn't recall what took place. Inspections reviewed and signed the Use-of-Force Report. There was no MVR tape of the incident.

Monitor's Assessment: While the warning of impending force is checked on the Use-of-Force Form, there is no discussion of the warning in the narrative section of the Use-of-Force Form or the Arrest Report. An independent witness verified that the involved officer gave several warnings to the subject to cease his behavior or he would be sprayed. The incident appears in compliance with the provisions of the MOA.

2. Department Tracking Number: 2003-0567, 7/29/03

Summary of Incident: Subject was under arrest and in route to detention where the officers intended to continue their investigation into the subject's concealment of crack cocaine (5 grams of crack cocaine would later be discovered in his anal cavity). While one of the officers was riding in the back seat of the patrol car with the subject, holding on to the subject's handcuffs, the subject began to pull away from the officer's grasp and control. The officers stopped the patrol car and ordered the subject to stop his movements or he would be sprayed, as they believed he was attempting to further tamper with evidence. The subject continued to pull away from the officer and all three officers simultaneously delivered a two second burst of chemical irritant. Subject complied and was transported to the detention center. A search warrant was authorized and executed. The contraband was recovered at University Hospital.

CPD Review: The District captain indicated on the Use-of-Force Report that the force used was consistent with Department policy and state law. Inspections also reviewed and signed the Use-of-Force Report. There is no MVR tape of this incident.

Monitor's Assessment: The MOA requires that the Department have sufficient equipment to properly restrain subjects during transport in an effort to limit the use of chemical spray against subjects who are restrained. In this case, an officer was seated in the back of the patrol car holding on to the subject's handcuffs during transport. This does not appear to be an appropriate level of restraint in the Monitor's opinion. The purpose of the officer's hold was to prevent the subject from gaining access to his rectal area where he was concealing contraband.

In addition, the MOA provides that "chemical spray may be used on a restrained individual only when, absent the use of spray, the

subject or another is likely to suffer injury, or escape.” The MOA does not appear to contemplate preventing the “destruction of evidence” as a circumstance where use of chemical irritant would be appropriate on a restrained subject.

Last, although unclear from the Use-of-Force Form and narratives, the taped statements of at least one of the involved officers does indicate a warning of impending force prior to deploying the chemical irritant. Also, the reports do not detail why it was necessary for all three officers to use their chemical spray.

3. Department Tracking Number: 2003-0602, 8/11/03

Summary of Incident: An officer responded to investigate a call for a domestic assault involving an elderly woman and her daughter. The daughter had left the scene in her mother’s car and was gone when police arrived. Shortly thereafter, the subject returned and had an odor of alcohol on her breath, red eyes, and slurred speech. The subject was arrested for domestic violence. After being placed in the police car, the subject got out of her handcuffs and began striking and kicking the Plexiglas partition and window. An officer sprayed one short burst of chemical irritant in the subject’s face to prevent her from harming herself. The subject complied, was re-handcuffed and transported to detention.

CPD Review: Command identified three issues during its analysis of this use of force incident:

- How did the subject get out of her handcuffs?
- Was she tested for DUI?
- Why was she not interviewed on tape?

The arresting officer was determined to be a probationary officer who had recently graduated from the academy. It was determined that the handcuffs had been applied too loosely. The Field Training Officer and the District 3 investigating sergeant counseled the officer as to the proper application of handcuffs. Due to the subject’s combative and uncooperative behavior, she was not subjected to any testing with regard to her intoxicated state. Further, she refused to be interviewed on tape or allow the investigating sergeant to take any photographs of her. Photographs were taken, however, while the subject was seated in the police vehicle. Command concluded the use of force was consistent with Department policy and state law. Inspections reviewed and signed the Use-of-Force Report. There was no MVR of this incident.

Monitor's Assessment: The verbalization field on the Use-of-Force Report indicates that a warning of impending force was given, and a review of the audiotape indicated that the subject was warned no less than three times of an impending use of force. This information should also be included in the narrative. It is unclear from the reporting whether the subject was properly restrained (seatbelt, lap harness, etc.) in the police car before she was able to get out of her handcuffs.

4. Department Tracking Number: 2003-0617, 8/31/03

Summary of Incident: Subject was arrested for disorderly conduct on a transit bus. When placed in the rear of the police vehicle, the subject attempted to kick out the rear window. He was sprayed with chemical irritant through the window partition, which resulted in his compliance.

CPD Review: Command's notation on the Use-of-Force Report was that the incident was within Department policy and state law. Inspections also reviewed and signed the Use-of-Force Report. There was no MVR of the incident.

Monitor's Assessment: The verbalization field on the Use-of-Force Report indicates that a warning of impending force was given, but the narrative of the Use-of-Force Report and the Arrest Report do not discuss the warning. It is also unclear whether any restraints were used once the subject was placed in the vehicle (e.g., lap bar, seat belt, etc.) that may have precluded the need for force in this instance. It is also unclear as to whether force was used to prevent destruction of Department property or to prevent injury to, or escape of, the subject in custody. The MOA does not appear to contemplate the use of chemical irritant on a restrained subject merely to prevent him or her from destroying property.

Last, the "subject non-compliance" field reflects only that the subject was "conspicuously ignoring" commands, whereas a review of the taped statements of the officers suggest more aggressive and violent actions on the part of the subject. For these reasons, the Monitor is unable to determine compliance with the MOA.

5. Department Tracking Number: 2003-0627, 8/14/03

Summary of Incident: Subject was arrested for disorderly conduct and obstruction. He was placed in the rear of the police vehicle and his legs were properly secured under a lap bar. The subject managed to work his legs free and began kicking out the window of the car, dislodging it from its frame. Chemical irritant was deployed which

resulted in the subject's compliance. No warning of impending force was given.

CPD Review: Three issues were identified by District 5 Command during the course of this investigation. The first issue involved the reporting of the incident. The subject in the case had initially been sprayed with chemical irritant during the course of his arrest. Twenty minutes lapsed between that event and the second incident where he was sprayed while restrained in the police vehicle. Initially, the supervisor had combined these two incidents into one report. Because of the lapse in time between the incidents, Command determined that two separate reports would be required. Further, the investigating sergeant had been the sergeant on the scene of this use of force and ordered the deployment of chemical irritant. The lieutenant noted this procedural violation, counseled the sergeant and made an ESL entry.

Second, Command noted a discrepancy in dates between the actual date of the incident and the date used by the sergeant when conducting his taped interviews. The lieutenant again counseled the sergeant about being attentive to such details.

Last, Command considered the timeliness in transporting the subject to the detention facility. Had he been transported immediately after his arrest, there might not have been a need to use chemical irritant a second time. The supervisory investigation of the first use of chemical spray could have taken place at the detention facility. Nonetheless, Command deemed the use of force consistent with Department policy and state law. Inspections reviewed and signed the Use-of-Force Report. There was no MVR of the incident.

Monitor's Assessment: Two issues give rise to some concern. The first is the absence of a warning of impending force prior to deploying the chemical irritant. The MOA requires that such a warning be given unless doing so presents a danger to the officer or others. The facts of this case as stated in the reporting fail to support such a danger. The taped statements of the officers and a witness indicate that the subject was verbally abusive. One of the officers stated that at one point the subject attempted to head-butt an officer after he was handcuffed. However, the narrative portion of the report fails to articulate this level of aggression on the part of the subject and the "subject non-compliance" field does not indicate that the subject was combative. Additionally, the verbalization field of the Use-of-Force Report was left blank. The absence of this information brings into question the urgency of deploying the irritant without a warning of force and the opportunity for compliance.

Second, it remains unclear whether force was used to prevent destruction of Department property or to prevent injury to or escape of the subject in custody. The MOA does not appear to contemplate the use of chemical irritant on a restrained subject merely to prevent him or her from destroying property.

6. Department Tracking Number: 2003-0628, 8/20/03

Summary of Incident: Subject was arrested for DUI, handcuffed, and placed in the back seat of a police vehicle. He became disorderly and began banging his head against the Plexiglas divider. Officers warned him three times to cease or he would be sprayed. The subject continued and an officer delivered a three second burst to the face and upper torso bringing the suspect into compliance. The subject refused to provide a statement to the investigating sergeant subsequent to this incident.

CPD Review: Command determined this incident to be within Department policy and state law. It was, however, noted in the Use-of-Force Report that the subject's refusal to provide a taped statement should have been captured on tape. The investigating sergeant was counseled as to this issue. Inspections reviewed and signed the Use-of-Force Report. Audio of the incident was recorded on the vehicle's MVR.

Monitor's Assessment: It is unclear from the Use-of-Force Report whether the subject was properly restrained in the vehicle, as is contemplated by the MOA. The involved officer states in his interview with the investigating sergeant that the subject was not restrained because of his height and because he was not combative at the time he was placed in the vehicle. A review of the MVR of the incident reveals that the subject did become aggressive, disorderly and verbally abusive. What is unclear from the tape, however, is whether the subject was being sprayed to prevent harm or escape, or whether chemical spray was used solely to prevent the subject from destroying property. At one point on the tape, the officer can be heard telling the subject that if "you damage my brand new car," he will be sprayed.

7. Department Tracking Number: 2003-0631/0632, 8/21/03

Summary of Incident: Subject was arrested for a B&E. Subsequent to his arrest, he was placed and secured by a lap bar in the rear of a police vehicle. He managed to break free of the lap bar and attempted to kick out the cruiser's driver side window. Officers gave the subject several warnings to cease his behavior or be sprayed. He continued his behavior and chemical irritant was introduced through a window into the rear of the car. Because the subject was violently

thrashing about, the officer's target was limited, though the irritant did have some limited effect. While the officers were awaiting the arrival of a scout car to transport the subject to detention, he again became combative and continued to hit his head against the car window and tried to kick the window out as well. A second warning of impending force was given to no avail and deployment of chemical irritant was initiated. The subject was hit in the face and upper torso. Again, the effect was limited.

CPD Review: District 3 Command conducted an analysis of this incident and raised legitimate concerns surrounding the delay between the first deployment of chemical irritant and the arrival of a scout car to transport the subject, resulting in the necessity to again deploy chemical irritant because of the subject's aggressive behavior. Command determined that the second deployment could have been avoided had the subject been transported in a more expedient manner. This issue was conveyed to the involved sergeant and other District 3 relief sergeants. Notwithstanding these issues, Command determined the use of force to be consistent with Department guidelines and state law. Inspections reviewed and signed the Use-of-Force Report. Audio of the incident was captured on the vehicle's MVR.

Monitor's Assessment: Review of reporting indicates a warning of force and an attempt to use restraining equipment. Upon breaking free of the restraining device, the subject began striking his head and feet against the glass in the rear of the police vehicle. A review of the MVR tape revealed a verbally abusive and threatening subject who stated multiple times that officers would have to "kill him" before he would allow himself to be taken to the Justice Center. It is clear from the reporting and the officer interviews that chemical irritant was applied to prevent the subject from endangering himself or others on the scene. Based on these factors, the use of force appears compliant with the MOA.

8. Department Tracking Number: 2003-0646, 8/29/03

Summary of Incident: Police responded to the subject's residence for a disorder in progress. Responding officer could hear screams coming from inside the house and items being thrown. As officers attempted to gain entry, the subject came to the door in an intoxicated state and slammed the front door on the officer, striking his face. The subject was placed under arrest. On the way to the police car, the subject became resistant and attempted to break free while kicking, spitting, and attempting to "head butt" the officer. Chemical irritant was administered and the subject became compliant.

CPD Review: Command concluded that the use of force was consistent with Department guidelines and state law. Inspections reviewed and signed the Use-of-Force Report.

Monitor's Assessment: There is no indication in either the verbalization field or the narrative of the Use-of-Force Report whether a warning of impending force was provided. Notwithstanding, the facts as articulated in the reporting indicate that the escalation of violence towards the officer likely precluded a warning. Based on these factors, the use of force appears in compliance with the MOA.

II. Citizen Complaints

1. Department Tracking Number: 03030, 1/21/03

Summary of Incident: A male and female officer responded to burglar alarm from a broken window at a business next to a downtown hotel. The male officer noticed the complainant and his friend near the door and stopped them for questioning. The officers placed the two in the police car while the male officer went inside to view the hotel security camera video. The tape showed complainant in the area, but did not show the window being broken, and the officer came back out to the police car. Complainant's friend consented to be searched, and a small amount of marijuana was found. He was handcuffed and placed in the car. Complainant did not consent to be searched. According to the female officer, the complainant was uncooperative and argued with the officers, telling them that they had no right to stop him. Because the video was not enough for an arrest, the officers were going to get complainant's information and write a report for an investigator to follow up. They decided to take complainant to the District to complete a field interview card and take photographs. Complainant, however, alleged that the male officer punched him in the face. According to the complainant's friend, the male officer yelled at complainant and accused him of breaking the window and of lying about it. Both complainant and his friend state the officer then hit complainant in the face at least twice. The officers took both individuals to District 1, where the officers photographed complainant and filled out a field interview (FI) card on him, and processed the friend for the marijuana charge. The officer denies hitting the complainant or using any force. The female officer also states that the male officer did not hit complainant or use any force, and that complainant did not complain of any force or any injury.

CPD Review: Complainant called Communications later that day to make a complaint, and a sergeant responded to his apartment to take his statement. According to the sergeant, complainant at first said that he had been punched on the right side of his face, and then said he was

punched on the left. The sergeant stated that complainant smelled strongly of marijuana, his speech was slurred, and his pupils dilated. According to the sergeant, complainant also stated that there was a third witness to the incident who was in his apartment, but this person did not want to talk to the police. Complainant did not want to make a statement on tape. The investigating sergeant also noted that complainant had no visible injuries, nor were injuries visible in the photographs the officers took of complainant. The sergeant recommended that the complaint be closed as “unfounded.”

In reviewing the sergeant’s memo, the Patrol Bureau noted that this was an allegation of excessive force which needed to be reviewed by IIS. IIS then completed an investigation with taped statements of the officers and the witness (complainant’s friend), but was not able to contact complainant, who had moved and did not have a phone number listed. The IIS investigator also reviewed the security tape, which did not capture the interaction between complainant and the officers. IIS also reviewed the initial stop and the officers’ decision to transport complainant to District 1. IIS obtained a legal opinion from the City prosecutor, who determined that the Terry stop was valid, given the reasonable suspicion to stop and detain complainant, but that complainant should have been released at the scene and not transported to District 1 after the investigation did not reveal sufficient information that complainant was involved in the criminal offense. IIS determined that the excessive force complaint was “not sustained,” but closed the procedure violation as “sustained-other.” An administrative insight hearing was conducted with the District 1 captain and lieutenant.

Monitor’s Analysis: Although the District 1 sergeant initially treated the complaint as a CCRP complaint, CPD properly initiated an IIS investigation. The “not sustained” finding was based on the conflicting statements of the officers and the witness. In addition, the investigation included an analysis of the initial stop and the decision to transport the complainant to District 1, even though this was not part of the original allegation of force. Based on the legal opinion the prosecutor, CPD sustained a violation of policy. This investigation met MOA requirements.

2. Department Tracking Number 03052, 01/15/03

Summary: Two police officers stopped complainant for an improper change of course.¹⁸ Upon a consensual search, officers realized that complainant had lied about information relating to his date of birth, name, etc. As the officers attempted to handcuff complainant, he

¹⁸ This can be a lane change or turn without a signal, among other things.

attempted to break free from the officers. The officers took complainant to the ground and complainant struggled with the officers. The complainant alleged that during the course of the struggle, the officers used excessive force by administering five (5) strikes with the PR24 to various parts of his body, including hitting him in the back of the head. The officers state that complainant attempted to punch one of them during the course of the struggle. The officers state they used their PR24s to gain control of complainant after he punched one of the officers, but state they did not hit him with the PR24 in the head. The complainant managed to escape and a foot chase ensued. In the middle of the chase, the complainant stopped for an unknown reason. As the complainant was approached by one of the officers, the officer drew his weapon to effectuate the arrest. The officer states that he drew his weapon after telling the complainant to show what was in his right hand, and the complainant refused. When the officer drew his weapon, there were no visible signs of a weapon being held by the complainant.

CPD Review: Complainant and the involved officers were interviewed and taped. Complainant indicates that he was not resisting and that he was struck in the back of the head as well as other parts of his body by one of the officers, but he could not identify which officer. Complainant was transported to the hospital and photos were taken of the various injured areas. One photograph of complainant's rib area shows an apparent injury from the PR24; however the photo of the back of his head is inconclusive. The investigating sergeant did not interview the individuals who provided medical care to the complainant.

The Inspections Section noted the sergeant's failure to interview the treating physician at University Hospital and to document the physician's diagnosis on the Form F-18. In addition, Inspections directed the District captain and sergeant to address the officers' failure to have their MVR repaired prior to beginning their tour of duty. The MVR had been improperly working for a couple of days and the officers did not attempt to get it fixed in a timely manner. The finding on the excessive use of force allegations was "not sustained."

Monitor's Assessment: With respect to the investigation, the complainant had a passenger, who was not located and interviewed by the investigating officer. The interviews were generally conducted in an unbiased manner; however, the questions asked as to why the officer drew his weapon were leading. Additionally, the investigating officer did not resolve an inconsistency relating to whether or not it was necessary to draw the weapon. The officer indicated that as he was pursuing the complainant he could not see what was in the complainant's right hand. However, when the officers first had contact with the complainant, he was patted down and searched and there were no weapons found. The

officers also indicated that while they were pursuing the complainant, they never lost track of him. Thus, the statement by the officer in his taped interview that he feared for his life during the chase appears inconsistent with the situation as described by the officers.

In addition, the use of chemical irritant as a first level of force should have been explored more fully. The District Command concluded that after complainant attempted to punch the officer, chemical spray was impractical because an immediate response was needed. However, the review should also have examined whether chemical spray could have been used instead of taking complainant to the ground. Inspections correctly notes that the stop should have been recorded on the MVR. The officers were provided verbal counseling, but no ESL entries appear to have been made.

3. Department Tracking Number: 03122, 3/7/03

Summary: Officers made a traffic stop of a car turning into a parking lot for failure to use a turn signal. There was a female driver, a male in the front passenger seat and two males in the back seat. When they approached the car, the officers smelled marijuana. They asked the driver for consent to search the car and she said yes. The officer on the passenger side of the car told the front passenger to exit the car and move to the back of the car. According to the officer, when the passenger exited the car, he faced the officer and then tried to push past him and break away. The officer states that he grabbed the passenger by the back of his sweatshirt and pulled him back. The passenger swung his elbows and tried to flee. The second officer, by this time, had moved to the passenger side to try to assist his partner. Both officers tried to apply control holds unsuccessfully, and the passenger was pushed up against the car with his back to the trunk.

According to the passenger, when he got out of the car, the officer tried to search him and pat him down. He then turned around to face the officer to see why he was searching him. The passenger alleges that the officer grabbed him by the throat. He told the officer to let go of him but the officer tried to throw him down. The driver of the car states that when the passenger got out of the car, the officer said to him "you better not run" and the passenger responded "I ain't running." She then heard the subject being thrown onto the back of the car and she heard them slam into her trunk.

The MVR does not show the initial interaction, but does show the officers struggling with the passenger as they move to the back of the car. The subject is thrown against the trunk of the car, and then the two officers struggle to get the subject on the ground. Although out of the

MVR view, the struggle then continues next to the police car. One of the officers kned the subject to get him under control and on the ground. The officers state that while they were on the ground with the subject, he hit one of them in the head with his elbow. The officers sprayed the subject and when the subject tried to put his arm under his body, which the officer interpreted as an attempt to escape and also as an effort to reach for a potential weapon, one of the officers delivered three hand strikes (punches) to the subject's face. The subject alleged that he was punched and maced and kned in the back and neck. He also alleged that the officers called him a "punk" and a "bitch." The complaint was made by the passenger's sister.

CPD Review: The investigating sergeants interviewed the subject, the driver, the two officers and two additional witnesses. One witness stated that the passenger was trying to "jerk the police off him" and yelling "Get off, get off!" She stated the police slammed the passenger into the ground and punched him in the face, saying "Lay down, lay down!" She did not see the passenger punch or hit the officers. The Use-of-Force Report lists this witness as corroborating the police. A second witness saw the officers and the passenger struggling on the ground, but did not see the beginning of the struggle. The passenger was saying "I can't breathe" and one of the officers hit him in the face and said "Shut up bitch." This witness is also listed as corroborating the officers' version of the event.

The Use-of-Force Report concludes that the initial contact and the force used were consistent with Department policy. In an additional memo, the sergeant addressed several questions about the incident. He states that although the officers' and the subject's statements conflict, the MVR tape "shows the incident did not occur as [complainant] stated." He also addresses why chemical irritant was not used earlier in the incident, why one of the officers thought the subject might be armed, and the effectiveness of one of the officer's knee strike. He also counseled both officers for not turning on their external microphones for the MVR and for not wearing their hats. The lieutenant (and Acting District Commander) reviewing the investigation concurred that the force was within policy and agreed with the sergeant's recommendation that the complaint be closed as "not sustained." He also noted that additional photos should have been taken, that the driver should not have been handcuffed (after the passenger was taken into custody) and that a contact card should have been completed for the stop.

IIS interviewed the officers with respect to the officers' use of profanity, which they deny, and the subject's injuries, which the officers state they did not recall. On the Use-of-Force Form and Arrest Report, subject's injuries were listed as an "abrasion to right cheek, bruising to

left eye.” Based on a review of the sergeant’s interviews and the MVR tape, “which corroborates [the officers’] statements,” IIS recommended that the investigation be closed as “exonerated.”

Monitor’s Analysis: While the MVR tape does show a part of the struggle, it does not show the initial encounter or the later uses of force, such as the punches, and thus cannot confirm either the subject’s or the officers’ version of the incident. Moreover, an “exonerated” finding is inconsistent with an allegation of excessive force.¹⁹

4. Department Tracking Number: 03148, (Inspections 2003-0282), 4/4/03

Summary: A motorist called 911 to report that a man and a woman were in a car ahead of him; the woman got out of the car and the man chased her, grabbed her and forced her back into the car. This happened a second time. The caller followed the car as it sped through several red lights. Police were dispatched on a possible abduction and an officer pulled up behind the car. Before the officer activated her emergency lights, the car pulled into a hotel parking lot. Both the driver and passenger side door opened. As the driver (the complainant) “jumped” out, according to the officer, and approached the officer’s car, the officer exited her car. An officer from the St. Bernard PD was behind the first officer’s car and also exited. According to the CPD officer, the complainant had his hands in his pockets, and she ordered “Let me see your hands.” She pulled her gun because she did not know what he had in his pockets. The St. Bernard officer stated that the complainant threw his hands up in the air and asked “What’d I do? What’d I do?” The CPD officer ordered the complainant to get on the ground. The CPD officer told the investigating sergeant that the complainant said “What are you going to do, shoot me?” The St. Bernard officer states that the complainant said “Go ahead and shoot me, I pay taxes, I didn’t do anything wrong.” The officers continued to order the complainant to get on the ground, and the complainant refused to do so, telling the officers “I’m not an animal, and I’m not getting on the ground.” The officers also continued to order the complainant to keep his hands out of his pockets, but the complainant put his hands in his pockets more than once, and then emptied them by throwing things from his pockets on the ground. The CPD officer requested assistance, and requested that PCS keep the channel open, broadcasting that the complainant was not complying. She also states that when complainant put his hands in his pockets, she put her finger on the trigger, because she was concerned about whether he was armed. Complainant jumped down to the street level from a

¹⁹ The allegations relating to the officers’ language were not addressed in the IIS determination.

slightly elevated area next to the hotel parking lot, and leaned (or sat, according to the complainant) on the retaining wall (approximately three feet high).

Two CPD officers arrived as backup. The first approached the female CPD officer and asked whether she was OK; she answered yes. He also asked whether chemical spray had been used, and she answered no. He then approached complainant with the spray and warned him that he will be sprayed if he does not comply and lie on the ground. Complainant said "Don't spray me" and the officer again warned him that he would be sprayed if he did not get on the ground. Complainant refused, and the officer deployed the chemical spray. As the officer did so, complainant bent his head down and covered his face, and the chemical spray was not effective. The second officer had gone to the trunk of the police vehicle and retrieved a beanbag shotgun. The initial CPD officer and the St. Bernard officer state that the officer with the beanbag yelled "clear" and then discharged the beanbag shotgun. The St. Bernard officer states that complainant was leaning forward with his hands in his pockets, and that he was commanded "get your hands out of your pockets" twice before being shot with the beanbag. The officer deploying the beanbag and his partner state that the officer with the beanbag shotgun twice gave the complainant a command to get on the ground or he would be shot with the beanbag. Complainant states that he told the officer "Don't shoot me with the gun, I ain't done nothing." The round was fired from approximately 35 feet and struck complainant in the chest. Complainant was then taken into custody. Complainant states that after he was hit with the beanbag round he asked officers for the name of the officer who shot the beanbag, but was not given his name.

CPD Review: Supervisors were dispatched to the scene. One sergeant interviewed the officers and completed a Use-of-Force Form (Form 18TBFP) and a second interviewed the complainant at the hospital and completed a citizen complaint form and a supplemental memo on the incident. Both the Use-of-Force Form and the supplemental memo conclude that the use of the beanbag was not in compliance with CPD policy. The District Commander reviewed the investigation and concluded that both the use of the chemical spray and the use of the beanbag were not consistent with CPD policy. In making these findings, he concluded:

- The officers deployed force before confirming that there was a criminal offense, and thus the officers did not have probable cause to arrest the complainant. No officer told complainant that he was under arrest before force was used and he was handcuffed.

- While there was sufficient cause to detain complainant on the potential abduction charge, he was entitled to know why he was being stopped.
- The “threat level posed by [complainant] was minimal at best.” The officers did not make an attempt to take cover. There was no indication that he was armed and “he was not threatening or assaulting anyone.”

The Patrol Bureau Commander recommended that the complaint be sustained and that a Department Level Hearing be scheduled, and the Chief of Police approved. In preparing for the Department Level Hearing, IIS reviewed the investigation and re-interviewed the CPD officers.

IIS concluded that the complainant’s non-compliant behavior, in addition to “conspicuously ignoring” as stated on the Use-of-Force Form, included “Resistive Tension, Exaggerated Movement, Combative/Assaultive, Armed, Excessive Emotional Tension, Ceased all Movement, and Violent History.” Regarding subject’s pre-attack posture, in addition to “Non-Compliance” as listed on the Form 18, IIS concluded the complainant’s pre-attack posture included “Fighting Stance, Hand Set, Shoulder Shift, Target Glance, and Blank Stare.” IIS stated that the “beanbag shotgun may be used any time officers encounter individuals actively resisting or threatening harm to themselves or others,” citing CPD’s 9/2/02 Use-of-Force policy regarding beanbag use, and determined that in this case the complainant was actively resisting. Therefore, it determined that the complaint should be exonerated.

Subsequent to IIS’s review, CPD’s Inspections Section reviewed the use of force incident and determined that the use of force was consistent with CPD policy. It addressed each of the District captain’s conclusions as follows:

- Officers had specific and reliable information from the informant regarding details of the alleged crime and the description of complainant; the officers thus had reasonable suspicion to forcibly stop and detain complainant; complainant’s refusal to cooperate in the investigation of a possible abduction constituted probable cause for an arrest for Obstructing Official Business;
- Complainant’s refusal to cooperate prevented the officers from providing an explanation for the stop and investigation; it would be

speculation to assess complainant's probable behavior had he been given an explanation;

- The initial responding officer stated in her interview that she was fearful that the complainant might be armed; the other officers also had this concern, especially when complainant put his hands into his pockets;
- The probable cause to arrest complainant for obstruction allowed officers to use an amount of force necessary to effect the arrest.

Monitor's Assessment: There are a number of issues raised with respect to this file:

1. The MOA states that beanbag weapons "may only be used to subdue or incapacitate a subject to prevent imminent physical harm to the officer or another person." At the time of this incident, the CPD Use-of-Force policy was not consistent with this provision. Instead, the CPD policy, Procedure 12.545 dated 9/2/02, allowed the use of the beanbag shotgun for actively resisting individuals, even if they did not pose a threat of imminent physical harm.

2. On July 29, 2003, CPD issued its revised Use-of-Force Policy, Procedure 12.545 (replacing a 6/1/03 policy), which complies with the MOA. The revised policy states that "Beanbag shotgun and 40mm foam rounds may only be used to subdue or incapacitate a subject to prevent imminent physical harm."

3. The IIS and Inspections review of this incident occurred after CPD changed its Use-of-Force policy regarding beanbag shotguns. Neither office notes this policy change in its memorandum. Instead, the IIS memo cites the old (9/2/02) Use of Force policy. This is because the old policy was in effect at the time of the incident, and was appropriately used to determine whether the complaint should be sustained, or whether the officers' use of force was consistent with CPD policy. However, the fact that the change in policy was not noted does raise a concern regarding whether the new, more restrictive policy on the use of beanbag shotguns has been sufficiently disseminated and trained. If officers and supervisors believe that the beanbag shotgun can be used in any situation where they encounter an actively resisting individual, CPD would not be complying with the MOA.

4. Whether the officer's use of the beanbag in this case was consistent with the MOA depends on whether complainant posed a threat of "imminent physical harm" to the officers. IIS and Inspections

note that the officers feared that the complainant was armed, was not acting rationally, and kept putting his hands in his pockets in defiance of the officers' orders. Complainant was clearly non-compliant and "actively resisting," and a case could be made that complainant also posed a threat of imminent harm.

5. As noted by IIS, the initial interviews by the investigating sergeants were not complete. For example, they did not attempt to resolve inconsistencies among the statements of the officers and between the statements of the officers and the complainant, or fully explore what statements were made by the officers or the complainant during the encounter (e.g., they did not ask the truck driver who heard the officers yell "get down" if he heard any of the complainant's statements; they did not ask the officers why they did not provide an explanation to complainant, or whether they believed he posed an imminent threat.) The supervisors also did not follow up on complainant's allegation that he was not provided with the name of the officer who shot the beanbag.

6. While it was appropriate for IIS and Inspections to review the field investigation (indeed, the MOA and now CPD policy require a review by IIS of District investigations of complaints of excessive force), the re-investigation was incomplete. IIS interviewed only the CPD officers and did not interview the other witnesses or the complainant. While the initial purpose of the interviews was to clarify certain issues in preparation for the Department Level Hearing, once the initial finding was placed in question, a more complete investigation would have been appropriate.

5. Department Tracking Number: 03154, 5/29/03

Summary of Incident. On May 29, 2003, complainant's older brother was stabbed by his ex-girlfriend, causing minor injuries. District 5 officers responded, but the older brother was no longer on scene. One of the officers attempted to interview complainant's younger brother, at which time the officer states that the brother told him to "Get the fuck out of here." When the officer tried to interview complainant, the brother began approaching the officer. According to the officer, the brother stated "Didn't I tell you to get the fuck out of here?" and lunged at the officer. The officer grabbed the brother's wrists, and then pushed him against the police car. Complainant's mother and other witnesses did not see the younger brother lunge at the officer, but state that the officer got mad at the brother for not cooperating with the investigation and grabbed him and put him against the police car. As the officer was handcuffing complainant's brother, complainant became upset and approached the officer, telling him not to arrest her brother and to let him go. Several other officers told complainant to step away from the

officer and her brother. She continued to scream and the officers grabbed complainant by the arm and placed her against a police car and handcuffed her. Complainant was arrested for disorderly conduct and obstructing official business, and her brother was cited for disorderly conduct. The next day, complainant called the District to complain about her arrest and alleged that the officer who arrested her brother slammed him into the police car and that she also was slammed against the police car.

CPD Review: The sergeant taking the complaint sought to meet complainant to take photographs of the alleged injuries to her wrist and abdomen, but complainant declined. IIS interviewed several officers on scene, but there was one patrol officer and a responding sergeant who were not interviewed. IIS made several attempts to contact complainant without success, including phone calls, mail, and visits to her home address.²⁰ The complainant's younger brother also refused to discuss the incident with IIS. IIS was able to interview complainant's mother and another witness. IIS determined that the complaint was "not sustained."

Monitor's Analysis: As required by the MOA, IIS investigated this complaint despite the complainant's lack of interest in pursuing the complaint. The investigating supervisor asked probing questions of the officers to assess their basis for arresting both complainant and complainant's brother, but her concern for whether the elements of offenses could be articulated was not reflected in the sergeant's write-up of the case. Also, complainant reportedly went to the hospital the day after the arrest. While the sergeant tells complainant's mother that she will need a medical release form, there are no medical records in the IIS file.

III. CCRP Cases

1. Department Tracking Number 03204, 6/30/03

Complainant alleged discourtesy when he was stopped for a traffic violation. Complainant alleges that during the stop, the officer accused complainant of almost hitting his cruiser and then stated "Didn't you see the lines there?" Complainant told the officer that there were no visible lines in the roadway because of construction, and that he had turned at this intersection for years. Complainant states that the officer told him he should write more tickets for all the years complainant had been turning that way. Complainant then told the officer that he had an attitude problem.

²⁰ The investigating sergeant's report states that she attempted to visit complainant's home, but this was not noted on the sergeant's activity log.

The investigating sergeant was unable to contact complainant by phone after several attempts. He interviewed the involved officer, who remembered the stop but did not remember the conversation. The officer denied being rude or making the statements attributed to him by complainant. The sergeant also reviewed the MVR tape of the stop, which showed a normal traffic stop. However, because the officer did not activate his wireless microphone, it was not possible to verify what statements were made during the stop. The sergeant also reviewed tapes of other stops made by the officer that evening, which took approximately the same amount of time as this stop. The discourtesy allegation was closed as “not sustained,” but the MVR violation was closed as “sustained-other.”

2. Department Tracking Number 03207, 5/29/03

Complainant alleged that a CPD officer was discourteous at a traffic stop after complainant questioned the validity of the stop. Complainant merged in front of the off-duty officer’s car. The officer stopped complainant at the next light, and told complainant that he could get his fellow officers “to take care of this,” a statement that complainant felt was threatening. The officer stated that complainant became abusive when he suggested he might need other officers or a supervisor to resolve the matter. The investigating supervisor determined that the officer’s actions were not consistent with policy, as off-duty officers are not to make traffic stops except in emergency situations. The officer was counseled and an ESL issued. The complainant declined to participate in a resolution meeting.

3. Department tracking number 03211, 7/14/03

Complainant alleged discourtesy and racial profiling regarding a traffic stop. Complainant was a passenger in a car that was stopped based on expired tags. The driver also had a suspended license. Because of this, the officer told complainant (who did have a valid driver’s license) to drive home. While complainant was stopped waiting for a second passenger to make a call at a payphone, a second officer approached the car because the vehicle had only one working headlight. Complainant alleged that the second officer used language suggesting the reason they were stopped was because they were white in a black part of town. The investigating supervisor determined the complaint to be “not sustained” because the stop was based on a legitimate traffic violation, the officer denied making any such statements, other officers denied hearing such statements, and other witnesses at the scene could not identify which officer made remarks relating to race. Because the officer did not use his MVR during the stop, however, the investigating

supervisor made a finding of “sustained-other” and issued an ESL for the officer. A CCRP resolution meeting was held with the complainant and the officer. Because this complaint involved an allegation of discrimination, the investigation should have been reviewed by IIS to determine if any additional investigation was necessary.

4. Department tracking number 03215, 7/12/03

An officer made a disorderly conduct stop because the complainant yelled a threat to a person across the street. As the officer gave complainant the summons, complainant alleged that he told her to “shut the fuck up.” The officer denies making this statement, and an independent witness did not hear the officer say this. The investigating supervisor determined the complaint to be “not sustained.” Complainant declined a resolution meeting.

5. Department tracking number 03278, 6/24/03

This complaint stemmed from an investigation of an auto accident. While officers were investigating the accident, complainant was inside a nearby restaurant ordering food. Officers asked the complainant to come outside for an interview and determined that he was at fault in the accident. Complainant alleged discourtesy and that the officers did not call for medical care. Independent witnesses corroborated the officers’ version, and the investigating sergeant found the complaint to be “unfounded.” Complainant declined to participate in a resolution meeting.

6. Department tracking number 03280, 8/10/03

Complainant was pulled over for failure to stop at stop sign. The complainant refused to sign the citation, and was arrested. Complainant alleged that he was stopped because of his race. The officer stated that she could not see who was driving the car when she decided to make the stop. She also stated that the complainant became loud and yelled at her, and that she called a supervisor to the scene when the motorist refused to sign the citation. According to the investigation supervisor’s report, the passenger in the car agreed that there was no discrimination or profiling involved in the stop. The complaint was determined to be “unfounded.” The complainant declined to attend a resolution meeting, but explained to the investigating sergeant that he felt too many officers responded to the scene, and also that since there was little traffic and he was only two blocks from his home, he should not have been given a ticket. The supervisor provided an explanation of police procedures, and complainant stated that if a better explanation had been provided at the

time, he would have signed the citation. This is a second CCRP complaint that involved a discrimination allegation.

7. Department tracking number 03256, 7/29/03

Complainant alleged that he was arrested by an officer on a “bogus charge” (theft from restaurant) and that the officer had been “harassing and coercing” him since that time. According to the investigating sergeant, witnesses positively identified complainant at the scene as the person involved in the theft, but case was dismissed at trial when the witnesses were unable to identify complainant as the suspect. The complainant did not provide the sergeant with any specific examples of harassment or coercion, and the complaint was closed as “unfounded.” The disposition memo did not reflect whether the investigating sergeant interviewed the involved officer, however. The complainant did not participate in a CCRP resolution meeting.

8. Department Tracking Number: 03249, 7/18/03

Complainant alleged that an officer called him a “nigga” and improperly cited him for a pedestrian violation. This incident involved a sergeant who was on directed patrol at night and stopped two females on bicycles. At least one of the females appears to be related to complainant (she has the same last name), although this issue was not noted by the sergeant. According to the sergeant, during the stop, complainant walked across the street and interfered with his investigation. The sergeant told complainant to move on, but he refused. Two other officers pulled up at this time, and also told complainant to move on, which he refused to do. One of the officers cited complainant for a pedestrian violation (presumably jaywalking, though the report does not say).

The investigating sergeant in this incident was the sergeant who was involved in the initial stop. He states that he was present for all of the conversations between complainant and the officer, and that the discourtesy did not occur. The complaint was closed as “not sustained” and a resolution meeting did not take place because the phone number provided by complainant was not in service. Pursuant to the MOA, the supervisor investigating a complaint should not have been involved in the incident being investigated. In addition, the complainant’s allegation that the officer called him a “nigga” should have prompted additional scrutiny from IIS as a discrimination complaint.

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