



The Durability of Police Reform
The Metropolitan Police Department
and Use of Force: 2008-2015

January 28, 2016

Report Team:
The Bromwich Group LLC

A Report of the Office of the District of Columbia Auditor
Kathleen Patterson, District of Columbia Auditor



The Hon. Muriel Bowser, Mayor
The Hon. Phil Mendelson, Chairman of the Council of the District of Columbia
The John A. Wilson Building
Washington D.C. 20004

Dear Mayor Bowser and Chairman Mendelson,

I am pleased to share this report, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force, 2008-2015*, reviewing the policies and practices of our Metropolitan Police Department (MPD) on use of force. The review was conducted by The Bromwich Group, led by Michael R. Bromwich, who previously served as Monitor for a Memorandum of Agreement (MOA) between the District and the Department of Justice initiated by former Mayor Anthony Williams and former Chief of Police Charles Ramsey, and in effect from 2001 to 2008.

We believe this review is the first detailed retrospective examination of the sustainability of use of force reforms undertaken by a major urban police department. It is my hope that this will be extremely useful to you in your leadership capacities, and to the Department and public, and that it will, as well, be instructive for other police agencies as they wrestle with this timely and challenging issue in policing.

This comprehensive review found that the Metropolitan Police Department and its overall policies on use of force “continues to be consistent with best practices in policing” and with the provisions of the earlier MOA. At the same time, it identified some deficiencies that need to be addressed. MPD has narrowed the categories of use of force that are now documented and investigated. The structure and management of the Force Investigation Team have changed and, at times, the quality of investigations has not been as robust as it was designed to be. In addition, the report documents significant delays in the U.S. Attorney’s Office review of officer-involved fatal shooting cases. Such issues can be readily addressed and, in fact, some changes are already under way. The review includes 38 recommendations to strengthen both policy and practice so that MPD continues to serve as a national leader on use of force. In a few substantive areas, the review team and MPD leadership disagree on the best approach, and the report and its exhibits explain the differing points of view.

Beyond the specific findings and recommendations, this review clearly demonstrates that it is possible to enact and sustain reform when a commitment to such action is made at the highest leadership levels. In this instance, a mayor and a police chief initiated a partnership with the Department of Justice, and the legislature supported that partnership with significant funding over a number of years. This review and the recommendations also underscore the importance of independent oversight by civilian entities such as the Office of the District of Columbia Auditor to ensure that the commitment to policing reform is sustained over time.

I would like to thank Michael Bromwich and his team for their expertise and good work, and Chief Cathy Lanier and her leadership team for their collaboration in producing a report that is comprehensive, accurate and – we hope -- useful.

Sincerely yours,

Kathleen Patterson
District of Columbia Auditor



THE DURABILITY OF POLICE REFORM

THE METROPOLITAN POLICE DEPARTMENT AND USE OF FORCE: 2008-2015



THE BROMWICH GROUP LLC
JANUARY 2016

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The Review Team wishes to express its appreciation for the assistance provided by Arthur Baines, Jack Herman, Tamara Schulman, Carly Johnson, Lorraine Bucy, and Melissa Schwartz at various stages of this review and in preparing this report.

Table of Contents

	Page
Executive Summary	i
I. Introduction	1
II. Background of Review	4
III. Independent Monitoring of the MOA	8
IV. Scope of Review, Staffing, and Methodology	11
V. MOA-Related Developments 2008-15.....	13
A. Use of Force Overview	13
B. Merger of FIT into IAD.....	19
VI. Review Team Findings and Recommendations	22
A. Use of Force Policies	22
1. General Use of Force Policy	22
2. Use of Firearms Policy	25
3. Canine Policies and Procedures.....	26
4. Oleoresin Capsicum Spray Policy	29
B. Use of Force Reporting, Investigations and Training	30
1. Changes in MPD Use of Force Reporting and Investigations.....	33
2. Review of Use of Force Investigations.....	40
3. Use of Force Investigations Training of IAD Investigators	48
C. Use of Force Review Board.....	56
1. Timing Issues.....	58
a. USAO Referrals and Declinations.....	58
b. Completion of MPD Administrative Investigations	62
2. Operation of the UFRB.....	65
D. PPMS and Supervisory Support Program.....	68

E.	Professional Conduct and Intervention Board (PCIB).....	74
F.	Audits and the Office of Risk Management.....	79
G.	Review of Officer-Involved Fatal Shootings	83
1.	Raphael Briscoe.....	83
a.	Original Reason for Pursuit	86
b.	Leading Questions.....	87
c.	Transcription of Interviews.....	89
d.	No Determination Whether Use of Force Consistent with Training.....	89
e.	Timeliness.....	91
2.	Abney.....	93
3.	Gray	97
H.	Assault on Police Officer Review.....	102
VII.	Summary of Recommendations.....	107
A.	Use of Force Policies	107
B.	Use of Force Reporting, Investigations and Training	108
C.	Use of Force Review Board.....	110
D.	PPMS and Supervisory Support Program.....	111
E.	Professional Conduct and Intervention Board	112
F.	Audits and the Office of Risk Management.....	113
G.	Review of Officer-Involved Fatal Shootings	113
H.	Assault on Police Officer Review.....	114
VIII.	Conclusion	114

Exhibits

- A. Memorandum of Agreement, June 13, 2001
- B. Findings Letter, June 13, 2001
- C. Use of Force Investigations Order (2002)
- D. Use of Force General Order (2002)
- E. Canine Teams General Order (2005)
- F. Chronology of Changes in Reporting and Investigating Use of Force
- G. Use of Force Review Board General Order (2015)
- H. Professional Conduct and Intervention Board General Order (2015)
- I. MPD's Comments on Draft Report and Recommendations (December 22, 2015)
- J. MPD's Comments on Draft Executive Summary (January 8, 2016)
- K. United States Attorney's Office Comments on Draft Report (December 21, 2015)
- L. United State Attorney's Office Supplemental Comments on Draft Report (December 24, 2015)
- M. United States Attorney's Office Comments on Draft Executive Summary
- N. Review Team Recommendations, MPD Responses, and Review Team Replies

Executive Summary

This report evaluates whether the District of Columbia's Metropolitan Police Department (MPD) remains in compliance with the June 2001 Memorandum of Agreement (MOA) between MPD, the District of Columbia, and the United States Department of Justice (DOJ). The 2001 MOA required MPD to adopt a broad set of reforms relating to the use of force by police officers, and to incorporate those reforms into policies, procedures, and training. The goal was to create a culture of accountability and constitutional policing within MPD. Although MPD is currently under no legal obligation to maintain these reforms, they establish meaningful benchmarks for assessing MPD's current management of the use of force. We were asked to undertake this review by the Office of the District of Columbia Auditor (ODCA). This report reflects fieldwork conducted from May through late September 2015 and includes certain use of force data through the end of 2015.

We have seen much that is positive in our review of MPD. MPD's command staff remains committed to limiting and managing use of force – and to fair and constitutional policing. MPD has reduced its use of the most serious types of force, including firearms, even during periods of increased crime in the District of Columbia. Importantly, we have seen no evidence that the excessive use of force has reemerged as a problem within MPD. But we have also identified some significant shortcomings that need to be addressed, including changes in the requirements for reporting and investigating use of force that impair MPD's ability to manage use of force, and declines in the quality of use of force investigations. In addition, we found systemic problems, involving both MPD and the United States Attorney's Office for the District of Columbia (USAO), that result in excessive delays in resolving officer-involved fatal shootings. All of this is described in detail in this report.

Our review, although limited to MPD, comes at a time of intense national focus on the relationship between local law enforcement agencies and the communities they serve. Within the last two years alone, the use of force policies and practices of police departments across the country – in Ferguson, Baltimore, New York City, Cleveland, Albuquerque, Newark, and, most recently, Chicago – have been the focus of community unrest, DOJ civil rights investigations, and intense media scrutiny. In addition, in December 2014, President Obama created the Task Force on 21st Century Policing with a mandate to examine use of force issues.

MPD was one of the first local law enforcement agencies to successfully navigate a reform process initially triggered by profound concerns about its use of force and its management of use of force. Beginning in 1999, MPD experienced a comprehensive, two-year DOJ civil rights investigation focusing

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on use of force, a binding agreement by MPD and the District of Columbia to implement substantial reforms, and a multi-year period of outside independent monitoring. As far as we know, this review marks the first retrospective examination of its kind – an analysis of the durability of such use of force reforms many years after independent monitoring ended – of any of the law enforcement agencies investigated by DOJ during the period 1994-2004, the first decade during which DOJ had statutory authority to investigate such matters.

Because of limitations of time and resources, we did not review all aspects of MPD's continued adherence to the MOA. Instead, we selected issues that we considered among the most significant reforms embodied in the MOA and implemented within MPD. We focused on the adequacy of MPD's use of force policies; MPD's use of force investigations; the operations of MPD's Use of Force Review Board (UFRB); MPD's systems for dealing with at-risk officers; and the operations of MPD's Office of Risk Management, the Department's internal oversight entity. In addition, we reviewed three officer-involved fatal shooting cases, and examined issues related to the alleged use – and potential abuse – of charges for alleged assaults on police officers.

The Review Team received excellent cooperation from MPD throughout this project, from our project liaison up to and including Chief Cathy L. Lanier. From the outset, Chief Lanier and her command staff showed strong interest in the results of our work and demonstrated a willingness to promptly address some of the deficiencies we identified. In early December, we circulated a draft of this report to MPD, inviting its comments and its responses to the report's 38 recommendations. We met with Chief Lanier and her staff for approximately four hours on December 16, and received a 42-page written response from MPD on December 22. We believe this process, and MPD's deep engagement with it, have resulted in a better report. Of our 38 recommendations, MPD has said it agrees with and will implement 15, agrees in part with 13, and disagrees with 10 – although of the 10 with which it disagrees, four relate to a new MPD program, and MPD therefore views the recommendations as premature.¹

Background

The MOA was a detailed charter for reforming MPD. It addressed all aspects of the use of force by MPD officers. It included detailed prescriptions for

¹ We have attached MPD's detailed comments on the report and its responses to the 38 recommendations as Exhibit I, and our detailed replies to MPD's responses to the recommendations in Exhibit N. Because of its brevity, this Executive Summary only addresses a subset of the Review Team's recommendations and does not, except in a few instances, address MPD's responses to those recommendations.

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary**

appropriate use of force policies; the implementation of those policies, including the training of MPD personnel; the reporting and investigation of uses of force by MPD officers; and many other related issues. Over a period of six years, beginning in the spring of 2002, an independent monitoring team, which included the members of the team that undertook the present review, assessed MPD's progress under the MOA and determined whether MPD was in substantial compliance with the MOA's requirements.

In April 2008, in large part as a result of the strong leadership of MPD Chief Charles H. Ramsey and Chief Lanier, and their commitment to the principles of the MOA, the Independent Monitor recommended that the MOA and the monitorship be terminated, even though substantial compliance with each provision had not been fully achieved. As stated in the Independent Monitor's Final Report:

In the seven years since the parties executed the MOA, MPD has become a much more sophisticated police agency in terms of training its officers in the proper use of force, investigating and reviewing use of force incidents and allegations of misconduct, and reaching out to citizens and members of the public based on sound principles of community policing. We believe that the City's and MPD's success in implementing the MOA's reforms, which are now embedded in the Department's internal policies and practices, stands as a model for municipalities and police departments across the country.²

In hiring The Bromwich Group LLC³ to undertake the current review, the District of Columbia Auditor, Kathleen Patterson, sought to determine whether the reforms implemented over the course of a decade – from the time the DOJ investigation was launched in 1999 until the time the MOA and independent monitoring terminated in 2008 – remained in place seven years later, even in the absence of any legal obligation binding the MPD, and whether MPD's use of force policies, practices, and training reflect best practices in law enforcement.

² Independent Monitor, Final Report, at 3-4, available at <http://www.policemonitor.org/MPD/reports/080613reportv2.pdf>.

³ The team assembled by The Bromwich Group to conduct this review ("the Review Team") was led by Michael R. Bromwich, who served as the MPD Independent Monitor of the MOA from 2002-08, and two key members of his independent monitoring team: Dennis E. Nowicki, former Chief of the Charlotte-Mecklenburg Police Department; and Ann Marie Doherty, former Superintendent of the Boston Police Department.

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The MOA focused on the use of different types of force available to MPD officers and the reporting, investigation, tracking, and management of such force. To determine recent patterns and trends, the Review Team examined data reflecting the use of different types of force ranging from the use of firearms to less serious uses of force such as hand controls and individual and team takedowns. Significantly, MPD's data from 2001 to the present show that the incidence of intentional firearms discharges by MPD officers, the issue at the center of the original media coverage and the 1999 DOJ investigation, has declined significantly, from 28 intentional discharges in 2001, 30 in 2004, and 31 in 2007, to seven in 2010, nine in 2012, nine in 2014, and 15 in 2015. Since 2009, the number of officer-involved fatal shootings has consistently been in the range of three to eight per year. Each officer-involved fatal shooting is its own tragic story, and we did not review the facts and circumstances of each incident. However, each such case is reviewed both by the USAO and internally within MPD. According to the USAO and MPD, none of the cases involving a fatal shooting has resulted in a criminal prosecution. Although the Review Team identified problems with the process that has been in place to review officer-involved fatal shootings—centering on the length of time it takes to consider the case for potential prosecution—the data do not support the claim that MPD officers use their firearms excessively.

The data for the use of other, non-firearms types of force by MPD officers tell a generally similar story. From 2008 through 2015, the use of ASPs (batons), bites of suspects by canines, and the use of OC Spray (commonly referred to as pepper spray) have remained at relatively consistent levels, with minor exceptions. The less serious uses of force—hand controls and tactical takedowns—which are consolidated by MPD for reporting purposes, show much greater variation, with a high of 503 in 2009 and a low of 260 in 2011. It is difficult to draw conclusions from this set of data, in part because of certain policy changes implemented in recent years. Even so, our review of the raw data shows no evidence of any significant or sustained increase in any category of use of force employed by MPD officers.

Use of Force Policies

We have reviewed MPD's core use of force policies—its overall use of force policy, as well as its specific policies governing the use of firearms, canines, and OC Spray. In general, we found that MPD's use of force policies are both consistent with the MOA and continue to reflect best practices in law enforcement, with a small number of exceptions. Nonetheless, and consistent with a recent report issued by the DC Police Complaints Board, we recommend that MPD's use of force policy be modified to include more detailed discussion of neck restraints—including chokeholds—and that the use of neck restraints be

The Durability of Police Reform The Metropolitan Police Department and Use of Force Executive Summary

reported and investigated as a serious use of force. In addition, we recommend that the use of MPD canines be more limited than current policy permits. Finally, as a matter of sound policy formulation, and especially given the current ferment in the law enforcement community concerning use of force, we recommend that MPD undertake a comprehensive review of its use of force policies every two years, and if necessary, make appropriate revisions.

Use of Force Reporting, Investigations, and Training

One of the cornerstones of the MOA was the requirement that MPD officers report all uses of force. In 2002, MPD developed a comprehensive use of force reporting policy that required MPD officers to document their uses of force, as well as a detailed system for assigning responsibility for investigating uses of force. In general, investigations of all incidents involving deadly force, serious use of force, and use of force indicating potential criminal conduct were assigned to the Force Investigations Team (FIT). FIT was an elite unit created by Chief Ramsey in 1999 to investigate officer-involved fatal shootings. FIT's responsibilities were subsequently extended to include uses of force that involved broken bones, hospitalizations, head strikes, loss of consciousness, and canine bites. Incidents involving less serious uses of force—that is, incidents not involving deadly force, serious use of force and use of force indicating potential criminal conduct—were to be investigated by the involved officer's chain of command in the various MPD police districts.

Although MPD's early efforts to require comprehensive use of force reporting encountered numerous obstacles in the years immediately following their 2002 implementation, MPD achieved high rates of use of force reporting starting in approximately 2006. High rates of reporting and investigating uses of force continued through the termination of the MOA and independent monitoring in early 2008. But the Review Team learned that starting in that same year, MPD began making a series of changes in its use of force reporting and investigations policies. The cumulative effect of those changes has been to remove certain less serious types of use of force—hand controls and individual and team takedowns (unless there is reported injury or complaint of pain)—from the reporting and investigation requirements originally established by the MOA. The Review Team believes that those changes weaken the comprehensive system for reporting, tracking, and managing less serious uses of force. In addition, those changes were implemented using teletypes, a longstanding method for making policy changes within MPD but one that lacks full transparency.

MPD believes that because reporting and investigation have been required when the suspect was injured or complained of pain, and because it had

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not seen excessive use of force or misconduct in cases involving these less serious uses of force, its supervisory resources were better spent elsewhere. We believe that MPD's changes to its use of force reporting and investigative policies deprive the department of valuable information that it needs to manage use of force effectively. Accordingly, we have recommended that MPD reinstate use of force reporting for certain less serious uses of force—i.e., hand controls and resisted handcuffing—and that it reinstate use of force reporting and investigations for individual and team takedowns.

In 2012, MPD merged FIT, its elite use of force investigations unit, into MPD's Internal Affairs Division. MPD provided the Review Team with several reasons for the merger, with primary emphasis on steep declines in FIT's workload. FIT's average annual caseload of 66.3 cases between 2004 and 2009 had dropped to an average annual caseload of 37.6 cases between 2010 and 2012. MPD also claimed that some of the FIT investigators had over time shown a tendency to shade their findings to justify the use of force when an objective review of the facts by MPD supervisors did not support that conclusion. The MPD attributed this alleged bias, at least in part, to FIT investigators being members of the police union. Following the 2012 merger, all IAD members were prohibited from joining the police union, eliminating the potential conflicts of interest inherent in having an officer investigate a fellow union member.

The members of the Review Team, when they served as members of the independent monitoring team from 2002 through 2008, reviewed every FIT investigation conducted during that period and were consistently impressed with the quality of those investigations. Even so, the question is not whether FIT should have been retained as a standalone entity—sharply declining caseloads is reason enough to consider structural alternatives—but whether MPD has ensured that it has retained a corps of skilled and experienced investigators capable of conducting complex use of force investigations and writing high-quality investigative reports. Based on interviews with IAD investigators, USAO prosecutors, UFRB members, and review of a limited sample of use of force investigations performed by IAD investigators, as well as the review of cases that came before the UFRB between early June and the end of September, the Review Team concluded that the quality of use of force investigations has deteriorated over the past seven to eight years. We provide a number of recommendations to address the need to improve the quality of those investigations, including a recommendation that IAD be restructured to create specialists in conducting use of force investigations. The need for maintaining such expertise is especially pressing because, with the passage of time and the large number of transfers and retirements involving former FIT personnel, MPD urgently needs to replenish its group of skilled use of force investigators.

The Durability of Police Reform The Metropolitan Police Department and Use of Force Executive Summary

Use of Force Review Board

The Use of Force Review Board (UFRB) is the internal entity that provides the most senior-level review of the most serious uses of force by MPD officers. It reviews all use of force investigations completed by IAD, any chain of command use of force investigations referred to the Board by the Internal Affairs Bureau, and all vehicle pursuits that result in a fatality. An MPD Assistant Chief chairs the UFRB, and its members include five other senior members of the Department.

For each case, the UFRB reviews an investigative file prepared by IAD investigators. The UFRB is authorized to recommend corrective or adverse action in cases where the use of force was inappropriate, and to recommend non-disciplinary actions – including additional training or tactical improvements – that its review suggests are appropriate. The MOA emphasized the crucial position of the UFRB within MPD, and by the time independent monitoring ended in early 2008, the UFRB, after an unsteady beginning, had shown dramatic improvement and was in full compliance with the MOA.

During the course of our review, the Review Team identified a significant issue that has affected the work of IAD, the UFRB, and the ability of MPD to properly adjudicate its most serious use of force cases. All serious uses of force by MPD officers are investigated as potential criminal matters by the USAO even though criminal prosecutions of MPD officers are exceedingly rare. Indeed, according to the USAO, there has never been a criminal prosecution of an on-duty MPD officer arising from an officer-involved fatal shooting. Thus, the likelihood of a criminal prosecution in connection with an officer-involved fatal shooting, or other serious use of force, is very small. Even so, legal reasons require that the criminal investigation take precedence, and certain aspects of the administrative investigation cannot proceed until the USAO has declined prosecution.

Early in our work relating to the UFRB, we reviewed cases reflecting extremely lengthy intervals between the underlying events and the conclusion of the USAO's criminal investigation and review. Our review of additional data confirmed that this was part of a broader pattern that had caused concern among senior MPD officials. Our analysis of officer-involved fatal shooting cases during the five-year period 2009-2014 showed that the average time for the USAO criminal investigation and prosecutorial review was more than 19 months, far longer than the typical investigation-and-review period during the six-year period of independent monitoring that ended in 2008. These criminal investigations and extended reviews were explained in part by the need to obtain

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various forensic reports, but also by a paper-intensive, multi-layered review at the USAO. Although such cases are serious and deserve thorough investigation and careful scrutiny, the process should not take two or three years, or more.⁴

We found that the extended criminal investigations and prosecutorial review of officer-involved fatal shootings and other serious uses of force have had serious consequences for the administrative investigations conducted by IAD, and for the review of those investigations by the UFRB. Although MPD must be careful not to take steps in the administrative investigation that might compromise the criminal investigation – such as compelled interviews of the officer(s) whose conduct is under investigation – the Review Team found that, in many instances, the MPD administrative investigation is unnecessarily deferred. Instead of moving forward with steps that would enable it to expedite the completion of the administrative investigation once the USAO has completed its review, IAD generally has not advanced the administrative investigation and developed the investigative file until after MPD has received the USAO's declination to prosecute. This is frequently long after the preliminary investigation was completed and sent to the USAO.

Extended USAO review, coupled with lack of attention to the requirements of the administrative investigation, have had a number of adverse consequences. First, if the needs of the administrative investigation are ignored until the USAO completes its review, substantial additional investigative work may be required after the case has been sent back to MPD – in many cases by a different investigator because the original investigator may have transferred or retired due to the passage of time. Evidence may be less accessible because of the length of time that has elapsed during the USAO's investigation and consideration of the case. This creates a significant timing issue because the law requires that any disciplinary action against a MPD officer must be commenced within 90 days of the underlying incident. Although the period during which the officer's conduct is the subject of a criminal investigation is excluded from the calculation of time, the 90-day clock resumes once the USAO's declination sends the case back to MPD. Lack of attention to the administrative investigation during the intervening period thus threatens the ability of the UFRB to initiate disciplinary action.

Our observation of the UFRB's meetings and discussions confirmed the importance of these difficulties. Our review found that IAD has a chronic problem completing the administrative investigation in sufficient time for the

⁴ Between the beginning of 2011 and the end of 2015, six out of the 13 officer-involved fatal shooting cases involving MPD officers took more than two years for the USAO to resolve, and only two were resolved in less than a year. In all 13 cases, prosecution was declined.

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary**

UFRB to conduct a timely review of the case without sacrificing the ability to take disciplinary action. Of the 23 cases heard by the UFRB over a six-month period in 2015, 12 were addressed by the Board with seven days or fewer left in the 90-day period. This timing problem forces the UFRB to confront the difficult choice of deciding to direct IAD to conduct further investigation – with the knowledge that doing so would bar the imposition of any discipline on the officer – or deciding the case based on an incomplete or inadequate record.

The Review Team observed the UFRB’s consideration of 20 cases over the course of seven separate sessions between early June and late September. Although we were troubled by the UFRB’s superficial discussion of one of the earliest cases we saw it consider, we generally saw serious and systematic discussion of the facts of individual cases. In those cases, we saw the UFRB function as it should – experienced MPD personnel engaging in a detailed discussion of serious uses of force, including in several cases involving fatalities. That is a credit to the importance the majority of UFRB members attach to their responsibilities.

Our interviews of four of the six members of the UFRB reinforced this generally positive view of the UFRB, but also led to a number of recommendations contained in our report. These include the need to provide orientation for new UFRB members to make them fully aware of their important responsibilities; we determined that some members were unfamiliar with certain requirements embodied in UFRB policy. Significantly, the UFRB members were critical of the quality of the IAD investigations they review, noting the frequency of gaps in those reports, and their formulaic “cut-and-paste” quality. The ability of the UFRB to function properly relies on the quality and timeliness of IAD investigative reports, and the improvement of IAD investigative reports requires close attention to specific training of IAD investigators in conducting use of force investigations. The UFRB can do its part to improve this process by monitoring the progress of IAD in completing serious use of force investigations and providing candid feedback to IAD investigators on the quality of their work. In addition, we have noted areas for improvement in the way the UFRB conducts its business, including performing types of analysis required by MPD directives that are not currently followed.

PPMS, the Supervisory Support Program, and the PCIB

The MOA required MPD to develop a computerized early warning system – the Personnel Performance Management System (PPMS) – that would provide a means for MPD managers to track uses of force by officers throughout the Department. From the beginning, PPMS was a star-crossed project. Budget

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complications, contractor issues, technical difficulties, and other problems prevented MPD from meeting the requirements of the MOA, and PPMS was one of the three issues for which MPD had continuing reporting responsibilities to DOJ after the MOA's termination.

PPMS was installed and made available to all members of MPD in 2011. Although the Review Team did not conduct an exhaustive review of PPMS, our impression—based on discussions with MPD and USAO personnel who have access to PPMS—is that it meets MPD's basic needs regarding information on individual officers, but that it nonetheless falls short of the MOA's original requirements. MPD personnel at all levels are well aware of the limitations of PPMS.

The Review Team examined in greater depth MPD's Supervisory Support Program (SSP), a risk management tool developed as a component of PPMS. SSP assists MPD managers and supervisors in identifying problematic behavior by MPD officers and addressing it to protect the officer, MPD, and the community. SSP operates on a points system, with certain categories of officer behavior assigned a certain number of points. These categories include unjustified uses of force and sustained misconduct charges, with points assigned to each category. Once an officer reaches a certain threshold of points an SSP "case" is created and transmitted to the officer's first- and second-level supervisors. The supervisors work with the officer, prepare an assessment, and create an intervention plan to address the identified issues.

The intervention plan is designed to address the underlying behavior and each incident, and to include counseling by the officer's direct supervisor; it also may include training, increased field supervision, and referral to various types of counseling and medical services. Various types of follow-up are built into the SSP system. The system automatically notifies the SSP administrator if information relating to the follow up is not properly and timely entered into the system.

MPD advised us that only 50% of the cases created through the SSP result in a form of intervention; in the other 50% of the cases, the manager and direct supervisor determine that no intervention is required. According to MPD, 15-20% of SSP cases result in referrals to MPD's Employee Assistance Plan, while other outcomes include mandatory training and increased supervision. The SSP administrator prepares monthly and quarterly reports of pending SSP cases. The most common types of cases involve accidents of various types and violations of MPD orders or directives.

MPD was candid with us about the current shortcomings of the SSP system, which are largely the result of the failure of MPD supervisors and

The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary

managers to invest the time, energy, and effort necessary to make the system work properly. MPD cited several reasons for these shortcomings: 1) the failure of managers to submit timely assessments and intervention plans; 2) the assessments and intervention plans are poorly written and frequently fail to adequately address the issues that gave rise to the officer's SSP case; and 3) managers frequently provide insufficient justification for not completing an intervention plan or rejecting the need for one. In addition, MPD has recognized that MPD supervisors need further training to familiarize them fully with their SSP responsibilities, to improve assessments and intervention plans, and to eliminate mismatches between the intervention plans and the original behavioral indicators.

In addition to these weaknesses, we identified several additional concerns. PPMS/SSP does not require an assessment in cases where an officer has received numerous complaints but MPD investigations of the allegation have found insufficient facts to substantiate the allegations. Multiple complaints of excessive force or other misconduct that have not been substantiated because of insufficient facts may provide an important warning flag for a possible at-risk officer; multiple complaints against an officer alleging similar conduct should flag that officer for review. Although the PPMS/SSP system does not currently generate SSP cases on this basis, our understanding is that it could be adjusted to do so – with the formal assessment and intervention plan in cases based at least in part on unsubstantiated allegations being discretionary rather than mandatory. In addition, supervisors can on their own initiative review the histories of officers under their supervision and conduct an assessment. We have recommended that the software be tweaked to flag officers against whom multiple use of force or misconduct allegations have been lodged even if not substantiated, and that MPD's analysis of PPMS data focus not only on individuals but also on units and sub-units within MPD.

During the course of our work, MPD introduced us to the Professional Conduct and Intervention Board (PCIB), an entity created by MPD in early 2014 to address patterns of officer behavior outside the context of a specific case and separate from the SSP. The PCIB is an MPD institutional innovation designed to address individual MPD members whose behavior has caused concerns within the department, with the goal of proactively managing at-risk officers. The review of individual officers that has become the core of the PCIB was designed to go well beyond the somewhat mechanical mechanism of the SSP, and to be proactive in identifying at-risk officers and ensuring management accountability. These have included the use of integrity checks – *i.e.*, the creation of artificial scenarios requiring police intervention for the purpose of observing and evaluating the officer's conduct – in order to prevent and detect officer

The Bromwich Group

misconduct. The PCIB is based on the recognition that efforts to be proactive in identifying at-risk officers, including the SSP, collided with various institutional and data limitations, and was designed to overcome them.

The PCIB has diverse membership, ranging from the Assistant Chief for Internal Affairs, who chairs the PCIB, to the Director of MPD's Medical Services Branch, and includes twelve other members. It meets on a monthly basis to review a small number of cases involving individual officers. The criteria for referral include past documented uses of force, citizen complaints against the officers, requests from supervisors for Board review and intervention, and multiple poor performance evaluations. The Board reviews previous actions taken by the officer's managers and supervisors to address the officer's conduct to determine any shortcomings in the way it previously been addressed. Based on recommendations of the Board, the Chair determines what action to take, and which members of the Board will be responsible for implementing them.

Although our window on the PCIB was limited, the Review Team was impressed by the PCIB's goals, its broad and diverse membership, and the seriousness with which its members appear to take their responsibilities. The PCIB reflects recognition that the investigative and disciplinary mechanisms within MPD cannot adequately address all of MPD officers who create risk through their use of force and their interactions with the public. The PCIB appears to be a creative and promising new tool to manage personnel who have engaged in behavior that risks antagonizing the public, endangering relationships with the community, exposing the officer to potentially career-ending consequences, and creating litigation risk for MPD and the city.

Audits and the Office of Risk Management

MPD's Office of Risk Management (ORM) was created during the MOA to demonstrate MPD's ability to conduct rigorous and objective reviews in the subject areas covered by the MOA. In late 2005, MPD created the predecessor of the Office of Risk Management, the Quality Assurance Unit, within the Office of Professional Responsibility. During 2006, 2007, and early 2008, the Independent Monitor team worked closely with the QAU, providing it with technical assistance as well as assessing its competence. By the time the monitorship concluded in 2008, the QAU seemed well on its way to serving as a robust internal audit and monitoring unit, an important tool for ensuring the continuation of MPD-related reforms.

As part of a broad, September 2007 reorganization, the QAU was renamed the Office of Risk Management (ORM), but it continued to undertake many of the types of reviews previously conducted by the Independent Monitor. In its Final Report, the Independent Monitor team explicitly tied its recommendation

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary**

for early termination of the MOA to the ongoing work of ORM. The Final Report noted the competence and professionalism of ORM's personnel and MPD's commitment to providing ORM with adequate resources to conduct objective reviews and audits, observing that the commitment was "one of the strongest signs that there will be no backsliding by MPD as a result of the termination of the MOA."⁵

Unfortunately, our review of the audits performed by the ORM during the period 2010-2014 shows that the expectation that ORM would continue to serve as an effective force for ensuring the durability of MPD's MOA-related reforms was unfounded. The decline in ORM's performance was not immediate – it conducted several MOA-related audits in 2009, including audits on use of force reporting (covering a six-month period in 2008), chain of command investigations, UFRB recommendations, and canine deployments. We reviewed these reports and found that the audits were performed capably and professionally, under the same leadership as when the MOA terminated in 2008.

However, the quality and extent of ORM's coverage of MOA-related issues declined steeply throughout the period 2010-14. During those years, only a small fraction of ORM audits and reviews were relevant to MOA-related issues. Of 204 audits completed during that five-year period, only 10 (5%) examined MOA-related issues. There were no audits whatsoever during this five-year period on some of the most important reforms implemented by MPD between 2002 and 2008. The deficiencies in the coverage of MOA-related issues during this period were matched by the poor quality of the few audits that were conducted. The MOA-related audits from 2010 and 2014 were of vastly inferior quality to the audit reports reviewed by the Independent Monitor during the period when the MOA was in force. The reports were poorly organized, included extensive (and unnecessary) block quotations from MPD rules, and contained very little meaningful analysis and very few recommendations.

MPD provided us with three MOA-related audit reports performed in FY 2015, after ORM had once again been placed under the MPD official who headed the office from 2005 to 2009. We found those reports – including an audit of canine deployments and an audit of the system by which probationary officers are trained in the field following their recruit training – to be dramatic improvements over the reports completed during the previous five-year period.

⁵ Independent Monitor, Final Report, June 2008, p. 9 (quoting Independent Monitor Letter from Michael R. Bromwich to Shanetta Y. Cutlar, Cathy L. Lanier, and Philip K. Eure regarding "Early Termination of MOA Provisions Pursuant to Joint Modification No. 4" (April 1, 2008)).

The Bromwich Group

In addition, MPD in early November provided us with a list of MOA-related audits on ORM's audit plan for FY 2016. These include scheduled audits of canine deployments, the SSP, use of force reporting, chain of command misconduct investigations, and two separate audits on UFRB recommendations. These audits will all focus on significant MOA-related issues long neglected by ORM. For the first time in many years, audits of MOA-related reforms make up a significant share of ORM's audits: 11 out of 47 (23%).

We welcome the recent refocusing of ORM on important issues relating to the use of force by MPD officers. MPD must ensure that ORM operates under leadership that recognizes the importance of reviewing, at periodic intervals, the important issues covered by the MOA, and that is capable of carrying out such audits in a responsible and professional manner. We are sympathetic to MPD's argument that priorities for such audits change over time, and that the resources for conducting such audits are limited. We also understand that certain audits are mandatory, further reducing the resources available to conduct MOA-related audits. Even so, there should never be a time when MOA-related issues are ignored to the extent they were during the period 2010 to 2014.

Officer-Involved Fatal Shooting Cases

The Review Team was asked to review cases of three officer-involved fatal shootings to assess the adequacy of the use of force investigations conducted by MPD. Our mandate was to assess MPD's actions in investigating and analyzing the conduct of the involved officers, to determine whether those actions are consistent with the requirements of the MOA, and to assess whether the relevant MPD institutions, including FIT/IAD and the UFRB, performed their responsibilities in a manner consistent with the MOA and with best law enforcement practices. The cases involve the officer-involved shootings of Raphael Briscoe, on April 26, 2011; Michael Abney, on October 4, 2014; and Gregory Marcus Gray, on December 24, 2014.

In the Briscoe case, we reviewed the entire FIT investigative file and the record of the UFRB's consideration of the case. The Review Team found that the evidence supported FIT's findings that at the moment the officer fired the shots that killed Mr. Briscoe, his actions were justified and within MPD policy because he reasonably believed that Mr. Briscoe had a real firearm rather than the inoperable BB gun he actually possessed. However, we found serious deficiencies in the manner in which the FIT investigation was conducted, including the failure to recognize and reconcile inconsistencies in the reasons given for the original pursuit, the excessive use of leading questions during the investigation, and discrepancies between the written summaries of investigative interviews and the tape recordings of those interviews. In addition, neither FIT

The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary

nor the UFRB made a serious effort to conduct a tactical analysis of the actions of the officers in the Briscoe case.

In the Abney and Gray cases, our review was extremely limited. We had completed our fieldwork by the time the Abney IAD administrative investigation was completed in early December and therefore were unable to review the complete investigative file. The Gray criminal investigation was still pending at the USAO in early January 2016. Our review of the incomplete Abney IAD investigative file raised questions about why the files did not reflect investigative work conducted after the cases had been referred to prosecutors. As discussed at length in the report, this lack of attention to moving forward with assembling the administrative investigation while IAD awaits a prosecution decision creates problems for the timely completion of the IAD investigation and for the UFRB's full and unhurried consideration of the case. Because the criminal investigation of the Gray case remained under USAO review through early January 2016, we were asked by the USAO and MPD to eliminate from the report the brief section the Review Team had drafted about the Gray case. We have substituted a section that relies solely on publicly available information relating to the death of Mr. Gray and, therefore, contains no analysis of IAD's investigation.

Assault on Police Officer Review

We were asked to explore issues surrounding arrests and prosecutions in recent years for assault on police officers (APO) in the District of Columbia. Specifically, we were asked to try to determine whether the charge is used excessively and for conduct that is less serious than the phrase "assault on a police officer" would suggest.

The DC assault on a police officer statute was broadened in 2007 to include a misdemeanor charge that covered incidents in which certain assaults on MPD officers could not be prosecuted as felonies because the officers were not seriously injured. However, the creation of a misdemeanor APO charge brought within its scope incidents that did not involve assaults on police officers, including ill-defined behavior that "resists opposes, impedes, intimidates, or interferes," with MPD officers. As experience accumulated with the misdemeanor prong of the statute, it proved increasingly problematic. The statute's vague language allowed arrests for conduct that did not match the common understanding of assaultive behavior, and accorded MPD officers broad discretion to make arrests for mere noncompliance with their commands. In some cases, relatively trivial instances of non-violent non-compliance with police officer commands led to misdemeanor arrests for assault on a police officer.

The Bromwich Group

The defects in the misdemeanor APO statute were publicly recognized by MPD. In 2014 testimony before the DC Council’s Judiciary and Public Safety Committee, Chief Lanier supported the need for changes in the APO statute, stating that making arrests for APO that is not an assault “naturally causes tensions between police and residents.” Subsequent explorations of the APO issue by the media highlighted troubling aggregate data as well as specific cases in which the facts raised serious questions about the propriety of the arrests. In response to the perceived flaws and inequities in the misdemeanor APO statute, the DC Council is currently considering legislation that would make significant changes to the law.

We examined the APO issue from a different perspective than the media and legislature. We looked at the extent to which MPD officers reported using force in cases where arrests were made for felony or misdemeanor APO. To assess whether the use of force was being reported in APO cases, we requested a listing of Complaint Control Numbers of incidents occurring between January 2014 and April 2015 where an arrestee was charged with APO. The likelihood of an officer using force is high in incidents where the officer claims that he has been the victim of an assault, especially in felony APO cases where the statute requires the officer to suffer “significant bodily injury.” From the list containing 1714 such incidents, we randomly selected two samples of APO cases—75 felony cases and 75 misdemeanor cases.

Our review of the 150 APO cases allows us to draw only limited conclusions about MPD’s use of force during arrests for APO, in part because of the threshold that currently exists for reporting use of force. Because individual and team takedowns were, as of July 2014, no longer reportable uses of force unless they resulted in injury or complaint of pain, we were unable to tell how many of the felony or misdemeanor arrests involved these forms of force, or other actions by MPD officers that would have been reportable under MPD’s original use of force reporting policies but that are no longer reportable.

We expected that felony APO arrests would have involved a higher percentage of reportable uses of force than misdemeanor APO arrests. In fact, they did so—of the 75 felony APO arrests we reviewed, 21 (28%) involved reported uses of force; of the 75 misdemeanor APO arrests, only 11 (14.7%) involved reported uses of force. Although the low percentage of reported uses of force in misdemeanor APO cases supports the conclusion that it is used in a large number of cases in which there is no violent behavior towards the officer—nothing like the common-sense meaning of an “assault”—we would have expected a higher percentage of felony APO cases to involve reported uses of force. Our review was sufficiently limited that we were unable to determine

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary**

whether the low percentage of reported uses of force in felony APO cases reflects the under-reporting of uses of force, the over-charging of felony APO, or some measure of both.

Conclusion

Our review of MPD during 2015 focused on whether its policies, practices, and procedures have remained consistent with the June 2001 MOA and are consistent with current law enforcement best practices. As described in detail in this report, we have reached a mixed verdict.

MPD has generally kept in place the use of force policies and procedures that brought it into substantial compliance with the MOA more than seven years ago, even though it was under no legal obligation to do so once the MOA was terminated in 2008. At the same time as the policies and procedures have remained in place, we have seen evidence of the MPD command staff's continuing commitment to those reform principles and to fair and constitutional policing. MPD's record in successfully reducing its use of the most serious types of force, including firearms, even during periods of increased crime in the District of Columbia, speaks for itself – and we have seen no evidence that the excessive use of force has reemerged as a problem within MPD. MPD is plainly a very different, and much better, law enforcement agency than it was when DOJ began its investigation in 1999. In addition, Chief Lanier and her command staff have confronted the important issue of how best to identify officers whose behavior creates risk for themselves, MPD, and the public and have launched an innovative program (the PCIB) to address those risks, although at this point on a small scale.

However, we have found some significant deficiencies in key areas covered by the MOA. We have found that certain use of force policies are in need of revision to reflect best practices in law enforcement. More significantly, we have found significant changes in the requirements for reporting and investigating use of force by MPD officers that we think have gone too far. Specifically, except where there is an injury or complaint of pain, MPD no longer requires the reporting and investigation of certain relatively less serious uses of force, up to and including individual and team takedowns. We think those modified reporting and investigations thresholds, especially with respect to takedowns, are inconsistent with law enforcement best practices. The changes result in a large number of less serious uses of force going unreported and

The Bromwich Group

uninvestigated, and thus deprive MPD of valuable data that can help it to manage at-risk officers.⁶

In addition, the Review Team found substantial evidence showing that the quality of serious use of force investigations has declined. MPD's elite use of force investigations unit – FIT – has been disbanded and merged into IAD, though declining FIT caseloads over time make this reorganization decision understandable. Unfortunately, the intensive and continuing training needed to maintain high-quality use of force investigations has not occurred. The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce unsatisfactory use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view.

As we have described in this report, the shortcomings in Internal Affairs investigations and investigative reports have had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the use of force by MPD officers is consistent with MPD policies and law enforcement best practices. In examining the handling of the most serious use of force cases – including officer-involved fatal shooting cases – we found the system for conducting criminal and administrative investigations to be plagued by significant delays that impede the prompt resolution of these cases. We found that MPD and the USAO share responsibility for these delays in the most serious cases involving fatalities, and that much of the responsibility lies with the USAO. Even so, MPD needs to conduct its administrative investigations more expeditiously, and complete them promptly once the USAO's criminal investigation is complete. In addition, we found that the Office of Risk Management, the internal unit within MPD that audits programs and operations – and that was a vital part of ensuring the durability of MOA-related reforms – virtually stopped conducting MOA-related audits and reviews during a five-year period (2010-2014). This absence of oversight may well have contributed to some of the weaknesses we have identified.

Some of these shortcomings are less the result of explicit policy choices or conscious decisions to deemphasize use of force issues and more the result of other factors, many of them beyond MPD's control. These factors include the

⁶ In its comments on the draft report, MPD argues that scarce MPD resources are better spent deploying supervisors on the street rather than having them prepare paperwork relating to less serious uses of force such as resisted handcuffing or takedowns when there is neither injury nor complaint of pain. We fully understand the resource argument but think that our recommendations on changing MPD's reporting and investigations requirements advance the goals of managing use of force within MPD without the excessive or inappropriate diversion of scarce MPD resources.

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force
Executive Summary**

transfer and retirement of personnel who played key roles in MPD's system for dealing with use of force issues, an inevitable loss of focus on these issues after a period of intense attention to them, and the emergence of competing priorities. However, as described in this report, other changes have been conscious and deliberate, and they have reduced the number of uses of force that are documented, investigated, and reviewed.

Even though these deficiencies are significant, they are eminently remediable. We have been encouraged by the prompt and aggressive response of Chief Lanier and her command staff as we provided periodic briefings during the course of our review. Indeed, MPD has promptly and constructively responded to both the observations that we shared during the course of our work and the recommendations contained in this report. We believe that our recommendations, if accepted and fully implemented, will help address the weaknesses we have found to exist in MPD's system of self-governance regarding use of force.

In a time of extraordinary national attention on the conduct of law enforcement agencies and their relationship to the communities they serve, MPD operates from a position of substantial strength. Many years ago, MPD successfully adopted and implemented a full complement of reforms on most of the central issues involving use of force. Indeed, it transformed itself into a leader on these issues, a police department that many other law enforcement agencies turned to for advice and guidance.

To ensure its continued leadership on use of force issues, MPD must protect and enhance the policy and practice reforms that transformed the department. It must continue to work hard to prevent the natural erosion of important reforms that comes naturally with the passage of time, and to make sure, through continuing focus on use of force issues, that those bedrock reforms remain embedded in the culture of the department.

I. Introduction

This report evaluates whether the District of Columbia's Metropolitan Police Department (MPD) continues to be in compliance with the terms of a June 2001 Memorandum of Agreement (MOA) between MPD, the District of Columbia, and the United States Department of Justice (DOJ). The immediate goal of the MOA was to require MPD to adopt, implement, and institutionalize a broad set of reforms addressing the details of policing, with a special focus on issues relating to the use of force by police officers. The long-term goal was to incorporate these reforms into policies, procedures, and training to establish within MPD a culture of constitutional policing and a respect for the civil rights of the members of the community it serves.

We were asked to undertake this review by the Office of the District of Columbia Auditor (ODCA), pursuant to a contract between ODCA and The Bromwich Group LLC. Our objective has been to assess whether MPD policies, practices, and training – especially those relating to the use of force by MPD officers – remain consistent with the MOA and best practices even though MPD is under no continuing legal obligation to comply with the MOA. We were also asked to review three officer-involved fatal shootings and to explore issues associated with MPD officers making arrests of citizens for alleged assaults on police officers. This report reflects the review and assessment we conducted over the past several months.

The MOA was in many respects a detailed charter for reforming MPD, with broad and exacting requirements addressing all aspects of the use of force by MPD officers: use of force policies; the implementation of those policies; the training of MPD personnel on use of force policies and procedures; the investigation and review of force used by MPD officers; and many other related issues.

Our review, although limited to MPD, comes at a unique time, against the backdrop of intense and unprecedented national focus on the relationship between local law enforcement agencies and the communities they serve. Within the last two years alone, the use of force policies and practices of police departments across the country – in Ferguson, Baltimore, New York City, Cleveland, Albuquerque, Newark, and, most recently, Chicago, among other places – have been the focus of community unrest, DOJ civil rights investigations, and intense media scrutiny.

Indeed, the importance of these issues, and the large number of communities in which they have emerged as problems of broad and profound

The Bromwich Group

concern, led President Obama, in December 2014, to create the Task Force on 21st Century Policing.¹ A panel composed of experienced law enforcement professionals, community leaders, and academics, the Task Force focused on a broad set of issues implicating the relationship between law enforcement agencies and the communities they serve, with use of force issues as a principal focus. The Task Force published its Final Report in March 2015, addressing a range of issues affecting the policies and practices of local law enforcement agencies and their interactions with communities.²

In this context, a review of MPD, the leading law enforcement agency operating in the nation's capital, is extremely timely. MPD was one of the first local law enforcement agencies to successfully navigate an extended multi-step process triggered by profound concerns about its use of force and its methods for investigating uses of force. Beginning in 1999, MPD's experience included a comprehensive DOJ pattern and practice investigation, a binding agreement to implement substantial reforms, and a multi-year period of outside independent monitoring focused on the implementation of those reforms. As far as we know, this is the first time a retrospective examination of this kind – an analysis of the durability of such use of force reforms many years after the end of independent monitoring – has been undertaken in any one of the law enforcement agencies investigated by DOJ during the period 1994-2004, the first decade during which DOJ had statutory authority to investigate such matters.³

The bulk of the work described in this report commenced in May and extended through the end of September 2015, although we continued to gather relevant follow-up information from MPD into early January 2016. Because of limitations of time and resources, we could not (and did not) review all aspects of MPD's continued adherence to the MOA. Instead, we selected issues that we

¹ <https://www.whitehouse.gov/blog/2014/12/18/president-obama-creates-task-force-21st-century-policing>.

² *Final Report of the President's Task Force on 21st Century Policing* (May 2015), available at http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf ("President's Task Force Report").

³ These cities include Steubenville, Ohio (1997); Pittsburgh, Pennsylvania (1997), Los Angeles, California (2001); Cincinnati, Ohio (2002); and Detroit, Michigan (2003). In 2005, the Vera Institute conducted a retrospective review of the Pittsburgh Bureau of Police but the fieldwork began while independent monitoring was continuing and ended within eighteen months after monitoring ceased. Robert C. Davis, Nicole J. Henderson, Christopher W. Ortiz, *Can Federal Intervention Bring Lasting Improvement in Local Policing: The Pittsburgh Consent Decree*, Vera Institute of Justice, 2005. http://www.vera.org/sites/default/files/resources/downloads/277_530.pdf.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

considered among the most significant elements of the MOA-related reforms implemented within MPD. Specifically, we focused on the adequacy of MPD's use of force policies; the policies, practices, and training governing MPD's use of force investigations, including a review of a sample of those investigations; the operations of MPD's Use of Force Review Board (UFRB); MPD's systems for dealing with at-risk officers; and the operations of MPD's Office of Risk Management, its internal oversight entity. In addition, as noted above, we undertook examinations of three officer-involved shooting cases resulting in citizen fatalities⁴ and aspects of issues related to arrests for alleged assaults on police officers.

In early December 2015, we provided a draft of this report to MPD and the United States Attorney's Office for the District of Columbia (USAO) and invited comments on the report and responses to our recommendations. On December 16, we met for more than four hours with Chief Cathy L. Lanier and members of the MPD command staff to discuss specific issues addressed in the draft report. On December 22, MPD submitted extensive written comments asking for various changes and clarifications to be made in the report and responding to each of the report's 38 recommendations, and on January 8, it provided written comments on a draft of the Executive Summary. On December 21, the USAO submitted comments on the report; on December 24 it supplemented its response based on follow-up questions that we asked; and on January 8 it provided comments on the draft the Executive Summary.

We have carefully reviewed all of these comments and have made a substantial number of changes in the report to address the facts and arguments presented by MPD and the USAO. In addition, in many instances where we have declined to make the requested changes, we have noted MPD's and the USAO's comments and concerns in the text or footnotes. At the request of MPD and the USAO, we have included their comments as exhibits to this report. MPD's comments on the draft report and on the Executive Summary are attached, respectively, as Exhibits I and J. The USAO's comments are attached as Exhibit K, L, and M.⁵ Finally, Exhibit N consolidates in one document the Review

⁴ As we discuss in detail below, our review of two of the three officer-involved fatal shootings was sharply limited because of the incomplete state of the MPD administrative investigations through the end of November.

⁵ In its comments on the draft report, MPD correctly pointed out that it is under no continuing *legal* obligation to remain in compliance with the requirements of the MOA. We have noted this above. As described below, MPD's legal obligations terminated in 2008, as did independent monitoring of MPD's compliance with the agreement. For a brief period of time, as noted below, (footnote continued)

The Bromwich Group

Team's original recommendations, MPD's responses, and our replies to those responses.

We believe this process, and MPD's deep engagement with it, have resulted in a better report. Of our 38 recommendations, MPD has said it agrees with and will implement 15, agrees in part with 13, and disagrees with 10— although of the 10 with which it disagrees, four relate to a new MPD program, and MPD therefore views the recommendations as premature.

II. Background of Review

In June 2001, MPD, the District of Columbia, and the Department of Justice entered into a landmark Memorandum of Agreement (MOA) that addressed a wide range of issues relating to the use of force by MPD officers.⁶ The MOA was the culmination of events that began several years earlier.

In late 1998, the *Washington Post* published a five-part series that focused on a broad range of issues relating to MPD's use of force, including officer-involved shootings.⁷ The *Post* articles made a number of disturbing claims, including that

- MPD officers fired their weapons at more than double the rate of officers in other major police departments;
- During the period 1994-98, MPD officers had shot and killed more people (57) than in Chicago, which at the time had a police force three times as large and a population five times as large; and
- During the same period, MPD officers were involved in 640 shooting incidents, 40 more than the Los Angeles Police Department, which at the time had twice as many officers and a population six times as large.

MPD was required, even after the MOA's termination, to continue reporting to DOJ on three specific issues.

⁶ Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department (June 13, 2001), available at <http://www.justice.gov/crt/memorandum-agreement-united-states-department-justice-and-district-columbia-and-dc-metropolitan>. A copy of the MOA is attached to this report as Exhibit A.

⁷ Jeff Leen, Jo Craven, David Jackson, and Sari Horwitz, *District Police Lead Nation in Shootings – Lack of Training, Supervision Implicated as Key Factors*, *Washington Post* ((Nov. 15, 1998) (first of five articles)).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

In addition to the large number of officer-involved shootings, the *Post* series highlighted alleged inadequacies in the way MPD conducted investigations of uses of force by MPD officers. In particular, the *Post* documented the high percentage of cases in which the use of deadly force by officers was found to be justified and within MPD policy, calling into question the thoroughness and impartiality of those investigations.

In January 1999, D.C. Mayor Anthony A. Williams and MPD Chief Charles H. Ramsey invited DOJ to “review all aspects of [MPD]’s use of force.”⁸ Under the Violent Crime Control and Law Enforcement Act of 1994, the DOJ was authorized to investigate local law enforcement agencies for a pattern or practice of depriving citizens of their civil rights through the excessive use of force or other improper actions.⁹ At the time, the request of Mayor Williams and Chief Ramsey was unprecedented: although DOJ had previously investigated numerous law enforcement agencies under the authority conferred by this legislation, it had not previously been *invited* by the law enforcement agency to conduct the pattern and practice investigation.¹⁰

The DOJ launched its investigation shortly after receiving the request. After a two-year investigation, DOJ found “a pattern or practice of use of excessive force by MPD.”¹¹ More specifically, the DOJ found, among other things, that

⁸ MOA, ¶ 1.

⁹ See 42 U.S.C. § 14141.

¹⁰ The mayors of other cities have subsequently invited DOJ to conduct such investigations. Baltimore did so in May 2015 following the highly publicized death of Freddie Gray. See Luke Broadwater, *Baltimore mayor seeks federal investigation of police department*, The Baltimore Sun (May 6, 2015), available at <http://www.baltimoresun.com/news/maryland/politics/bs-md-ci-doj-partnership-20150506-story.html>. More recently, Illinois Attorney General Lisa Madigan requested a DOJ pattern and practice investigation of the Chicago Police Department following the release of a videotape showing the fatal shooting of Laquan McDonald by a police officer. Illinois Attorney General, *Madigan Asks United States Department of Justice Civil Rights Division to Investigate Chicago Police Department* (Dec. 1, 2015), available at http://www.illinoisattorneygeneral.gov/pressroom/2015_12/20151201.html.

¹¹ Letter from William R. Yeomans to Honorable Anthony Williams and Chief Charles Ramsey (“DOJ Findings Letter”), available at <http://www.justice.gov/crt/findings-letter-re-use-force-washington-metropolitan-police-department>. A copy of the Findings Letter is attached as Exhibit B.

The Bromwich Group

- Approximately 15% of the use of force incidents reviewed by DOJ reflected the use of excessive force, compared to an expected rate in well-managed and adequately-supervised departments of 1-2%;
- MPD's use of force policies were inadequate and inconsistently followed;
- MPD's use of force investigations were deficient and gave rise to concerns about the competence, thoroughness, and impartiality of those investigations;
- MPD lacked an adequate program and systems to minimize the use of excessive force;
- MPD did not have an adequate system for addressing citizen complaints of officer misconduct, including excessive force; and
- MPD's use of force training curriculum for officers was inadequate.¹²

In short, while praising MPD for its willingness to initiate the inquiry, the DOJ investigation and its Findings Letter reflected a powerful indictment of MPD's practices and systems regarding use of force.

As the Findings Letter and the MOA acknowledged, by the time the Findings Letter was issued and the MOA was signed, MPD had already begun to implement, under Chief Ramsey's leadership, a number of reforms addressed to many of the deficiencies identified during the DOJ investigation. Indeed, DOJ's Findings Letter explicitly recognized that those reforms had already contributed to a reduction in the use of deadly force by MPD officers. Citizen fatalities resulting from the use of force by MPD had dropped from 11 in 1998, to four in 1999, and to two in 2000. The MOA acknowledged that MPD had "begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues."¹³

¹² *Id.*

¹³ MOA ¶ 2.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

The MOA was announced at a June 13, 2001, press conference held jointly by U.S. Attorney General John Ashcroft, Mayor Williams, and Chief Ramsey.¹⁴ At the press conference, Attorney General Ashcroft observed:

We are confident that when the balance of the reforms contained in this agreement are implemented, the DC Metropolitan Police Department will be a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary. And, we hope that the cooperative approach adopted by MPD and the Department of Justice likewise will serve as a model for how Justice can help police agencies fix a problem, rather than merely fix the blame.¹⁵

The reforms Attorney General Ashcroft referred to were contained in the MOA, a lengthy and detailed instrument that addressed each of the areas in which the DOJ investigation had found deficiencies.¹⁶ In addition, the MOA mandated specific reforms needed to ensure that MPD's policies, procedures, and training adequately dealt with the full range of relevant issues. The MOA required changes and reforms in the following areas, among others:

- Use of force policies, including a general use of force policy, as well as specific use of force policies governing firearms, canines, and Oleoresin Capsicum Spray (pepper spray);
- Use of force reporting policies and practices, and investigations of use of force;

¹⁴ United States Department of Justice, *Justice Department Reaches Agreement with District of Columbia Metropolitan Police Force* (June 13, 2001), available at <http://www.justice.gov/archive/opa/pr/2001/June/260cr.htm>.

¹⁵ Transcript of June 13, 2001 Press Conference, available at <http://www.justice.gov/crt/attorney-general-news-conference-dc-mayor-anthony-williams-and-dc-police-chief-charles-ramsey>.

¹⁶ Many of the DOJ investigations that have produced similar findings have been resolved by consent decrees, which are supervised by a federal district court. By contrast, the MOA was not placed under the supervision of the courts, although DOJ reserved its rights to enforce the MOA through filing suit. MOA ¶¶ 184-85. The *Washington Post* recently examined aspects of DOJ's national pattern and practice program over the twenty years of its existence. Kimbriell Kelly, *et al.*, *Forced Reforms, Mixed Results*, *Washington Post/Frontline* (Nov. 13, 2015), available at http://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results/?hpid=hp_rhp-more-top-stories_copreforms-227am%3Ahomepage%2Fstory.

The Bromwich Group

- Handling of citizen complaints relating to misconduct, including allegations of excessive use of force;
- Discipline of MPD officers found to have violated MPD policies;
- Training on use of force and related matters;
- Development of an information technology personnel management and supervisory tool (PPMS); and
- Management of Specialized Mission Units.

The MOA was signed on June 13, 2001, by Mayor Williams, Chief Ramsey, and representatives of DOJ's Civil Rights Division.

III. Independent Monitoring of the MOA

The MOA required the selection of an independent monitor to review and assess MPD's compliance with the Agreement. As set forth in the MOA, the independent monitor's responsibilities included conducting a comprehensive review of MPD's compliance with all the aspects of the MOA, including MPD's use of force policies, practices, training, and its system for supervising and overseeing use of force and misconduct investigations.¹⁷ The monitor was required to file quarterly reports tracking MPD's progress in implementing the MOA-mandated reforms and determining whether MPD was in substantial compliance with the MOA's requirements.

In January 2002, MPD and DOJ jointly selected a monitoring team led by Michael R. Bromwich, the former Inspector General of the Department of Justice, and at the time a partner with the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). In addition to other Fried Frank personnel, the monitoring team included three experienced policing experts, as well as statisticians from a major accounting firm.¹⁸

¹⁷ MOA ¶¶ 161-180.

¹⁸ At the outset, the policing experts serving on the monitoring team were Dennis E. Nowicki, the former Chief of Police in Joliet, Illinois, and Charlotte, North Carolina; Mitchell W. Brown, the former Chief of Police in Raleigh, North Carolina; and Ronald L. Davis, then a Captain with the Oakland, California, Police Department. Chief Nowicki remained a member of the monitoring team for the duration of the assignment. In late 2004, Ann Marie Doherty, the former Superintendent of the Boston Police Department, joined the monitoring team; she remained a member of the team through the filing of the independent monitor's final report in June 2008.

(footnote continued)

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Although MPD's compliance with many of the MOA's provisions took substantial time and effort, the monitoring of MPD proceeded smoothly, based in large part on MPD's full and consistent cooperation. Between June 2002 and June 2008, the Independent Monitor filed an initial Special Report, a Summary Compliance Report, twenty-three Quarterly Reports, and a Final Report.¹⁹ The MOA had set the presumptive duration of the independent monitorship at five years, but this was subject to potentially indefinite extension if MPD had demonstrated "substantial compliance" with all aspects of the MOA. The MOA placed the burden on MPD to demonstrate compliance with each of the provisions of the Agreement.

The definitions of substantial compliance for the different substantive provisions of the MOA were developed through discussions among MPD, DOJ, and the Independent Monitor and were agreed to by MPD and DOJ. In light of the large number of requirements in the MOA, and the substantial effort required to change and improve the policies, practices, and training in a major law enforcement agency, it was not surprising that MPD was unable to come into substantial compliance with the MOA within five years.

In April 2008, however – and in large part as a result of the strong leadership of Chief Ramsey and Chief Lanier²⁰ and their commitment to its underlying principles – the Independent Monitor recommended that the MOA and the monitorship be terminated, even though substantial compliance with each MOA provision had not been fully achieved.²¹ This recommendation was based on MPD's having achieved substantial compliance with the vast majority of the MOA's 126 substantive provisions and requirements, and having shown substantial improvements with respect to the rest. DOJ approved the Independent Monitor's recommendation, and in early April 2008 both the MOA

The statisticians who worked with the monitoring team, Jessica Pollner and Arthur Baines, were at the time affiliated with PricewaterhouseCoopers.

¹⁹ All the reports filed by the Independent Monitor are available at www.policemonitor.org.

²⁰ Chief Lanier took over as Chief of MPD in January 2007.

²¹ Independent Monitor, Final Report, Exhibit D (April 1, 2008 Letter from Michael R. Bromwich to Cathy L. Lanier, Shanetta Y. Cutlar and Philip Eure), available at <http://www.policemonitor.org/MPD/reports/080613reportv2.pdf>.

The Bromwich Group

and the independent monitoring of MPD's compliance with the MOA terminated.²²

By the time the monitorship concluded, MPD had made substantial improvements in a wide range of its policies, procedures, and training. As stated in the Independent Monitor's Final Report:

In the seven years since the parties executed the MOA, MPD has become a much more sophisticated police agency in terms of training its officers in the proper use of force, investigating and reviewing use of force incidents and allegations of misconduct, and reaching out to citizens and members of the public based on sound principles of community policing. We believe that the City's and MPD's success in implementing the MOA's reforms, which are now embedded in the Department's internal policies and practices, stands as a model for municipalities and police departments across the country.²³

As part of the understanding at the time the MOA and independent monitoring terminated, MPD agreed to submit follow-up information to DOJ on three specific provisions of the MOA with which MPD had not achieved substantial compliance: 1) MPD's efforts to fulfill its obligations regarding community outreach and citizen complaints; 2) the deployment of the Personnel Performance Management System (PPMS), a computer database of information related to the performance of MPD officers;²⁴ and 3) issues relating to MPD's Field Training Officer (FTO) program.

At the outset of the current review, we met with personnel in the Special Litigation Section of DOJ's Civil Rights Division to obtain information on the continued reporting by MPD on these remaining issues. We were provided with documents reflecting MPD's continued reporting to DOJ on the three issues described above; these included audits by MPD's Office of Risk Management regarding community outreach and citizen complaints and its Field Training Officer program, as well as documentation regarding PPMS. Based on those records, and additional documentation subsequently provided by MPD, it

²² *Id.*, Executive Summary at 1.

²³ *Id.* at 3-4.

²⁴ PPMS was designed to enable MPD, among other things, to proactively identify and manage at-risk officers. For virtually the entire period of the monitorship, MPD experienced lengthy delays in implementing PPMS, largely because of multiple design and implementation problems. *Id.* at 81-90.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

appears that MPD provided information in 2008 on all three issues and, after a lengthy hiatus, certain follow-up information on PPMS in 2011 and 2012.

IV. Scope of Review, Staffing, and Methodology

The March 16, 2015 agreement with ODCA governing the current review required The Bromwich Group to

review the policies, procedures, and operations of the Metropolitan Police Department (MPD) addressed in the June 13, 2001 Memorandum of Agreement [among the] United States Department of Justice DOJ), the District of Columbia, and the MPD, including all the Modifications to the MOA, and addressed in the reports of the Office of the Independent Monitor during the period of 2002-08. It will also review MPD actions with regard to the following officer-involved fatal shootings:

- Raphael Briscoe on April 26, 2011
- Michael Abney on October 4, 2014
- Gregory Marcus Gray on December 24, 2014

These shootings will be reviewed for consistency with the requirements of the MOA. [The Bromwich Group] will report on whether additional best practices have been developed nationally since the development of the MOA and whether MPD should consider adopting them.²⁵

The Bromwich Group's team consisted of Michael R. Bromwich, the former MPD Independent Monitor, as well as two of the police practices experts who had served on the original independent monitoring team: Dennis E. Nowicki and Ann Marie Doherty. Chief Nowicki had participated in the original DOJ investigation as well as the entire six years of the monitorship; Superintendent Doherty had served on the MPD monitoring team for more than three years.²⁶

²⁵ Expert Services Agreement, Contract # ODCA 2015-02, March 16, 2015.

²⁶ In this report, Mr. Bromwich, Chief Nowicki, Superintendent Doherty, and the other participants in the review are collectively be referred to as "the Review Team." In addition to these members of the team, Arthur Baines of Charles River Associates provided statistical advice
(footnote continued)

The Bromwich Group

On April 29, District of Columbia Auditor Kathleen Patterson and members of the Review Team met with Chief Lanier and members of her staff to discuss the review. At the outset, Chief Lanier expressed concern about the scope of the review, given the breadth of the MOA and the potential drain of the review on MPD's scarce resources, but she pledged MPD's full cooperation.²⁷ She designated as her liaison for the project MPD personnel who had worked extensively with the original MPD monitoring team and with whom the members of the Review Team had established excellent working relationships. Chief Lanier also described steps the MPD had taken over the past several years to address officer misconduct, especially the development of a process to identify at-risk officers and design appropriate means to prevent misconduct rather than merely respond after it occurs.

One of the first requests made by the Review Team at the April 29 meeting was for reports of MPD's Office of Risk Management, the internal MPD entity that had developed the capacity, during the later phase of the monitorship, to conduct reviews of issues covered by the MOA. In addition, we suggested that MPD provide us with an update on relevant developments within the MPD since the monitoring team completed its work in 2008.

On May 6, members of the Review Team met with Keith Williams, the head of the Office of Risk Management, and Maureen O'Connell, the Director of MPD's Policy Development Branch, to address a wide range of issues relevant to the MOA. On May 19, Chief Lanier and senior members of her command staff provided the Review Team with a lengthy and detailed briefing on issues relevant to the review.²⁸

and assistance, and Jack Herman, Tamara Schulman, Carly Johnson, and Lorraine Bucy also assisted with aspects of the review and preparation of this report. The Review Team thanks them for their contributions.

²⁷ In its comments on the draft report, MPD stated that Chief Lanier's concern had nothing to do with the substance of this review but instead more broadly relates to any and all initiatives that may constitute a drain on MPD resources.

²⁸ The May 19 briefing was broad in scope and included issues that were covered by the MOA but that we did not examine in detail as part of the current review. These issues included the Disciplinary Review Branch; the Personnel Performance Management System (PPMS); and the Field Training Officer Program. In addition, it included discussion of matters, including MPD's program to deploy body-worn cameras, that were not covered by the MOA.

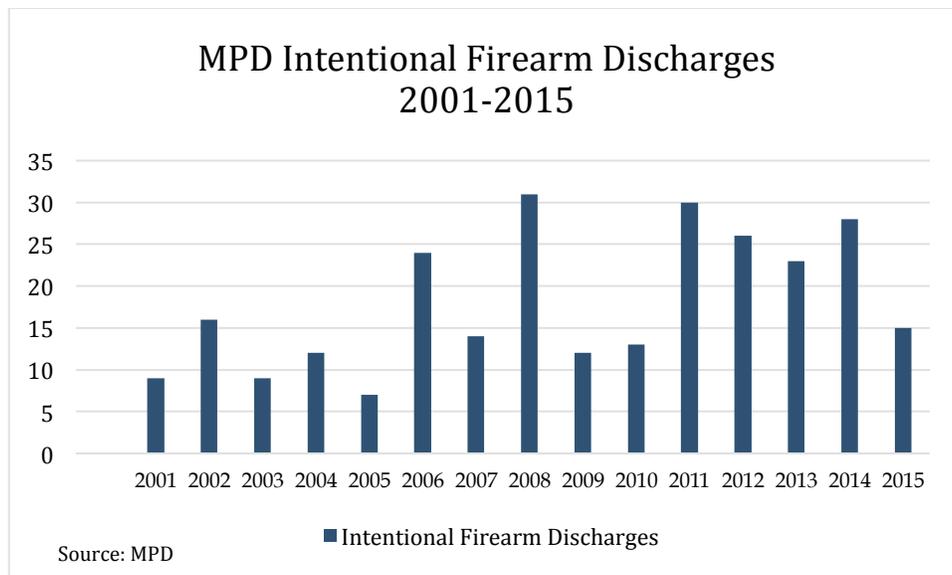
The Durability of Police Reform The Metropolitan Police Department and Use of Force

V. MOA-Related Developments 2008-15

During the course of our review, we gathered information and data on certain key issues relating to MPD's use of force, its use of force investigations, and other related MOA issues.

A. Use of Force Overview

We obtained data from MPD on its use of various forms of force over the past several years. For the most serious use of force, intentional firearms discharges, MPD provided the following data:²⁹



As the above chart shows, over the period since 2001, the number of intentional firearms discharges has ranged from a high of 31 in 2007 to a low of seven in 2010. The average of intentional firearms discharges during the five-year period 2001 to 2005 was 26; during the period 2006-2010, the average was 17.6; and during the most recent five-year period 2011-2015, the average was 12.2. Thus, the most recent period marks more than a 50% reduction of intentional firearms discharges from 2001-2005, and a reduction of 31% from

²⁹ This data excludes intentional firearm discharges at animals. MPD tracks this data but it is not included in the bar graph and table below.

The Bromwich Group

2006-2010.³⁰ This data is obviously important and reflects that MPD has succeeded in substantially reducing the number of instances in which the most deadly type of force has been used.

The chart below shows the consequences of those firearms discharges:

MPD Intentional Firearm Discharges 2001-2015															
Classification	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Fatalities	3	5	4	2	4	2	8	3	8	0	5	4	5	4	2
Injuries	13	4	10	11	7	4	12	5	5	1	2	4	7	3	7
Misses/ No Injury	12	14	12	17	12	6	11	6	11	6	5	1	4	2	6
TOTAL	28	23	26	30	23	12	31	14	24	7	12	9	16	9	15

Source: MPD

As the chart reflects, fatalities resulting from firearms discharges over the period 2001 through 2015 ranged from a low of zero (2010) to a high of eight (2007), with an average of four. Although the Review Team identified problems with the process that has been in place to review officer-involved fatal shootings – centering on the length of time it takes to consider the case for potential prosecution – the data do not support any claim that MPD officers use their firearms excessively.

With respect to other uses of force,³¹ MPD's data show the following for the years 2008-2015:

MPD Total Reported Uses of Force 2008-2015								
Classification	2008	2009	2010	2011	2012	2013	2014	2015
ASP ³²	33	32	32	47	41	44	39	41
Canine Bites	16	15	8	8	7	13	8	3
OC Spray	83	79	75	73	73	84	105	123
Hand Controls/ Tactical Takedowns	687	503	276	260	355	497	496	463

Source: MPD

³⁰ In its comments on the draft report, MPD stressed the significance of the reduction in intentional firearms discharges, noting that such discharges were a central reason for Chief Ramsey's seeking the 1999 DOJ review that led to the MOA.

³¹ MPD has not adopted the use of conducted electrical weapons, commonly known as Tasers, although we were advised by MPD that their adoption continues to be considered.

³² An ASP is a type of baton commonly used by law enforcement agencies in the U.S. and many foreign countries.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

The data show that MPD's use of these various types of force have remained relatively constant over an eight-year period, with the exception of a rise in the use of OC Spray, which increased 46% between 2013 and 2015.³³ The data on the most common consolidated category of use of force – hand controls and tactical takedowns – shows major variances across different years, with a high of 503 in 2009 and a low of 260 in 2011.³⁴ In addition, because of a policy change in July 2014, which will be discussed at length below,³⁵ the requirement to report individual and team takedowns has changed, with mandatory reporting applying to fewer of these takedowns. This means that the numbers above for hand controls and tactical takedowns in 2014 and 2015 *understates* the number of times these types of force are used by MPD officers. Even so, our review of the raw data shows no evidence of any significant or sustained increase in any category of use of force employed by MPD officers.

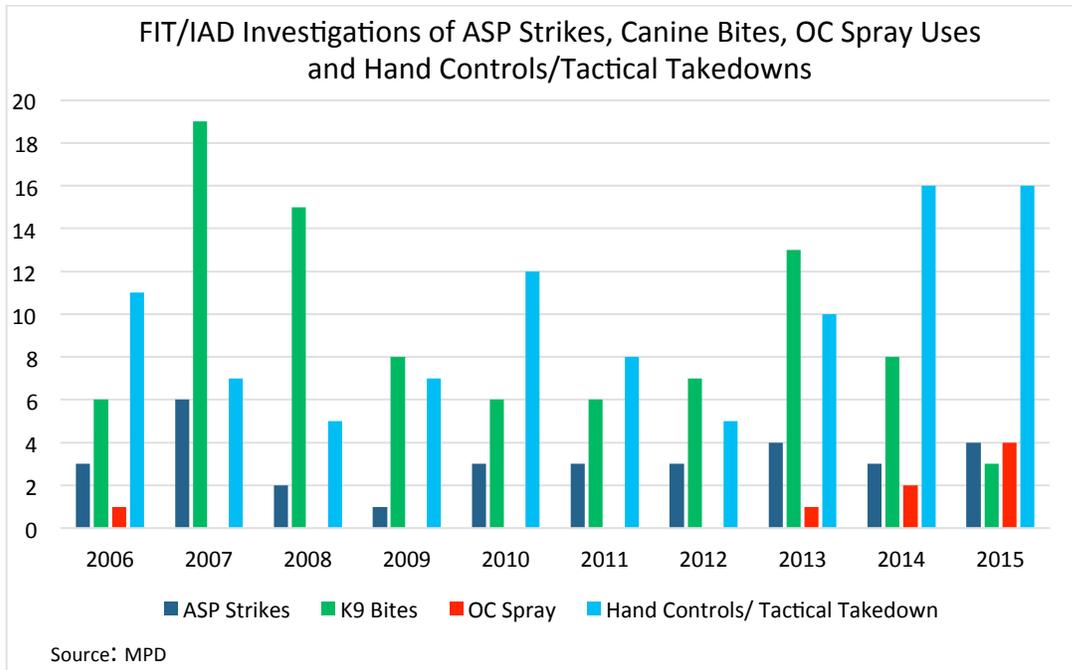
In addition to overall, agency-wide data, MPD also provided data on the subset of uses of force incidents investigated by FIT, and for the period after FIT's August 2012 merger into the Internal Affairs Division (IAD), by IAD. In general, the data showed a decline in all categories of serious use of force investigated by FIT/IAD.

³³ In its comments on the draft report, MPD pointed to local and national trends, including the greater use of synthetic drugs, that can produce violent behavior and that may help explain the rise in the use of OC Spray.

³⁴ We discussed this data category with MPD to determine whether we could obtain an allocation of these numbers between hand controls and tactical takedowns, which include takedowns by individual officers and team takedowns. We were advised that the data for these uses of force is maintained in a single consolidated category and could not be broken down further.

³⁵ The policy changes are discussed at pp. 28-33.

The Bromwich Group



The data reflects that the number of FIT/IAD investigations has generally remained stable or declined over the past ten years. We note, however, that FIT/IAD investigates only a small fraction of the incidents involving uses of force by MPD officers. FIT/IAD investigates all firearms discharges, but only a subset of incidents involving canine bites, ASPs, OC spray, and hand controls or tactical takedowns. From 2009 through 2014, FIT/IAD investigated:

- Between 3% and 10% of all ASP uses;
- Between 0% and 2% of all OC Spray uses;³⁶ and
- Between 1% and 3% of all uses of hand controls and tactical takedowns.

MPD's Use of Force Investigations General Order establishes that FIT/IAD is solely responsible for investigating incidents involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer; chain of command officials in the MPD Districts have responsibility for investigating other uses of force. "Serious use of force" is defined as lethal and less-than-lethal action by MPD members including:

³⁶ As reflected in the chart above, the number of OC Spray uses in 2007 through 2012 investigated by FIT was zero.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- All firearm discharges by an MPD member with the exception of range and training incidents and discharges at animals;
- All uses of force by an MPD member resulting in a broken bone or an injury requiring hospitalization;
- All head strikes with an impact weapon;
- All uses of force by an MPD member resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;
- All other uses of force by an MPD member resulting in a death; and
- All incidents where a person receives a bite from an MPD canine.³⁷

Use of force suggesting potential criminal misconduct by a member is defined as including but not limited to “all strikes, blows, kicks or other similar uses of force against a handcuffed subject and all accusations or complaints of excessive force made against the member.” All other uses of force are investigated by chain of command officials within MPD Districts.³⁸

MPD also provided data on the number of excessive force allegations against officers, and the number of those allegations investigated by FIT.

³⁷ Use of Force Investigations Order, GO-RAR-901.08, at 2. A copy of the Use of Force Investigations Order is attached as Exhibit C.

³⁸ GO-RAR-901.08. The Order permits the Chief of Police or her designee to reassign to FIT/IAD any use of force presumptively assigned to the chain of command.

The Bromwich Group

Allegations of Excessive Force Against MPD Officers 2005-2015											
Classification	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Allegations of Excessive Force	28	42	40	45	48	35	47	51	49	47	59
Allegations of Excessive Force Investigated by IAD	23	17	14	12	19	6	10	1	12	9	6

Source: MPD

Over the eight years since independent monitoring ended (2008-2015), the number of excessive force allegations investigated by FIT/IAD ranged from a high of 19 (2009) to a low of one (2012), with an average of approximately nine per year. The number of overall excessive force allegations received by MPD has more than doubled since 2005, with a major jump between 2005 and 2006, and smaller increases since then.

The Review Team pointed out to MPD that its Use of Force Investigations Order requires *all* allegations of excessive force be investigated by FIT/IAD rather than the chain of command. MPD acknowledged that its historical practice has been to have FIT/IAD perform an initial review of those allegations, but to have the vast majority of the excessive force allegations investigated by chain of command officials.³⁹ When the Review Team identified this discrepancy between the MPD’s practice and the definitions contained in the Use of Force Investigations Order, MPD said it would revise the definition of potential criminal misconduct in the near future. The goal of that revision will be to clarify that not every allegation of excessive force must be investigated by IAD, but instead that it will investigate only the most serious cases, with the remainder to be investigated by chain of command officials.⁴⁰

³⁹ In its comments on the draft report, MPD stated that all excessive force investigations conducted by the chain of command are provided to IAB for final review.

⁴⁰ In addition to making complaints directly to MPD, citizens can file allegations of use of excessive force with DC’s Office of Police Complaints (OPC), an agency created in 1999 that began operating in 2001. Excessive use of force complaints are one of six types of officer misconduct over which OPC has jurisdiction – the others are harassment, inappropriate language or conduct, retaliation, discrimination, and failure to identify. OPC’s FY 2014 Annual Report stated that in FY 2014, a total of 147 force-related complaints were made to OPC, which continued a decline in such complaints since FY 2010, when the number was 353. In FY 2014, the largest categories of force-related complaints were for “push or pull with impact” (41), “push or pull without impact” (32), and handcuffs too tight (11). Office of Police Complaints, Annual Report, (footnote continued)

The Durability of Police Reform The Metropolitan Police Department and Use of Force

B. Merger of FIT into IAD

In 2012, MPD merged the elite Force Investigation Team (FIT) into IAD. This was a significant development because FIT had been created, as described in the MOA, “to conduct fair, impartial and professional reviews of firearms discharges.” In addition, certain provisions of the MOA were intended to “build upon the investigative techniques employed by FIT and expand FIT’s role within MPD.”⁴¹

Created by former MPD Chief Charles Ramsey in 1999, FIT was initially responsible solely for investigating officer-involved fatal shootings. At the time of FIT’s creation, its members received extensive and specialized training in conducting such investigations. In subsequent years, FIT’s responsibilities were expanded to include, among other things, all police-related firearms discharges (whether or not death resulted), all deaths in police custody, and all officer suicides involving a service weapon.

Because of the early and widely acclaimed success of FIT – both within MPD and more broadly in the policing community – a second FIT team (FIT 2) was launched in early 2002 to investigate, among other things, uses of force involving broken bones, hospitalizations, head strikes, loss of consciousness, and canine bites. These expanded responsibilities were incorporated in the MPD General Orders designed to reflect the requirements of the MOA, including the Use of Force Investigations Order described above.

The MOA contained a number of very specific requirements for FIT investigations and investigative reports. For example, FIT reports were required to contain:

- Descriptions of the use of force incident and any other uses of force identified during the investigation;
- Summaries and analyses of all relevant evidence; and

2014, <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR14%20Report%20Final%20Cover%20Side%20Border%20%28Web%206-18-15%29.pdf>. OPC was unable to provide aggregate data on the number of excessive use of force allegations during these years that were substantiated.

⁴¹ MOA ¶ 56.

The Bromwich Group

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

From early 2004 through late 2007, the independent monitoring team reviewed every case investigated by FIT 1 and FIT 2. It consistently found that both units conducted “thorough and high quality investigations.” For example, with respect to FIT investigations conducted during the first three calendar quarters of 2007, the independent monitoring team found the “quality and timeliness of these investigations was exceptionally good.”⁴²

At the May 19 briefing and in subsequent discussions, MPD provided the Review Team with several reasons for its August 2012 merger of FIT into IAD. According to MPD, the main reason was a sharp decline in FIT’s workload. Data provided by MPD showed that the average annual FIT caseload was 66.3 cases between 2004 and 2009; the average annual caseload declined to 37.6 cases between 2010 and 2012.⁴³

The MPD data also reflected a decline in the number of officer-involved shootings. Between 2001 and 2007, FIT investigated an average of 25 intentional shooting cases per year; between 2008 and 2014, the annual average fell to thirteen. According to MPD, the significant reduction in FIT’s caseload, especially with regard to its most significant cases, raised doubts about whether MPD needed a unit devoted solely to investigating serious use of force cases.

Second, MPD claimed that some of the FIT investigators had over time shown a tendency to shade their findings to justify the use of force by officers. Multiple MPD senior managers advised us that they became concerned that FIT members, all of whom were (and had been since FIT’s inception) members of the police union, had found certain uses of forces to be justified (and consistent with MPD policy) when an objective review of the facts did not support that conclusion. Following the 2012 merger, all IAD members were prohibited from joining the police union, eliminating the potential conflict of interest inherent in

⁴² Office of the Independent Monitor, Final Report at pp. 38-39.

⁴³ The data presented by MPD suggested that the 37.6 figure for FIT caseload was through the end of 2012, but the merger took place on August 30, 2012.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

having an officer investigate a fellow union member. According to MPD, some FIT members did not want to forego their union membership and instead chose to retire or transfer out of IAD.⁴⁴

As the final reason it gave for merging FIT into IAD, MPD stated that it was incurring large overtime costs for use of force investigations.⁴⁵ FIT investigators were available around the clock to report immediately to the scene of use of force incidents and were called out to the scene of all serious uses of force, including canine bites and head strikes. As a result, FIT investigators worked substantial amounts of overtime in the immediate aftermath of serious uses of force, which constituted a substantial drain on scarce MPD resources. After the merger of FIT into IAD, and until November 10, 2015, IAD personnel no longer routinely responded to incidents involving canine bites and head strikes during off hours.⁴⁶ However, on that date, MPD reinstated the requirement that IAD investigators respond to the scene of all head strikes and canine bites.⁴⁷

At the May 19 meeting and in subsequent discussions, MPD advised the Review Team that in order to ensure the continued competence of MPD to investigate use of force incidents, all IAD investigators had been cross-trained in both use of force investigations and misconduct investigations. According to MPD, this cross-training was designed to increase IAD's flexibility, allowing all

⁴⁴ This concern about potential conflicts existed among certain senior officials at MPD from the time of FIT's founding. In their mind, the risk of potential conflict was outweighed by the urgent need to have FIT and its important function be accepted by MPD's rank and file. Significantly, in its extensive review of FIT investigations over the course of 2002 to 2007, the independent monitoring team did not observe any lack of objectivity or impartiality in FIT investigations – *i.e.*, no bias in favor of justifying the actions of MPD officers. Nor are we aware that the UFRB, which had a unique perspective on FIT investigations, identified this alleged pro-officer bias. Without engaging in an extensive historical review of FIT investigations between 2008 and 2012, we are in no position to independently corroborate or reject MPD's claim of FIT investigator bias. Although MPD said it would provide the Review Team with examples of FIT investigations that reflected pro-officer bias, it did not do so.

⁴⁵ In its comments on the draft report, MPD provided further information “to provide greater context on the reasons for the merger” of FIT and IAD. *See* Exhibit I, at 4.

⁴⁶ Off hours are between 4:00 pm and 7:00 am, Monday through Friday. Off hours also include weekends and holidays.

⁴⁷ Chief Lanier advised us of this change at our December 16, 2015, meeting to discuss the draft report, and the change was also contained in MPD's comments on the draft report.

The Bromwich Group

three IAD squads to share the caseload of use of force matters. As we discuss in more detail below, our interviews of IAD investigators and our review of their work product raise questions about the adequacy of that training and whether the FIT-IAD merger has degraded the ability of MPD to perform comprehensive and competent use of force investigations.

VI. Review Team Findings and Recommendations

This section describes the activities, findings, and recommendations of the Review Team over the five-month period between May and September 2015, and incorporates additional information we received from MPD through early January 2016 in response to our follow-up inquiries. It also sets forth our findings and recommendations.

A. Use of Force Policies

We have reviewed MPD's use of force policies to determine whether they have undergone any significant substantive revisions in the seven years since the MOA was terminated, and whether they reflect current best practices.

1. General Use of Force Policy

The 2001 MOA required MPD to develop and implement an overall Use of Force Policy that applies to all uses of force ranging from forcible handcuffing to use of firearms.⁴⁸ According to the MOA, the new use of force policy was required to be fully compliant with federal and local law, and to be consistent with then-current policing standards. More specifically, the policy was required to include provisions that:

- Defined and described the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encouraged officers to use warnings and verbal persuasion when appropriate and in general seek the goal of de-escalation in all encounters;
- Prohibited officers from unholstering, drawing, or showing a firearm unless the officer reasonably believed that a situation justifying the use of deadly force was likely to arise;

⁴⁸ MOA ¶¶ 36-40.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- Established that officers must, except in extraordinary circumstances, identify themselves as police officers and issue a warning before discharging a firearm;
- Required that officers examine persons subjected to the use of force and, if necessary, obtain medical care immediately; and
- Notify and train officers that the use of excessive force subjects them to MPD disciplinary action, potential civil liability, and criminal prosecution.

After a lengthy process of drafting, revision, and DOJ review, MPD's new use of force policy was approved by DOJ on September 30, 2002. MPD began training its members on the new policy shortly thereafter.

In addition to setting forth the circumstances under which non-deadly and deadly force may properly be used, the policy describes the role of the use of force continuum in helping to establish the level of force that is appropriate in specific circumstances. MPD's use of force policy defines the use of force continuum as

a training model/philosophy that supports the progressive and reasonable escalation and de-escalation of member-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered at the scene and the actions of the subject in response to the member's commands. Such response may progress from the member's actual physical presence at the scene to the application of deadly force.⁴⁹

As an explanatory tool, the MPD use of force policy contains a detailed diagram of the use of force continuum.

In the 13 years since it was approved, MPD's use of force policy has undergone only two changes. In 2005, it was revised to prohibit MPD officers from shooting at or from moving vehicles unless deadly force is being used against the officer.⁵⁰ In 2010, the policy was further revised to include explicit

⁴⁹ MPD GO-901.07, Section III. I. A copy of the Use of Force Policy is attached as Exhibit D.

⁵⁰ These revisions are not explicitly identified in GO-901.07 as modifications of the 2002 use of force policy. A member of the public reviewing the use of force policy would likely conclude that
(footnote continued)

The Bromwich Group

limitations on the use of force by MPD civilian personnel.⁵¹ Neither of these revisions affected the core provisions of the use of force policy.

The Review Team found that MPD's general use of force policy, as written, is generally appropriate and consistent with law enforcement practices. However, consistent with a report issued in August 2015 by DC's Police Complaints Board, we believe the use of force policy should be modified to include clearer guidance on the use of neck restraints, sometimes referred to as chokeholds.⁵²

At present, the use of force policy contains only a brief, general reference to neck restraints, stating that officers "shall not employ any form of neck restraint except when an imminent threat of death or serious physical injury exists, and no other option is available."⁵³ However, as the Police Complaint Board's 2015 report found, the General Order does not specify what constitutes a neck restraint, and does not incorporate the District's categorical statutory ban on trachea holds.⁵⁴ **We recommend that MPD's use of force policy be modified to include more detailed treatment of neck restraints, and that any use of neck restraints by MPD officers be treated as a serious use of force and be investigated by IAD. (Recommendation No. 1).**⁵⁵

it has not been modified since 2002. As we discuss in greater detail below, in the interests of transparency, we recommend that the timing and substance of changes to MPD's policies be clearly identified in the versions available to the public.

⁵¹ This revision was prompted by a DC Office of the Inspector General report on MPD's Juvenile Processing Center, which recommended that MPD clarify the authority of civilian cellblock technicians to use force. The revision made clear that civilian members of MPD, including such technicians, could only use force in their own defense and are not permitted to carry weapons of any kind. GO-901.07, IV. H. and I.

⁵² Police Complaints Board, *Improving MPD's Policy on the Use of Chokeholds and Other Neck Restraints, Report and Recommendations of the Police Complaints Board* (August 10, 2015), available at <http://serve.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/8.10.15%20chokehold%20policy%20rec%20FINAL.pdf>.

⁵³ GO 901.07 V. F(3).

⁵⁴ As defined by DC law, a trachea hold is a technique that "attempts to control or disable a person by applying force or pressure against the trachea, windpipe, or the frontal area of the neck with the purpose or intent of controlling a person's movement or rendering a person unconscious by blocking the passage of air through the windpipe." D.C. Code § 5-125.02(1).

⁵⁵ We present the Review Team's recommendations throughout the report in the context of the discussion and analysis of specific issues. We have also collected all of the Review Team's recommendations in Section VII of this report. MPD's responses to these recommendations are attached to this report as part of Exhibit I (pp. 28-42), and the Review Team's replies to MPD's responses are incorporated in Exhibit N.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

With this exception, and even though it has not been substantially revised since 2002, we believe the overall use of force policy continues to be consistent with best practices in policing. However, **we recommend that MPD comprehensively review and, if necessary, revise its use of force policies no less frequently than every two years. (Recommendation No. 2).** Thirteen years is too long for a policy of this importance not to have been comprehensively reviewed and, if necessary, revised.

With the exception of the need to clarify the practice of using neck restraints, we have found that MPD's overall use of force policy remains appropriate and consistent with law enforcement best practices. However, we have some significant concerns about the current implementation of the policy, and with the current use of force reporting and investigation requirements – all of which will be addressed in subsequent sections of this report.

2. Use of Firearms Policy

The 2001 MOA required MPD to develop and implement a Use of Firearms Policy fully consistent with applicable federal and local law and consistent with contemporary law enforcement standards. More specifically, the MOA required, among other things, that the Use of Firearms Policy:

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain ammunition through MPD channels;
- Specify the number of rounds that officers are authorized to carry;
- Establish a unified reporting system for all firearms discharges;
- Require documentation and thorough review of any instance when an officer's service weapon malfunctions; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.⁵⁶

⁵⁶ MOA ¶¶ 41-43. Handling of Service Weapons General Order, GO-RAR-901.01, available at https://go.mpdonline.com/GO/go_901_01.pdf

The Bromwich Group

DOJ approved MPD's Handling of Service Weapons General Order in August 2002. In 2005, the policy was amended to clarify the types of firearms MPD officers are authorized to carry when they are off-duty.⁵⁷

In 2008, the policy was further revised to include regulations and procedures relating to the use of patrol rifles, to add specific firearms to the list of firearms officers are authorized to carry while off-duty, and to modify certain firearm requalification procedures. In addition, the 2008 revision of the policy included specific limitations on the quantity of ammunition that officers are permitted to carry while on-duty and off-duty, and clarified the disciplinary procedures for dealing with officers who fail to undergo required periodic firearms requalification.

The Review Team found that MPD's Handling of Service Weapons General Order, as written, modified, and implemented, is comprehensive and appropriate. The policy continues to be consistent with best practices in policing.

3. Canine Policies and Procedures

The DOJ investigation that led to the MOA found substantial problems with the use of canines in MPD's law enforcement activities. More specifically, DOJ found that MPD's policies and practices resulted in canine bites in 70% of canine apprehensions between 1996 and 1999, compared to far lower percentages in law enforcement agencies with properly managed canine programs.⁵⁸ In its 2001 Findings Letter, DOJ recommended a series of policy changes in MPD's use of canines, including limitations on their use, new requirements for pre-deployment supervisory approval, and attempts to limit the circumstances under which canines would be permitted by their handlers to bite suspects. DOJ also recommended improvements in MPD's investigation of canine bites as uses of force. As noted in DOJ's Findings Letter, by the time the MOA was signed, MPD had already made significant improvements and had "initiated ambitious reforms."⁵⁹

The MOA required MPD to reform its canine policies and practices to

⁵⁷ This 2005 amendment also established the requirements for weapons qualification applicable to officers on limited duty or sick leave. Office of the Independent Monitor, Final Report, at p. 15.

⁵⁸ DOJ Findings Letter, Section B 4. Although the Findings Letter states the ratio in terms of bites to deployments, we believe the reference to deployments was erroneous. The meaningful measure is the frequency that canines bite suspects during apprehensions.

⁵⁹ *Id.*

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- Limit the high-risk deployment of canines – defined as off-leash deployments, use of canines during searches, and other situations where there is significant risk of a canine bite – to cases where the suspect is wanted for a serious felony or wanted for a misdemeanor and is reasonably suspected to be armed;
- Require supervisory approval for canine deployments;
- Require suspects to be clearly advised that a canine is about to be deployed;
- Ensure that in every case where a canine bites a suspect, the handler calls off the canine as promptly as possible; and
- Ensure that any suspect who is bitten by an MPD canine receives prompt medical attention.⁶⁰

MPD's Canine Teams General Order went through multiple sets of changes and revisions until it was finally approved by DOJ in early 2005.⁶¹

The Independent Monitor reviewed MPD's canine program on numerous occasions between 2002 and 2008 and found that reforms in MPD's program had resulted in a substantial reduction in the percentage of canine apprehensions that resulted in suspects being bitten. Those reviews found that MPD's program had reduced the bite-to-apprehension percentage to 20% or less – and that by 2006, the percentage had been lowered to 11.5%.⁶² In addition, the Independent Monitor's reviews determined that the other deficiencies identified by DOJ during its investigation had been remedied.

MPD has made no changes in the policies or procedures governing its canine program since 2005. The data provided by MPD reflected a spike in canine bites in 2007 (19) and 2008 (15), and another spike in 2013 (13); in all other years, the number of canine bites was eight or fewer. We found sharp increases in the bite-to-apprehension ratios more troubling than the spikes in the absolute

⁶⁰ MOA ¶¶ 44-46.

⁶¹ Office of the Independent Monitor, Final Report at, p. 17-18; GO-RAR – 306.01. A copy of the Canine Teams General Order is attached as Exhibit E.

⁶² *Id.*

The Bromwich Group

number of bites. For the period 2009 through 2015, the ratio increased to 29.8% – and it reached 65.0% in 2011, 57.7% in 2013, and 44% in 2014.

When we asked about these spikes, MPD pointed to a surge in homicides and violent crime more generally during those years, as well as other factors more specifically related to the canine program. But the crime statistics for those years lend only equivocal support to that argument – for example, homicides were actually lower in 2013 (a canine bite spike year) than they were in 2009-11 (non-spike years), and the data for violent crime generally does not neatly coincide with the spike in canine bites.⁶³ We examined overall DC crime statistics for those years, and were unable to identify any correlation between those crime statistics and increases in the number of canine bites.

In the last several years, significant developments in the use of canines by law enforcement agencies have established two areas of best practice that we believe MPD should adopt. Both are designed to limit the number of canine bites.

First, we recommend that MPD’s canine policy restrict off-leash deployments to searches for suspects wanted for violent (as opposed to serious) felonies; searches for burglary suspects in hidden locations inside buildings;⁶⁴ or searches for suspects wanted for a misdemeanor and whom the officers reasonably believe to be armed. (Recommendation No. 3).

Second, we recommend that the number of verbal warnings provided prior to canine deployment be increased from one to three; and that in open field or block searches, an additional warning be given each time the canine team has relocated the equivalent of a city block from where the initial warnings were given. (Recommendation No. 4).

With the exception of these two issues, the Review Team has found that MPD’s Canine Teams General Order as written, modified, and implemented remains comprehensive and appropriate. The policy, if modified to incorporate the two changes recommended above, would be consistent with current best practices in policing.

⁶³ This is the type of issue the Office of Risk Management could have explored to determine whether the spikes were driven by crime rates or by other factors.

⁶⁴ In response to MPD’s comments on the draft report, we revised this recommendation to include as an appropriate off-leash deployment searches for burglary suspects in hidden locations inside buildings.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

4. Oleoresin Capsicum Spray Policy

The 2001 MOA required MPD to develop an Oleoresin Capsicum (OC) Spray Policy fully consistent with applicable federal and local law and consistent with contemporary law enforcement standards. More specifically, the MOA required, among other things, that the OC Spray Policy:

- Limit the use of OC spray to those situations in which the officer has an adequate legal basis for taking a suspect into custody, and the suspect is actively resisting the officer;
- Prohibit officers from using OC spray to disperse crowds or smaller groups of people unless in response to actions that endanger public safety and security;
- Generally prohibit the use of OC spray on children, and the elderly; and
- Prescribe numerous specific additional restrictions on the use of OC Spray, including the amount of spray that may be used, and actions that must be taken after its use.

MPD's OC Spray General Order was approved in September 2002.⁶⁵ The Independent Monitor reviewed MPD's implementation of the policy on multiple occasions and found MPD generally to be in substantial compliance. To ensure that MPD officers did not use excessive quantities of OC Spray, an issue independently identified by both the monitoring team as well as the Use of Force Review Board (UFRB), MPD had advised the Independent Monitor that it would follow up on issues relating to the potential use of excess amounts of OC Spray. However, our current review suggested that MPD did not specifically follow up in any meaningful way. According to data provided by MPD, the number of instances in which OC Spray has been used has remained relatively stable between 2009 and 2015, ranging from a low of 73 uses (in 2011 and 2012) to a high of 105 uses (in 2014). The number of uses of OC spray investigated by FIT/IAD has remained extremely low. MPD reported no instances of OC Spray investigated by FIT/IAD between 2007 and 2012, one instance in 2013, and two instances in 2014.

⁶⁵ GO-RAR 901.04, available at https://go.mpdonline.com/GO/901_04re.pdf.

The Bromwich Group

MPD has made no changes in the policies or procedures governing its OC Spray program since 2002. We have found that MPD's OC Spray Policy as written and as implemented remains comprehensive and appropriate, but the Review Team suggests that MPD take further action to address the concern about the use of excessive amounts of spray in those instances when it is used, as it originally pledged to do in 2008.⁶⁶ The policy itself continues to be consistent with best practices in policing.

B. Use of Force Reporting, Investigations and Training

One of the cornerstones of the MOA was the requirement that MPD officers must report all uses of force. Paragraph 53 of the MOA required MPD to develop a Use of Force Reporting policy and Use of Force Incident Report (UFIR) for uses of force, as well as a mechanism for documenting and investigating allegations that claimed excessive use of force by an MPD officer.⁶⁷

MPD's Use of Force Investigations General Order, GO-RAR-901.08, approved by DOJ in September 2002 and implemented the following month, established the policy and procedures for reporting and investigating use of force by MPD members.⁶⁸ It defined what constitutes a use of force and classified the various levels of force. It required written documentation of any use of force above unresisted handcuffing, and it assigned responsibilities for conducting investigations based on the level of force used by the officer.

The investigations of all incidents involving deadly force, serious use of force, or use of force indicating potential criminal conduct were assigned to FIT. Incidents involving less serious uses of force – that is, incidents not involving deadly force, serious use of force, or use of force indicating potential criminal conduct – were to be investigated by the involved officer's chain of command.

⁶⁶ In its comments on the draft report, MPD stated that its Office of Risk Management (ORM) will conduct an audit during 2016 on the use of OC Spray by MPD officers to determine if there are any issues that need to be addressed, including those relating to the potential use of excessive amounts of spray.

⁶⁷ The MOA originally required a UFIR to be completed by MPD officers in cases when an officer drew and pointed a firearm, even when it was not fired. However, in the face of substantial concerns expressed by MPD and after extended discussions with DOJ, this requirement was modified. Although still a reportable event, the drawing and pointing of a firearm by an MPD officer was reported on a different form, the Reportable Incident Form (RIF). *See, e.g.*, Office of the Independent Monitor, Fifteenth Quarterly Report, at p. 32.

⁶⁸ A copy of the Use of Force Investigations General Order is attached as Exhibit C.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Officers were required to immediately notify their supervisors following any use of force, whether it was intentional or unintentional, or after any allegation that an officer had used excessive force. They were also required to fill out a UFIR immediately after they used a reportable level of force.

Section VI.1 of the Use of Force General Order, GO-RAR-901.07, required that a UFIR (PD Form 901 e) be completed in all of the following situations:

- all Use of Force incidents (except Cooperative or Contact Controls, *e.g.*, mere presence, verbal commands, submissive handcuffing, unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);
- any time an officer is in receipt of an allegation of excessive force; or
- whenever a member draws and points a firearm at or in the direction of another person.

Immediately after receiving notification that force has been used, or that an allegation of excessive force has been made, the officer's supervisor was required to respond to the scene. In any instance involving deadly force, a serious use of force, or any use of force potentially reflecting criminal conduct by an officer, the supervisor was required to notify the Force Investigation Team ("FIT").⁶⁹

⁶⁹ The definitions of deadly force and serious use of force were initially set forth in the MOA ¶¶ 15, 33, and, along with use of force potentially reflecting criminal conduct by an officer, were set forth in MPD's Use of Force Policy, ¶¶ III A, H, and J.

Deadly force is defined as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

Serious use of force is defined as "lethal and less-than-lethal actions by MPD officers including:

1. all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals;
2. all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization;
3. all head strikes with an impact weapon;
4. all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;
5. all other uses of force by an MPD officer resulting in a death; and

(footnote continued)

The Bromwich Group

FIT was required to respond to the scene of every incident involving the serious use of force and to conduct all such investigations, whether the investigation results in criminal charges or is ultimately handled administratively. No officers from any unit other than FIT were permitted to participate in the investigation. These requirements were embodied in General Order 901.08 as MPD policy, as was the requirement to immediately notify the United States Attorney for the District of Columbia (USAO) of every event involving police use of deadly force, serious use of force, or any use of force potentially reflecting criminal conduct by an officer.

In the early stages of the MOA, MPD had substantial difficulty reaching a high level of compliance with the UFIR requirement. This was in part because of the length and complexity of the MPD UFIR form, and in part because of uncertainty among MPD officers and supervisors as to whether low-level uses of force were reportable uses of force. These low-level uses of force included so-called contact controls to handcuff or subdue a suspect.

Indeed, three years after the MOA was signed, the Independent Monitor found that MPD officers were only completing UFIRs in 16% of the cases in which reporting was required.⁷⁰ Many of these unreported uses of force involved hands-on physical force by an officer to subdue and handcuff a suspect. In December 2005, MPD provided clearer guidance for reporting low-level uses of force, and the result was a dramatic improvement in the rate of use of force reporting. This improvement was addressed in the Independent Monitor's Final Report:

MPD's dramatic and sustained improvement in the rates at which officers report uses of force is extremely important. The UFIR was a central requirement of the MOA intended to enable MPD to gather and track accurate information about the frequency and level of force employed by its officers. Without such accurate information, MPD command staff would be unable to identify and address problems involving uses of force and to identify the serious potential consequences should such uses of force go unrecognized and unaddressed by the Department.⁷¹

At the May 19 meeting, and in subsequent discussions, MPD advised the Review Team that it had over the previous several years significantly changed its

6. all incidents where a person receives a bite from an MPD canine."

⁷⁰ Office of the Independent Monitor, Thirteenth Quarterly Report at p. 9.

⁷¹ Office of the Independent Monitor, Final Report, at p. 30.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

use of force reporting policy, raising the threshold for reporting low-level uses of force. Because of the central importance of use of force reporting to the structure of MOA-related reforms, we explored this issue, and MPD's changes in policy, in substantial detail.

1. Changes in MPD Use of Force Reporting and Investigations

The use of force policy and use of force reporting procedures were in place at the time the MOA was terminated and independent monitoring ended. However, on June 13, 2008 – the same day as the Independent Monitor issued his final report – MPD issued administrative teletype # 06-049-08, which modified the use of force reporting requirements.⁷²

The stated purpose of the teletype was “to streamline the administrative process for incidents involving ‘Resisted Handcuffing,’ and ‘Contact Controls’ (commonly referred to as ‘Hand Controls’) where there is no report of injury.”⁷³ In effect, the teletype eliminated the need to report – and the requirement to investigate – MPD officer uses of force that consisted solely of overcoming the suspect's resistance to being handcuffed, unless the suspect was injured or complained of pain or injury. In cases of injury or complaint, the Watch Commander at the MPD District level had full discretion whether to require a UFIR. If the Watch Commander determined that no UFIR was required, FIT was not notified. Because of the potential impact of this change, and the importance of the new responsibilities assigned to Watch Commanders, the teletype directed ORM to conduct an audit on the appropriate implementation of the policy change. ORM did conduct a “Use of Force Reporting Compliance Audit” in 2008 that was completed in May 2009, but it did not focus on the central issue implicated by the directive – that is, the Watch Commander's exercise of discretion.

⁷² Administrative teletypes are used within MPD for various purposes, including local lookouts, administrative matters, and to inform MPD members about assignment to details. They are more often used for law enforcement-related matters than to implement policy changes.

⁷³ Although the teletype referred to contact controls as well as resisted handcuffing, our understanding is that it did not change the requirements relating to contact controls, which already did not require reporting unless the subject was injured or complained of pain or injury.

The Bromwich Group

A subsequent teletype, #08-006-10, issued on August 4, 2010, restated FIT's responsibilities as originally set forth in the 2002 General Order Use of Force Investigations. It clarified the organizational structure of FIT, spelling out the respective responsibilities of FIT 1 and FIT 2. In short, FIT 1 was assigned responsibility for investigating all officer-involved shootings, as well as deaths that resulted from police actions and weapons discharged by law enforcement personnel. FIT 2 was assigned responsibility for investigating all other serious use of force by MPD officers, including canine bites, head strikes, and any use of force resulting in serious injury. In addition to describing the structure and responsibilities within FIT, this teletype modified the definition of "serious use of force" by removing from the definition head strikes that do not result in injury or where no corroborative evidence exists.⁷⁴

The substance of these two teletypes was subsequently codified in MPD Special Order, SO-10-14, issued on October 1, 2010. Neither the teletype nor the Special Order provided for any higher-level review of the Watch Commander's decision whether to require a UFIR and an investigation in cases when there is no injury or complaint of pain. Nor did they prescribe a method for forwarding copies of the Watch Commander's Report and the Arrest/Prosecution Report (PD163) to PPMS for entry into the system's database. The consequence appears to be the creation of gaps in both the oversight and data collection relating to uses of force.

In 2011, MPD further modified its system for reporting and investigating uses of force. In Teletype # 04-001-11, issued on April 1, 2011, MPD reaffirmed the requirement that FIT should respond to and investigate all uses of force resulting in death, even when the death was not force-related. However, the April 1, 2011 teletype eliminated the requirement that FIT respond to the scene of other "serious use of force" incidents, unless it resulted in hospital admission, broken bones, loss of consciousness, or the risk of either death, "serious disfigurement," or serious bodily damage.⁷⁵

Thus, the April 1 teletype eliminated the requirement that FIT respond to serious uses of force that involved a head strike or canine bite. Instead, the

⁷⁴ "Corroborative evidence" was not defined, and because these reports of head strikes were presumably submitted by MPD officers, it is unclear why any additional evidence was needed.

⁷⁵ The teletype made clear that FIT responses to incidents involving hospitalization were limited to cases in which the hospitalization was directly associated with injuries resulting from the use of force rather than injuries incurred prior to the use of force and caused by other factors, such as drug or alcohol use, or preexisting medical conditions. This limitation could of course produce perverse effects because it eliminated at the threshold investigations that might establish the cause of the injury as opposed to relying on assumptions about its causes.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Watch Commander was directed to complete specific investigative steps, and was further required to submit an online preliminary report and all relevant documents to FIT.⁷⁶ After reviewing the information gathered during the preliminary investigation, FIT was responsible for determining whether it should investigate the case, or whether it should be investigated within the chain of command. The teletype did not provide IAD with any criteria to guide the investigative assignment decision.

MPD's use of force reporting and investigative requirements were further modified three years later. Teletype # 07-144-14, issued on July 29, 2014, again raised the threshold for reporting use of force incidents. It eliminated the requirement that MPD officers notify the Watch Commander of incidents involving contact controls or resisted cuffing, and added individual or team takedowns to the list of non-reportable uses of force, as long as there was no report of injury or pain by the subject.

The cumulative effect of this series of directives between 2008 and 2014 has been to remove various types of use of force from the reporting and investigation requirements originally established by the MOA.⁷⁷ Because the duty to report these uses of force has been eliminated, so has any comprehensive system for review by a supervisor and the involved officer's chain of command. Nor was there any requirement to investigate the use of force to determine if it was justified. Finally, because of the lack of reporting for such incidents, they were not entered into PPMS, into which all reportable uses of force must be entered, and therefore not included within data collected on use of force within MPD.

In responding to our inquiries about these changes in use of force reporting and investigations, MPD explained the changes as follows:

The primary reason that we changed this requirement is that we felt there was no added benefit to conducting full administrative use of force investigations for these low-level uses of force when there was no injury or complaint of pain. In these cases, we simply were not uncovering

⁷⁶ By the time of the April 1, 2011 teletype, FIT had been renamed the Force Investigations Branch. For simplicity, we will continue to refer to the pre-merger entity as FIT.

⁷⁷ We have attached as F a chart tracing in detail these changes implemented by MPD in the reporting and investigation of use of force between 2008 and 2014.

The Bromwich Group

misconduct or instances of excessive force. Supervisors had also expressed concern over the amount of time these investigations were taking and the amount of time the investigations kept them off the streets. We felt that it was a better use of resources to eliminate those investigations and increase the availability of supervisors to respond to calls, supervise their members, and ensure members comply with our policies when handling calls for service and interacting with the public.⁷⁸

We fully understand that law enforcement agency policies must be dynamic in response to the specific challenges faced by each agency, and that those policies should be revised when they prove to be impractical or unduly burdensome. However, we are concerned that MPD's changes to its use of force reporting and investigative policies have lowered the bar too far, and we are troubled by the manner in which they were made—in particular, through internal teletypes that were not promptly incorporated into revised policies.

As summarized in detail above, the original provisions of the MOA, and the MPD Use of Force and Use of Force Investigations General Orders, which were designed to comply with the MOA, defined as a use of force any physical contact intended to ensure compliance, exempting only unresisted handcuffing and hand control procedures that did not result in injury. After the revisions summarized above, those requirements had been changed so that significant additional categories of force no longer trigger the reporting or investigation of the use of force—these categories are resisted handcuffing and solo or team takedowns.

The result is that even though the *definitions* of use of force have never been changed, the reporting, investigation, management and oversight of uses of force by MPD officers have been substantially diminished.⁷⁹ The scope of FIT/IAD's investigative jurisdiction has been narrowed, the scope of use of force reporting has been curtailed through the exclusion of quite common categories of force used by officers, and the collection of data on uses of force has been limited because of the significant categories of force now exempted from use of force reporting.

⁷⁸ Email from Maureen O'Connell to Michael R. Bromwich, September 25, 2015.

⁷⁹ In its comments on the draft report, MPD stated that it strongly disagrees with this characterization, arguing that the reporting and investigating of only the lowest level uses of force have been eliminated, and only when there is no injury or complaint of pain. See Exhibit I, at 6-7. Although we agree that there is no need for a full-blown investigation of the use of hand controls (unless the individual suffers an injury or complains of pain), we have an honest disagreement with MPD regarding the value of *reporting* use of hand controls and the value of *reporting and investigating* individual and team takedowns.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

The most recent changes in use of force reporting were not made in an informational vacuum. Indeed, they appear to have been based in part on trend analysis of use of force reporting prepared by IAD. The Second Quarter 2014 Trend Report addressed an increase in reports of non-lethal use of force as follows:

Trend/Issue: Non-Lethal Use of Force Reported Incidents. 2013 saw an overall increase of 20% of the reported Non-Lethal Uses of Force compared to 2012. For the calendar year 2014, the reported Non-Lethal Use of Force is equal to the 2013 reported numbers. Therefore, the reported Non-Lethal Use of Force reports comparing 2013 and 2014 are equal but since the 2013 numbers were [sic] high the reported trend is that Non-Lethal Uses of Force reported incidents remain high.

Likely Cause: Officers reporting more non-lethal uses of force and hand controls.

Research: These incidents are captured by number of UFIR incident reports.

Proven Approaches: Indications are reporting non-lethal uses of force are up. This could result from better reporting.

Recommendation: Need to re-evaluate our reporting of uses of force (hand controls) with no injury. Pros of reporting all hand control uses of force with no injury uses are that it refutes any potential complaints that may be false, but cons are that it can be overly broad and inconsistent reporting. I would recommend only reporting uses of force hand controls where there are injuries or complaints of injuries.⁸⁰

Within a month of the trend report, Teletype # 04-144-14 was issued, raising the use of force reporting threshold so that it required reporting incidents of resisted handcuffing and solo or team takedowns only where there has been a resulting injury or complaint of pain. The Trend Report mentioned nothing about eliminating use of force reporting for individual and team takedowns.

⁸⁰ Second Quarter 2014 Trend Report for Internal Affairs Bureau, July 3, 2014.

The Bromwich Group

Takedowns are by definition significant uses of force. We know of no reason why they should not be reported and investigated. The Review Team has concluded that eliminating the reporting and investigative requirements for solo or team takedowns goes too far in reducing the reporting responsibilities of MPD officers.

These conclusions about the importance of use of force reporting and investigations are fully supported by recent DOJ pattern or practice investigations that have resulted in settlements and consent decrees – and reflected in policies developed by law enforcement agencies pursuant to those settlement agreements and consent decrees.⁸¹ The requirements for reporting and investigating uses of force that have been established in cities throughout the country over the past several years have generally included, at a minimum, reporting any use of force beyond unresisted handcuffing. We believe those requirements reflect current law enforcement best practice.⁸²

The Review Team believes that MPD is entitled to some latitude in balancing the need for use of force reporting and investigations against the significant administrative burdens imposed by requiring reporting and investigations for less serious uses of force. We fully understand MPD's concern with requiring the submission of UFIRs for these less serious uses of force, such as resisted handcuffing, where there is no complaint of pain or injury, because of the investigative apparatus this puts in motion, and the lack of evidence that excessive use of force has been a problem within MPD in recent years.

However, the Review Team believes that MPD has given insufficient weight, in the sequence of changes described above, to the value of data collection for the use of less serious force by officers. Data collection and analysis

⁸¹ These pattern and practice investigations have resulted in settlement agreements and consent decrees in Albuquerque, New Mexico; East Haven, Connecticut; Cleveland, Ohio; New Orleans, Louisiana; Puerto Rico; and Seattle, Washington. *See generally* United States Department of Justice Civil Rights Division, *Special Litigation Section Cases and Matters*, available at <http://www.justice.gov/crt/special-litigation-section-cases-and-matters0#police>.

⁸² In its comments on the draft report, MPD argues that it disagrees with this analysis because the use of force reporting and investigations requirements that may be appropriate immediately after DOJ has determined that a law enforcement agency has engaged in a pattern or practice of using excessive force, it may not be appropriate for an agency – such as MPD – that has successfully implemented reforms and which has not in recent years demonstrated it uses excessive force. The Review Team agrees with MPD, which is why we do not recommend that MPD conduct an administrative investigation for every use of hand controls. But we do think that hand controls should be reported, and that individual and team takedowns should be reported and investigated as appropriate methods for managing force and ensuring that excessive force does not reemerge as a problem within MPD.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

allow for the early identification of patterns of misuse of force, and facilitate remediation efforts that might avoid serious abuses of force. Experience demonstrates that officers who unjustifiably use lower levels of force, and whose conduct is not addressed, are more likely to use excessive force. Indeed, this is the logic behind creating early warning systems in law enforcement agencies, which has long been accepted as a law enforcement best practice. Limiting data collection of less serious uses of force thus limits MPD's ability to intervene promptly and effectively in ways that might prevent the unnecessary and unjustifiable higher-level uses of force.

As for hand controls and resisted handcuffing, MPD should revisit its determination that the administrative burdens of *reporting* such uses of force outweigh the benefits. Requiring reporting but not full investigations in such cases would facilitate the collection of relevant data without consuming substantial time or resources.

Accordingly, the Review Team **recommends that MPD reinstate use of force *reporting* for hand controls and resisted handcuffing (even when there is no injury or complaint of pain). (Recommendation No. 5). The Review Team further recommends that MPD reinstate use of force reporting *and investigations* for individual and team takedowns (even when there is no injury or complaint of pain). (Recommendation No. 6).** We believe that these changes, if implemented, will restore a more appropriate balance between, on the one hand, the value of use of force reporting and investigations, and, on the other hand, the burdens of additional reporting and investigation.

Further, we have been troubled by the large number of substantive changes in use of force reporting and investigations policy and practice that have been implemented through internal communications such as teletypes. That has made it difficult for us to piece together the changes in MPD policy and practice over the past several years, but more importantly it means that MPD officers are acting pursuant to policies and procedures that are inconsistent with the policies and procedures that are available to the public through MPD's published system of general orders. Although we do not suggest this was MPD's intent, the result is a defeat for the principle of transparency in an area that is extremely important in promoting community understanding of the operations of its police department.⁸³ **Therefore, the Review Team recommends that MPD make all**

⁸³ The President's Task Force Report stressed the importance of such transparency: "Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection, and information sharing. These policies (footnote continued)"

The Bromwich Group

substantive changes in use of force reporting and investigations policy through a transparent process that ensures that the public, all MPD stakeholders, and MPD officers have access to current MPD policies. (Recommendation No. 7).

2. Review of Use of Force Investigations

As discussed above, the MOA established specific investigative steps required in every case investigated by FIT. It required that FIT respond to the scene to conduct an investigation into every incident involving deadly force, serious use of force,⁸⁴ or any use of force indicating potential criminal misconduct by an officer. MPD's Use of Force Investigations policy established that FIT also was responsible for investigating all allegations of excessive force because the definition of use of force indicating potential criminal misconduct includes "all accusations or complaints of excessive force."⁸⁵ Investigators from the MPD District to which the involved officers were assigned were prohibited from conducting investigations into these force incidents.

As discussed above, Teletype # 04-001-11, issued on April 1, 2011, changed the notification and FIT/IAD response requirements. This change was initially brought to our attention during our interviews of current IAD staff, who advised us that they were no longer required to respond to the scene of canine bites or head strikes that occur between 4:00 pm and 7:00 am on weekdays, or at any time on weekends and holidays. We were told that whether IAD responds to an incident involving a head strike or canine bite during normal work hours is left to the discretion of the IAD squad lieutenant.

Although IAD has a general written policy for assigning investigations, there is no separate policy for assigning use of force investigations. According to the IAD investigators we interviewed, the lack of a written, uniform policy for assigning use of force investigations to IAD staff has created confusion and

must be clear, concise, and *openly available for public inspection.*" President's Task Force Report, Recommendation 2.2, at 20 (emphasis added).

In its comments on the draft report, MPD pointed out—and requested that we note in this report—that policy revisions implemented by teletype is a longstanding practice within MPD. Nevertheless, MPD has represented that it will replace the use of teletypes with "executive orders" that will be available both within MPD and on MPD's public website.

⁸⁴ As defined in MOA ¶ 33 (see p. 27, fn. 56 above).

⁸⁵ GO-RAR-901.08, ¶ III E. As discussed above, in practice FIT/IAD has initially reviewed allegations of excessive force but investigations of those allegations have generally been handled by the chain of command.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

imbalance in caseloads. IAD investigators advised us that each squad lieutenant has implemented his or her own assignment procedure, and our interviews with the lieutenants confirmed this. Two of the lieutenants told us that, for the week that their squads are on call to respond to uses of force, the squad's weekly work schedule designates the lead investigator for each day of the week. If a use of force incident occurs that requires an IAD response and investigation, the designated IAD officer serves as the lead investigator. One of the IAD lieutenants advised us that he reassigns a use of force case if he feels the designated lead is not well-suited to conduct the investigation. The third lieutenant's approach is completely *ad hoc*: he makes lead investigator assignments based solely on his assessment of his staff and the nature of the incident. We were told that none of these assignment procedures have been embodied in a written directive of any kind.⁸⁶

The lack of a uniform, written policy on designating the lead investigator in serious use of force cases is problematic and can lead to confusion in responding to important use of force cases. For example, we were told of a recent serious use of force event where the disagreement between two squad lieutenants about who was to lead a high-profile investigation – observed by the on-scene investigators – required intervention by a ranking member of MPD to resolve the issue. Several IAD investigators also told us of the disruption caused by reassigning investigations. As an example of such disruption, an IAD investigator told us that he was designated to be the lead on an investigation even though he was not working the day of the incident. As a result, the investigator did not respond to the scene or participate in the preliminary investigation but thereafter inherited the investigation. This investigator advised us that the preliminary lead investigator did not ensure all the information was gathered, which created more work for him and slowed the investigation as he worked to fill the void. Yet another investigator told us of a canine bite case that he was assigned to the day after the incident took place. The preliminary investigation was conducted at the field-unit level within the chain of command and the unit supervisor failed to take photos of the bite, evidence that was never captured for the investigative report. Based on our interviews of IAD investigators and supervisors, **the Review Team recommends that IAD develop**

⁸⁶ In its comments on the draft report, MPD stated that its general policy for assigning investigations will serve as the basis for the policy on assigning use of force investigations that will appear in a new manual that will combine existing FIT and IAD manuals. The Review Team believes that a more specific policy relating to use of force investigations, and their special characteristics and requirements, is needed to reflect the specific demands of those investigations.

The Bromwich Group

a comprehensive use of force investigations procedural manual that incorporates the requirements of the MOA, relevant General Orders, and an appropriate set of procedures based on the original FIT Manuals. (Recommendation No. 8).

Under the MOA, cases involving less serious uses of force – those not involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer – were to be investigated in the MPD chain of command by a district supervisor. A supervisor who was involved in the incident was prohibited from conducting the investigation. Like the FIT investigative report, the chain of command investigative summary was required to include a finding of whether the force was justified, a determination of whether the use of force was consistent with MPD policy and training, a finding of whether proper tactics were employed, and a determination whether lesser force alternatives were reasonably available.⁸⁷

To assess whether MPD's use of force investigations have been conducted in a manner consistent with the standards established by the MOA, we selected and reviewed 35 investigative files from an MPD listing of citizen complaints and incidents in which MPD officers used force. Because three of the cases selected had no investigative reports in the file, we reviewed a total of 32 investigative files.

We found that four out of the 32 cases we examined (12.5%) were investigated by the involved officer's chain of command when they should have been investigated by IAD. These cases are described below.

- The complainant alleged that the arresting officers broke his arm. His arm was in fact broken, but the subsequent investigation determined the officers did not break it. Nevertheless, a claim of a serious injury such as a broken arm should have been assigned to IAD for investigation.
- The complainant alleged he was struck in the head with a 2 x 4 by the arresting officer. A head strike with a hard object is a serious use of force and should have been investigated by IAD. Instead, the officer's supervisor conducted the investigation.
- A suspect suffered a canine bite. The file contained an investigative report from a District sergeant that reflects that IAD was notified,

⁸⁷ MOA ¶ 65.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

but the file contained no evidence that IAD had conducted the investigation.

- The complainant alleged that the arresting officer placed her in a chokehold. The case was assigned to a District supervisor for investigation.⁸⁸

Though the definition of a “reportable use of force” has been changed several times since 2008, the requirement that a supervisor who becomes aware of a reportable use of force is to notify the Command Information Center (CIC)⁸⁹ and ensure that the officer prepares a UFIR has remained constant.⁹⁰ We found two cases where a reportable use of force was made known to a supervisor but the supervisor did not comply with these requirements and where the subsequent investigation failed to address the violations of the reporting requirements.

In one case, which occurred on November 20, 2014, the person arrested alleged that the officers had injured him, prompting the sergeant to complete an Injury to Arrestee Report. This complaint should have caused the sergeant to initiate a use of force investigation, which requires notifying IAD, obtaining an incident number, and conducting an immediate investigation into the alleged use of force. In fact, IAD was not notified about the allegation until December 2, 2014. The subsequent investigation into the use of force, completed by a lieutenant, failed to address the sergeant’s failure to initiate a use of force investigation on the date of the arrest.

⁸⁸ In its comments on the draft report, MPD stated that only two of these four cases should have been investigated by IAD, and it provided evidence not contained in the original file we reviewed that the canine bite case was in fact investigated by IAD. We disagree with MPD regarding the appropriate entity to investigate the cases involving the allegation of a broken arm and the allegation that the individual was hit in the head by a 2 x 4. MPD focuses on the end result – in each case the allegations were not substantiated. But the mere fact that the allegations were not substantiated does not vindicate, after the fact, the decision to allow the chain of command to handle the investigations. Our view is that the nature of the allegations warranted not only initial reporting to IAD but investigation by IAD.

⁸⁹ The Command Information Center (CIC) was previously known as the Joint Operations Command Center (SOCC).

⁹⁰ GO-RAR-901.08, Sections V. D(4), V.I(3).

The Bromwich Group

In a second case, described above, the complainant alleged that he had been struck in the head by officers – an allegation of a serious use of force – but the district supervisor conducted the investigation. This incident occurred on August 22, 2014, approximately six weeks after the issuance of MPD Teletype # 07-022-14, which reinstated the requirement that IAD investigate any confirmed head strike. The supervisor should have notified IAD and IAD should have conducted the investigation.

At the conclusion of a use of force investigation, the MOA required FIT and chain of command investigators to prepare a comprehensive investigative summary that included specific elements, including a summary and analysis of all relevant evidence, as well as proposed findings. In addition, the findings were required to address whether the use of force was consistent with MPD policy and training, whether the officer used proper tactics, and whether the officer could have used a lesser amount of force.⁹¹

MPD's Use of Force Investigations Order comprehensively embodied those requirements of the MOA:

The final investigative report shall include a description of the force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation, and proposed findings and analysis supporting those findings.

The proposed findings shall include: a determination of whether the force was consistent with MPD policy and training, a determination of whether proper tactics were employed, and a determination whether lesser force alternatives were reasonably available.⁹²

These requirements were also included in the FIT Manual approved by DOJ in late 2003 and have not been modified.

Although the investigations we reviewed generally summarized the evidence collected and analyzed whether the use of force was justified, none of the investigative reports included an analysis of apparent training deficiencies reflected in the use of force, or recommendations for remedial training. Training opportunities and equipment failures were not discussed in any of the investigative reports we reviewed. For the most part, the same was true

⁹¹ MOA ¶¶ 62, 65.

⁹² GO-RAR-901.08 V.K(3)-(4).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

regarding tactical analysis. Indeed, in only one of the 32 cases we reviewed—an IAD case—did the investigator engage in anything resembling a tactical analysis.

As part of its use of force investigations, the MOA required MPD to tape record or videotape its interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury.⁹³ If a complainant or non-officer witness refused to be tape recorded or videotaped, the investigating officer was required to prepare a written narrative of the statement to be signed by the complainant or non-officer witness.⁹⁴ The MOA's requirements were mirrored in MPD's Use of Force Investigations Order.⁹⁵

In only seven of the 12 IAD cases we reviewed to which these requirements applied—cases investigated by IAD involving a serious use of force—did we find evidence that at least some interviews were recorded or reduced to a written narrative, and in only one of those cases did we find recordings in the file.⁹⁶ Most of the chain of command investigations we reviewed relied exclusively on written reports prepared by the involved officer. In only a few cases did the file or the report contain evidence that the investigator interviewed the officer involved in the use of force. None of the files contained a tape-recorded interview of the officer.

Of the 32 investigations we reviewed, 18 contained evidence that the complainant and witnesses were interviewed. In six of these cases investigated by the chain of command, the investigating supervisor failed to contact the complainant, relying entirely on the statement the complainant gave at the time the complaint was lodged. In eight cases, either the witness refused to be interviewed or no witnesses were identified.

The MOA required MPD to collect, preserve, and analyze all appropriate evidence, including conducting canvasses of the scene to locate witnesses, and,

⁹³ MOA ¶ 81.

⁹⁴ MOA ¶ 81a.

⁹⁵ GO-RAR-901.08 V.D(2).

⁹⁶ We were informed that IAD's Tech Unit maintains copies of these recordings and can provide them based on the IS number. Even if this is so, we are uncertain whether the recordings are readily available to reviewers of the investigation.

The Bromwich Group

where appropriate, obtaining complainant medical records.⁹⁷ However, most of the investigative reports we reviewed contained no evidence that a witness canvass had been conducted. Even when the report stated that a canvass was completed, there was seldom any description of the canvass, the specific locations checked, or the persons interviewed.⁹⁸ The Review Team found sufficient documentation that a witness canvas was conducted in only eight of 27 cases where canvasses were feasible; in the remaining five of the 32 cases a canvass was not feasible because the incident scene was unknown or the matter was brought to the attention of the Department days after the event occurred.

Even where the investigative report strongly suggested that witnesses were likely present, the investigative file reflected no effort to identify and interview them. For example:

- The investigator of an incident that occurred at a nightclub claimed to have conducted a canvass. His report stated that no witnesses to the incident were found, but the report failed to state when the canvass was completed or with whom the investigator spoke. In a properly conducted canvass, each person contacted should be identified, even if the person claims that he or she did not witness anything relevant.
- The investigator of an incident that occurred at a store reported that the complaint said that the store camera captured the entire incident. The investigator reported that he talked with the store manager and was informed that the cameras were not functional—according to the store manager, they were dummy cameras in place as deterrents. The investigator's report did not provide the name of the store manager or any reflection that the officer had verified that the cameras were not working.
- The investigator of an incident that occurred at the front desk of an MPD District office included in the investigative file a video that showed other officers coming and going during the incident. However, because of asserted mechanical malfunctions, the incident itself was not captured on the video. If the investigator

⁹⁷ MOA ¶ 81f. GO-RAR-901.08 V.D(2)(f).

⁹⁸ In its comments on the draft report, MPD noted that it has begun to explore using MPD's new records management system—Cobalt—for IAD investigations. If using Cobalt is feasible, that would, according to MPD, facilitate the ability to document and track the investigative activities of investigators, including witness canvasses.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

had interviewed officers who could be recognized in the video, he might well have been able to determine what happened while the video malfunctioned. However, the investigative file reflects no effort by the investigator to identify the other officers.

- The investigator of an allegation of racial harassment that occurred in the lot of a 7-Eleven convenience store reported that he conducted a canvass and found no one to interview. There was no evidence in the file that he interviewed the store clerk. Nor did the investigative file suggest that he checked with the clerk to see if the 7-Eleven or any adjacent businesses had outdoor surveillance videos.

In general, we reviewed several cases in which we would have expected security cameras to be present, such as the incident at the 7-Eleven. Such security cameras might have captured relevant footage of the incident. Despite D.C.'s well known and extensive public- and private-sector surveillance resources, we saw very few instances in which investigators reported canvassing for video surveillance equipment. As a matter of standard practice, MPD investigators should conduct a canvass for installed cameras and video recordings.⁹⁹

Based on our review of these investigations, **we recommend that all civilian witnesses and officer witnesses involved in a use of force be interviewed and that the interviews be either audio and/or video recorded, except when a civilian witness declines to give consent to taping. (Recommendation No. 9).**

We further recommend that all recorded statements in serious use of force cases be transcribed, and that the transcript be included in the investigative file. (Recommendation No. 10).

⁹⁹ In several of the investigations, the facts indicated a high degree of likelihood that a video recording was available but the investigator documented no effort to locate any recordings. For example, in an investigation into an allegation of racial profiling, a complainant accused a lieutenant working a security detail at a Target store of following him around the store because he was black. The allegation was not sustained due to a lack of evidence, but the finding might have been different if video recordings were available for review. The complainant also accused the store manager of racial profiling. The investigating supervisor made no mention of checking to see if Target deployed video surveillance in the store.

The Bromwich Group

3. Use of Force Investigations Training of IAD Investigators

From its inception, MPD's Force Investigation Team was committed to the training and continuous improvement of its staff. At the time of its formation, FIT investigators were provided with seminars and training sessions specifically designed to prepare its members to investigate and manage complex use of force cases. FIT investigators received training regarding general investigative techniques, homicide investigations, deadly force investigations, crime scene processing, interviewing and interrogation, post-traumatic stress, administrative law, criminal law, and criminal procedure. The results of that intense and specific training were reflected in the extremely high quality of the FIT investigations reviewed by the independent monitoring team between 2002 and 2008.¹⁰⁰

The merger of IAD and FIT occurred on August 30, 2012. We have discussed MPD's stated reasons for the merger elsewhere in this report. At the time of the merger, only six members remained from FIT 1 or FIT 2; they became members of IAD. Other members of FIT had retired or been promoted or reassigned within MPD. These factors should have prompted sharp focus on the need to provide comprehensive use of force investigation training, especially to the IAD investigators who had not previously conducted such investigations.

Our interviews with IAD investigators strongly suggested that adequate training had not been provided. But when we raised this issue with MPD, members of its command staff assured us that such training had in fact been provided. To resolve this conflict we sought additional information.

MPD advised us that, at the time of the 2012 merger, all staff affected by the merger received two weeks of training – totaling 80 hours of instruction – including substantial training on conducting use of force investigations. In response to our requests for documentary support, however, MPD was unable to produce evidence that a training needs assessment was conducted, or to provide a complete course schedule or lesson plans.

Instead, MPD produced copies of emails sent or received by the head of the Internal Affairs Bureau (IAB) that related to this 2012 training. The emails included exchanges in June 2012 between the head of IAB and one of the USAO civil rights attorneys regarding, among other things, the specifics of the training to be provided to the members of the newly merged IAD. The USAO attorney recommended that the IAD investigators be provided training on the Fourth and Fifth Amendments, as well as training on the constitutional limitations on

¹⁰⁰ See, e.g., Office of the Independent Monitor, Final Report at pp. 38-39.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

interviewing MPD personnel who are under criminal investigation. In an attachment to one of these emails, an IAD captain outlined some of the training that was scheduled to take place the weeks of July 16 and July 23, 2012. In addition to blocks of training on Labor Relations, IT, and MPD's Public Information Office, the outline contained references to the following:

- the responsibilities of the MPD Homicide Unit in connection with fatal uses of force and in-custody deaths, and how unit members relate to the IAD investigation; and
- the role of the UFRB, how it operated, and the strengths and weaknesses noted by the UFRB concerning previous FIT investigations.

These topics obviously relate to use of force investigations but they are distinct from use of force investigations training. Additional emails addressed the need to identify training resources to discuss the canine unit, the MPD Audit Unit, and death investigations by the Medical Examiner's Office. Although one of the emails attached a proposed schedule for the 2012 training, fully half of the allocated training time was blank.

We also encountered problems in determining who attended this training. The emails we were provided contained a list of 36 IAD staff members *designated* to attend the training, but in the absence of any attendance lists or sign-in sheets, we have no way of knowing how many of the 36 IAD staff members actually attended. Anecdotal evidence suggests that attendance was less than perfect: one IAD member told us that he recalled missing up to 80% of the 2012 training sessions because he was required to appear in court. We do not know how many IAD staff scheduled for the 2012 training had similar scheduling conflicts. Moreover, because of the turnover within IAD, approximately 50% of the current IAD members were not members of IAD in 2012 and would therefore not have received the 2012 training.

In addition to the training at the time of the 2012 merger, MPD advised us that in-service training was provided to IAD staff in 2014. For the 2014 training, MPD was able to produce a detailed schedule reflecting training blocks over a four-day period in early May 2014. We obtained copies of the 2014 training curriculum, most of the associated lesson plans, and a sign-in sheet for one of the days training was scheduled, which reflected that 31 of the 34 IAD staff designated to attend the training sessions actually signed in to the training.

The Bromwich Group

Our review of the lesson plans for the 2014 in-service training supports MPD's claim that it provided use of force investigation to IAD staff. The lesson plans showed that at least 12.5 hours of the training was fully or partly related to use of force investigations. More specifically, the lesson plans showed a block of instruction devoted to "Use of Force Crime Scene Management for Internal Affairs Division Personnel"; a block of training devoted to legal issues relevant to conducting use of force investigations; and a block of instruction entitled "Use of Force Investigations." For this block of instruction, the training objectives were listed as:

- Identify the investigative tasks/steps in preparing the final investigative report for a use of force investigation;
- Define each of the disposition terms of a use of force investigation; and
- Able to prepare a final investigative report for a use of force investigation.

The presentation used 37 slides that covered the different sections of a use of force investigative report. Although the training generally provided adequate coverage of the topic, it did not adequately address an important requirement: the need to conduct a tactical assessment. Instead, the presentation contained two slides entitled "Curriculum Review," the purpose of which was "to show that the tactics/force used are within policy and training doctrine."

As we have described above, the MOA required that all investigations into a serious use of force include, among other things, a determination of whether proper tactics were employed.¹⁰¹ These requirements were implemented through MPD's Use of Force Investigations General Order,¹⁰² and were further reinforced by the FIT Investigative Manual. As a result, one of the permissible findings was "Tactical Improvement Opportunity," reflecting that the investigation revealed tactical errors by the MPD officer(s) that could be addressed through non-disciplinary and tactical improvement training. The Independent Monitor's review of all FIT investigations during the pendency of the MOA confirmed that this tactical analysis was conducted. However, the serious use of force investigations we recently reviewed did not include such tactical assessments. In their place, the reports include a "curriculum review" of the type outlined in the 2014 IAD in-service lessons plans, which as implemented by MPD is of dubious value because it simply calls for confirming that general use of force topics are covered in MPD training.

¹⁰¹ MOA ¶ 62 (emphasis added).

¹⁰² GO-RAR-901.08, V(K)(4).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

In addition to our review of training records for 2012 and 2014, we also monitored the portion of IAD's September 2015 Annual Development Training devoted to Use of Force Investigations. For approximately 1.50 hours, one of the IAD lieutenants provided specific training on use of force investigations. He informed the class that because each of the three IAD squad leaders has a somewhat different approach to use of force investigations, the IAD Commander had directed that an IAD SOP for use of force response be created, which at the time of the September training was still in progress. The trainer also provided class members with an on-scene checklist.¹⁰³ The checklist facilitates uniform documentation of basic scene information (date, time, location, etc.); IAD staff and assignments; detailed scene description; information on involved members, the subject of force, and police witnesses. It also provides for documentation of responding officials and specialized units, as well as hospital, evidence, and canine information. There is also a separate checklist for information that should be contained in the preliminary investigative report.

In addition to these checklists, the trainer also provided an outline of the various roles for responding IAD personnel, including defined roles for persons designated as Lead, Scene, Hospital, and Canvass, with the roles of additional personnel to be defined by the squad lieutenant. The trainer emphasized the importance of the canvass and the need for detailed documentation, but these important points were not incorporated in the distributed printed handout, which also did not require documentation of all witnesses to the incident.

The 2015 in-service training for IAD investigators also included a nearly two-hour presentation by a senior Assistant United States Attorney (AUSA) focusing on various issues relevant to IAD investigators and their relationship to the USAO. The topics included legal issues associated with obtaining statements from officers who used force, the importance of video and witness canvasses, the submissions expected by the USAO in connection with use of force investigations, and other issues that may arise in use of force investigations. We found the training session provided by the AUSA to be helpful and relevant.

Based on our review of the training of IAD records from 2012 and 2014, and our interviews with twelve IAD investigators, we have concluded that at least some use of force investigation training was almost surely provided to IAD

¹⁰³ The on-scene checklist is less comprehensive than the on-scene checklist included in the original FIT manuals.

The Bromwich Group

investigators in 2012 – although we have no way of confirming the extent of it – and that use of force investigation training was in fact provided in 2014. We reach this conclusion about 2012 based on 1) the strength of the command staff's assertions that use of force investigations training was provided, 2) the fact that we find it implausible that such training was not provided at the time of the merger, when it was well known that IAD investigators who had no experience conducting such use of force investigations would begin to do so, and 3) the fact that MPD provided substantial documentary evidence that such training was provided in 2014. Needless to say, we are unable to evaluate anything about the substance of the 2012 training because of the absence of training schedules or lesson plans.

Even though we find that use of force investigation training was provided to IAD staff in 2012 and 2014, and that relevant training was provided as part of the 2015 in-service training program, the cumulative training has been insufficient to equip IAD investigators with the adequate skills and confidence to conduct complex use of force investigations, and to produce first-rate use of force investigative reports. We base this conclusion on the following.

First, feedback provided on the 2014 IAD training strongly suggested the need for more use of force investigation training. Even those IAD investigators who received training in 2014 stated that more training is necessary. Although we were impressed by the 2015 in-service training, more focused and intensive training on use of force investigations is needed.

Second, our numerous interviews of current IAD staff revealed a nearly unanimous view that they have been insufficiently trained to conduct use of force investigations. Several investigators told us that the training they have received dealt primarily with the general aspects of conducting misconduct investigations, even though the lesson plans suggest that use of force investigation issues were covered, at least to some extent. None of the IAD members who recalled their investigations training felt that it adequately prepared them to conduct a serious use of force investigation.

To the contrary, they informed us that they have learned how to conduct a use of force investigation by “just doing it.” These investigators told us they would seek opportunities to assist a former FIT investigator, now an IAD colleague, during an investigation of a serious use of force in order to learn how to conduct such an investigation. Several IAD staffers advised us that in mid-2015, three years after the merger, they continued to feel inadequately trained to conduct a use of force investigation, and that certain IAD staff “will do anything to avoid catching a use of force investigation.” Not surprisingly, this lack of confidence prevents squad leaders from assigning force investigations to these IAD investigators. In addition to the need for further training of existing IAD

The Durability of Police Reform The Metropolitan Police Department and Use of Force

staff, high staff turnover has created the need for training of new members. Further, the lack of adequate training is compounded because assignments as lead investigator in use of force investigations appears to be arbitrary and inconsistent. As a result, investigators may go long periods of time without being assigned a serious use of force investigation. By the time these investigators are assigned such a case, the training they received may be only dimly remembered.

Numerous IAD investigators shared with us the consequences of inadequate training. One IAD investigator assigned to investigate a canine bite said he felt insufficiently prepared to do so. He said he was unaware of what he needed to include in his report and that he had not been advised of the databases that were available to obtain the information he needed. He said he spent several days gathering information and preparing his report, only to learn after he submitted a draft that it lacked much of the required information, including information about the canine team's training records.

Another investigator advised us that he did not know what warnings should be given to police officers under investigation for a use of force until he became involved in his first use of force investigation. He said that, as a former homicide investigator, he knew the rules for interrogating suspects in a homicide investigation, but that he did not learn about *Garrity* warnings¹⁰⁴ until midway through his first investigation of a police shooting. He said that MPD should have better prepared him before assigning him to be the lead investigator on such matters.

Finally, our review of IAD investigations, as well as the review by UFRB members who have reviewed significant number of IAD investigations, suggests that the quality of use of force investigations has sharply deteriorated over the

¹⁰⁴ *Garrity* is a reference to *Garrity v. State of New Jersey*, 385 U.S. 493 (1967), which stands for the principle that public employees cannot be compelled to choose between keeping their job and exercising their Fifth Amendment right against self-incrimination. Like all other employees, police must be able to exercise their Fifth Amendment rights without risking the loss of their jobs. If police officers are compelled to testify by their employing agency, their statements cannot be used in any criminal prosecution against them that relates to the incident about which they are compelled to testify. In internal investigations involving use of force where there is little chance of a criminal prosecution, a so-called reverse *Garrity* warning can be authorized to obtain compelled statements from an involved officer. A reverse *Garrity* warning compels the officer to provide information but ensures that his statements cannot be used against him in a criminal prosecution.

The Bromwich Group

past seven or eight years.¹⁰⁵ The investigations do not meet the standards dictated by the MOA, the policies created by the MPD, or the high bar set by the MPD's past performance.¹⁰⁶

The need for maintaining use of force investigations is especially pressing because, with the passage of time and the large number of transfers and retirements involving former FIT personnel, MPD urgently needs to replenish its group of skilled use of force investigators and ensure they have adequate use of force investigations training. On a number of occasions, Chief Lanier has publicly addressed the consequences of the overall "retirement bubble" currently faced by MPD as a result of a hiring surge in 1989 and 1990, with more than 750 officers having retired in 2014 and 2015.¹⁰⁷ These retirements have taken a substantial toll on MPD's cadre of trained use of force investigators, underscoring the need for providing intensive use of force training to IAD investigators.

¹⁰⁵ In its comments on the draft report, MPD strongly disagreed with our conclusion that the 2012 in-service training was insufficient to equip IAD investigators with the skills and confidence to conduct complex use of force investigations and produce high-quality investigative reports. See Exhibit I at pp. 14-15. For the reasons stated at length above, the Review Team believes its conclusion is well-founded.

¹⁰⁶ In addition to the use of force training we discuss above, the Review Team also had the opportunity to review MPD's Tactical Training Center, a new 40,000-square-foot indoor training facility containing four separate buildings/modules designed to simulate different types of real-world policing challenges. The modules are: a two-story structure currently configured to be a school or office building; a one-story structure currently configured as commercial space located side-by-side with retail and service businesses; two adjoining two-story row houses; and a structure simulating an MPD station, cell block, or command center. We were impressed by the facility.

MPD described a planned transition from its current training program to a new training structure. The current program is composed of separate instruction modules that make only limited use of practical scenarios. It remains primarily lecture-based and is based on fixed hours requirements rather than testing performance competencies. However, MPD is in the process of replacing this structure with what it described as an "[i]ntegrated and interactive job-related training . . . [b]ased upon practical application and 'scenarios' preparing recruits for [a] field training environment." May 19, 2015 Slide Presentation. According to MPD, the new training process will involve MPD recruit trainees in more participation-based instruction; it adopts a learning model based on performance objectives rather than hours requirements. It will also reduce the amount of new recruit training from 26-40 weeks under the old model to 20 weeks under the new training system.

¹⁰⁷ See, e.g., *Chief Lanier: Setting the Record Straight on Staffing*, available at <http://mpdc.dc.gov/release/chief-lanier-setting-record-straight-staffing>

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Based on our interviews of IAD investigators and supervisors, our review of IAD cases, and our discussions with other stakeholders in the use of force investigations process, **the Review Team recommends the following:**

First, we recommend that MPD restructure IAD so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this group should be officers who have demonstrated the proper attitude and who possess the necessary skills for conducting use of force investigations. (Recommendation No. 11).

Second, we recommend providing the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident. (Recommendation No. 12).

Third, we recommend reinstating the practice of requiring IAD investigators to respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites. (Recommendation No. 13).¹⁰⁸

Fourth, we recommend that IAD investigators be required to investigate all reported or claimed strikes to the head whether or not the head strike is confirmed by a field supervisor and regardless of whether there is an injury or corroborative evidence; and that IAD investigators be required to investigate all canine bites. (Recommendation No. 14).

¹⁰⁸ At our December 16 meeting with MPD, we were advised that the practice of requiring IAD investigators to respond to the scene of head strikes and canine bites had resumed on November 10, 2015.

The Bromwich Group

The Review Team believes the implementation of these recommendations will significantly improve the quality of MPD's use of force investigations.

C. Use of Force Review Board

The Use of Force Review Board (UFRB) provides the most senior-level review of the most serious uses of force by MPD officers.¹⁰⁹ An MPD Assistant Chief and five other senior members of the Department comprise the UFRB—some serve on the UFRB because of their specific roles within the Department, while others are field commanders selected by the head of MPD's Patrol Services Bureau.¹¹⁰ The UFRB reviews all use of force investigations completed by IAD; any chain of command use of force investigations referred to the Board by the Internal Affairs Bureau; and all vehicle pursuits that result in a fatality.

The process for UFRB review of use of force cases is well-established. The UFRB receives an investigative file prepared by investigators from the IAD. The file generally includes written and recorded statements from officers involved in the use of force, photographs, laboratory reports, video footage, dispatch calls, and other relevant evidence. These investigative reports include proposed findings regarding whether the use(s) of force were justified and consistent with MPD policy. The UFRB is authorized to recommend corrective or adverse action in cases where the use of force was inappropriate, and also to recommend non-disciplinary actions—including recommending specific additional training or prescribing tactical improvements—that its review of the investigation suggests are appropriate. The UFRB also has the authority to recommend commendations for officers who have acted with distinction in incidents involving uses of force.

Although the UFRB existed prior to the DOJ investigation, the MOA specifically directed that the UFRB be “enhance[d]”¹¹¹ and assume a central role in dealing with use of force-related cases. Because of the UFRB's important institutional responsibilities within MPD for use of force reviews, the Independent Monitor spent significant time reviewing and assessing its handling of use of force cases starting in 2004, approximately a year after a new UFRB

¹⁰⁹ The MOA required the UFRB to conduct “timely reviews of *all* use of force investigations.” (emphasis added). MOA ¶ 67. Because of the volume of cases, in practice the UFRB has limited its reviews in the manner described above.

¹¹⁰ Those who serve by virtue of their position are the head of the Special Operations Division in the Homeland Security Bureau; the head of the Criminal Investigations Division in the Investigative Services Bureau; and the Director of MPD's Academy. In addition, the UFRB includes two non-voting members—a member of the Fraternal Order of Police, and the Executive Director of the Office of Police Complaints.

¹¹¹ MOA ¶ 67.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

general order was approved by DOJ. The initial assessments of the UFRB's operations by the monitoring team found broad deficiencies in both the process and substance of the UFRB's case reviews.¹¹² In response to the those assessments, MPD in 2005 substantially reformed the structure and operations of the UFRB in the following ways, as subsequently reflected in the 2009 revisions to MPD's Use of Force Review Board General Order:

- **Composition:** the Chair of the UFRB was required to be an Assistant Chief, and the other members of the Board were required to be commanders from the Special Operations Division, the MPD Academy, the Criminal Investigations Division, and two commanders from the Patrol Services Bureau;
- **Established schedule:** a regular schedule was established for UFRB meetings – two meetings each month – to ensure more reliable attendance, and strict attendance requirements were imposed, including the need for advance approval by the UFRB Chair for any member's absence from a UFRB meeting;
- **Decision Point Analysis:** consistent reviews of MPD uses of force were required to be conducted within a specific analytic framework, which focuses on each point at which decisions were made by any officer involved in the incident that may have affected subsequent events, including but not limited to the ultimate uses of force; and
- **Administrative Support:** administrative staff support was provided to assist the UFRB in preparing agendas, preparing decision point analytical case summaries, ensuring that relevant materials were available to the Board when it considered cases, preparing summaries of UFRB meetings, and notifying involved officers of the UFRB's decisions.

With the full implementation of these reforms, the Independent Monitor found that the UFRB satisfied the requirements created by the MOA. After monitoring a substantial number of UFRB meetings, the independent monitoring team found

¹¹² Office of the Independent Monitor, Tenth Quarterly Report, at pp. 33-34.

The Bromwich Group

that the UFRB had “improved remarkably”¹¹³ and was in compliance with the MOA.

The Review Team spent considerable time attending UFRB meetings in 2015. We attended in person or by phone UFRB meetings that took place on June 5, July 1, August 11, August 18, August 28, September 21, and September 25. During those sessions, the Board reviewed a total of 20 cases – some of them fairly simple but many of them quite complex, involving multiple officers and numerous suspects. Our review included not only attending the meetings and listening to the discussions, but also assessing the timeliness of the IAD investigations, the quality of those investigations, and the quality of the UFRB discussions. Our reviews were not designed to arrive at our own substantive conclusions about each case, unless we found that the UFRB’s conclusion was so unreasonable that it suggested deep flaws in the process.

1. Timing Issues

Our review of the cases considered by the UFRB found substantial evidence of two different timeliness issues, both of them serious. The first is the length of time consumed by criminal investigations, and prosecutorial review, by the United States Attorney’s Office for the District of Columbia (USAO) of incidents involving the serious use of force by MPD officers; the second relates to the length of time available to the UFRB to consider these serious use of force cases and to retain the legal authority to impose discipline on an officer found to have violated MPD policy.

a. USAO Referrals and Declinations

At the first UFRB meeting we attended (June 5, 2015), we noticed that the two cases being considered were several years old. In both cases, the underlying events had occurred several years earlier – one in 2012, and the other in 2011. In reviewing the documentation for these two cases, we learned that the cases had only recently – one in March 2015, the other in May 2015 – been declined for prosecution by the USAO. Declination – the decision not to prosecute the officer for his use of force – is a pre-requisite for the completion of MPD’s administrative investigation.¹¹⁴ Thus, MPD had been unable to complete its

¹¹³ Office of the Independent Monitor, Final Report at pp. 41-42.

¹¹⁴ All serious uses of force and uses of force indicating potential criminal misconduct by an MPD officer must be reviewed by the USAO to determine whether the officer will be criminally prosecuted. According to information we obtained from both MPD and the USAO, prosecutions of MPD officers for the excessive use of force are extraordinarily rare, and there has never been a prosecution of an MPD officer relating to an officer-involved fatal shooting.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

investigation, including interviews of the officers whose conduct was under review, for close to three years in one case and close to four years in another. When we subsequently asked whether these two cases were anomalies, MPD officials advised us that a pattern of delays had developed starting in approximately 2010.

This pattern of delay was substantially different from the manner in which the most serious use of force cases were handled from 2002 through 2008. During that time period, the USAO generally completed its reviews far more promptly. Because of this important development, with adverse consequences on the swift completion of MPD's administrative investigations, we requested data from MPD on all officer-involved fatal shootings from 2009 through May 2015. This included data on the length of time between the referral of the cases to the USAO and their return to MPD for the completion of MPD's administrative investigation and the consideration of the case by the UFRB.

The information on officer-involved fatal shootings, set forth in the table below, amply support MPD's contention that extended delays in the USAO's investigation and review of such cases have been the rule rather than the exception.¹¹⁵

¹¹⁵ We appreciate the professionalism and candor of the USAO in providing corrected data for three of the cases presented in this table; in each case, the new data showed that the delays were longer than was reflected in the data we originally received from MPD.

The Bromwich Group

Review of Officer-Involved Fatal Shooting Cases by USAO 2009-2015				
Name of Decedent	Location	Date of Incident	Date of Declination	Length of Review
2009				
Osman Abdullahi	830 7 th St NE	January 26, 2009	June 22, 2009	5 months (147 days)
Tawana Thomas	5300 B St. SE	March 8, 2009	September 17, 2009	6 months (194 days)
Michael Griffin	2200 Champlain St. NW	May 16, 2009	April 22, 2010	11 months (342 days)
Burlura Salvador	3355 Benning Rd. NE	August 27, 2009	January 20, 2010	5 months (146 days)
Robert McFarlin	3407 Staton Rd. SE	September 14, 2009	November 10, 2011	26 months (788 days)
James Miller	901 21 st St. NE	October 21, 2009	January 14, 2011	15 months (450 days)
Jamaal Grant	800 Upshur St. NW	October 24, 2009	November 5, 2010	12 months (377 days)
Tremayne Flythe	400 Kenyon St. NW	December 26, 2009	June 18, 2011	18 months (540 days)
2011				
Akeem Cayo	1011 Irving St. NE	February 13, 2011	March 20, 2015	49 months (1,497 days)
Ralphael Briscoe	2400 Elvans Rd. SE	April 26, 2011	January 25, 2012	9 months (274 days)
Michael Epps	5300 block of Clay Terrance NE	December 12, 2011	April 2, 2013	16 months (477 days)
2012				
Albert Payton	4252 4 th St. SE	August 25, 2012	March 4, 2015	30 months (921 days)
Justin Turner	3511 17 th St. NE	November 3, 2012	June 9, 2015	31 months (948 days)
2013				
Cleman Sweptson	2500 Sheridan Rd. SE	April 9, 2013	May 22, 2015	25 months (773 days)
Nathaniel McRae	800 Barnaby St. SE	May 29, 2013	December 15, 2015	31 months (930 days)
Aaron Alexis	1333 Isaac Ave. SE	September 16, 2013	August 7, 2014	11 months (325 days)
Robert Brown	4955 G St. SE	November 25, 2013	November 10, 2015	24 months (715 days)
Darius Murphy	1331 Queen St. NE	December 03, 2013	July 13, 2015	19 months (588 days)
2014				
Daquan Hendrix	77 K St. NW	March 18, 2014	November 6, 2015	20 months (598 days)
Issal Little	4500 C St. SE	April 6, 2014	November 9, 2015	19 months (583 days)
Gregory Gray	2806 Naylor Rd. SE	December 24, 2014	Still Pending at USAO*	12 months (372 days)
* For the Gray case, which remains pending at the USAO, we calculated the Length of Review as of December 31, 2015.				

We reviewed data for 21 officer-involved fatal shooting cases that occurred between January 26, 2009, and December 22, 2014. For the 20 cases for which the USAO completed its review by December 31, 2015,¹¹⁶ the average time a case was pending at the USAO was more than 19 months (599 days) and the median time was a full year. The one case still pending at the end of December 2015 (Gregory Gray) had been pending a full year.

Members of MPD's command staff advised the Review Team that these delays had been a source of major concern to MPD for the past several years, but

¹¹⁶ We originally included the officer-involved fatal shooting of Michael Abney, discussed at length below in Section VI G 2, in the above table because of the involvement of MPD officers. However, in its comments on the draft report, the USAO correctly pointed out that the Abney case was reviewed, and the declination issued, by the Criminal Section of DOJ's Civil Rights Division. This was because the law enforcement personnel involved in the fatal shooting included Deputy United States Marshals as well as MPD officers. By way of comparison, the Abney case was pending in the Civil Rights Division for 10 months (293 days) before prosecution was declined. This was shorter than any period of USAO review of an officer-involved shooting case since 2011.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

despite having raised the issue repeatedly with senior executives at the USAO, the problem had persisted.

With the permission of the USAO, we interviewed the two experienced career prosecutors in the USAO's Civil Rights Unit to get their perspective on the delays in the review of MPD use of force cases. The two prosecutors openly acknowledged that for several years, MPD officer-involved fatal shooting cases and other serious use of force cases have remained under investigation and review in the USAO for extended periods of time. They told us that some part of the delay was explained by periods of active investigation, which included delays in obtaining all necessary forensic evidence, most frequently ballistics and DNA evidence.¹¹⁷

But the two prosecutors also told us that much of the delay was the result of internal review procedures within the USAO. Those procedures, implemented in approximately 2010, included a new requirement to prepare a lengthy internal memorandum analyzing the evidence in each case, a document they referred to as the "memo monster." Once drafted, the memorandum is reviewed by multiple supervisors at successive levels of the USAO's chain of command, frequently returned to the author on multiple occasions for rewriting and occasionally with requests for additional investigation, and personally reviewed by senior executives at the USAO, before the process was complete.¹¹⁸ This process has not resulted in any increase in the number of MPD officers criminally prosecuted for the excessive use of force. In fact, the number of MPD officers prosecuted for on-duty use of force is extremely small, and the USAO

¹¹⁷ In its comments on the draft report, the USAO argued that our description of the length of time cases remain pending at the USAO before a prosecution decision is misleading because it fails to take into account the amount of time it takes IAD to fully investigate the incident and the time it takes other agencies (including the District's Medical Examiner) to complete their work. *See* USAO's December 21, 2015 Comments, at Exhibit K, at pp. 3-5. We fully appreciate that some of the time during which the cases remain pending at the USAO is attributable to the need to obtain work performed by other agencies, but we are unaware of any evidence that the time these agencies take to perform their work increased during the period (2009-2015) we examined, and therefore are unaware that the operations of these other agencies contributed to the increased length of time these cases were pending at the USAO. Thus, the one variable that has demonstrably changed has been the length of USAO review.

¹¹⁸ In its comments on the draft report, the USAO asserted that it has recently modified its internal review procedures. However, when the Review Team asked for specific information about these modifications, the USAO declined to provide further information. *See* Exhibit L, at pp. 2-3.

The Bromwich Group

has advised us that it has never prosecuted an on-duty MPD officer in connection with an officer-involved fatal shooting. Instead, the main consequence of the extended review process seems to have been the creation of obstacles to the prompt completion of MPD's administrative investigation, which must await the USAO's decision.¹¹⁹

These extended delays in resolving the most serious use of force cases — especially those involving officer-involved fatal shootings — must be addressed. **Accordingly, the Review Team recommends that top-level MPD officials meet with top-level officials at the US Attorney's Office to reengineer the system for reviewing the most serious MPD use of force cases. (Recommendation No. 15). We recommend that MPD and the USAO establish a goal of completing the USAO review of the most serious use of force cases within six months, and that the period be extended only by explicit agreement between the US Attorney and the Chief of Police, and with specific reasons provided that justify the need for additional time. (Recommendation No. 16).**

b. Completion of MPD Administrative Investigations

MPD's administrative investigation of serious uses of force cases begins with a preliminary investigation, usually completed within 24 to 72 hours. This preliminary investigation generally includes interviews of police officer witnesses, interviews of civilian witnesses, witness canvasses, collection of physical evidence from the scene, photographs of the scene and of the involved officers and civilians, collection of relevant video footage,¹²⁰ and the collection of relevant MPD dispatch tapes, among many other sources of evidence. The fruits of the preliminary investigation are provided to the USAO, which then works with IAD investigators to develop additional relevant evidence, including forensic evidence, necessary to make a decision to prosecute or decline prosecution of officers involved in the use of force.

By the terms of DC's Fire and Police Disciplinary Action Procedure Act of 2004, any disciplinary action against a MPD officer must be commenced within

¹¹⁹ The two USAO prosecutors advised us in general terms that the USAO review process has recently been modified to reduce these delays, but we are unaware of the details of those changes and have no means to judge their likely efficacy in reducing delays. We note, however, that within two months of our interviews of the two prosecutors, and within a span of four days, three of the officer-involved fatal shooting cases were returned to MPD with letters of declination.

¹²⁰ This includes video from DC government video cameras, private cameras deployed by retail establishments and/or commercial buildings, and private cameras for residences identified during the canvass.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

90 days of the underlying incident relating to the proposed disciplinary action.¹²¹ However, any period during which the officer's conduct is the subject of a criminal investigation is tolled – *i.e.*, not included in the calculation of time within which the disciplinary action must be commenced. In effect, referrals to the U.S. Attorney's Office provide additional time for IAD to conduct the investigations that may form the basis for discipline. There is no prohibition, in law or in fact, that prevents IAD investigators from proceeding with the administrative investigation while the matter is under review by the USAO, and in fact the criminal and administrative investigations rely largely on the same body of evidence, with some exceptions. In these circumstances, the main investigative step that cannot be taken until and unless the USAO issues its declination is an interview of the subject officer(s) whose conduct is under investigation.

However, The Review Team's examination of various MPD use of force cases reflects that, in many instances, the development of the MPD administrative investigation and the investigative file come to virtually a complete halt while the case is being considered by the USAO. This approach means that instead of a small number of additional steps necessary for completing the administrative investigation – in some cases, the only step that cannot be taken before the declination is interviewing the subject officer(s) – IAD investigators delay the development of the administrative case until after MPD has received the USAO's declination. Because, as we have just described, MPD serious use of force cases, especially fatal shooting cases, are frequently pending in the USAO for extended periods of time, the administrative investigation is frequently resumed long after the preliminary investigation was completed.¹²²

In monitoring the UFRB's consideration of numerous cases presented between June and late September, we observed many occasions in which the final phases of the administrative investigations, because of the passage of time, were conducted by someone other than the original investigator – the original investigator had transferred out of IAD, had retired, or was otherwise

¹²¹ DC Code § 5-1031; GO-PER-201.22.

¹²² In its comments on the draft report, MPD stated that it disagreed with this characterization but agreed that IAD investigators should more promptly assemble the case file and prepare a draft of the final report while the case is pending at the USAO. MPD further stated that it is hopeful that Cobalt, its new records management system, will allow MPD to more closely and effectively monitor IAD investigations. We agree with MPD that closer monitoring and oversight are necessary.

The Bromwich Group

unavailable to complete the investigation. Indeed, one of the first UFRB cases we observed had become the responsibility of the third IAD investigator assigned to the case. Not surprisingly, the investigator was not as familiar with the facts as he would have been had he handled the case from the beginning, and he could not answer basic questions asked by members of the UFRB.

The failure to promptly conduct as many aspects of the administrative investigation as possible has a number of adverse consequences. First, incomplete preliminary investigations require substantial additional investigative work after the case has been sent back to MPD, and in many cases, because of the passage of time, by a different investigator. Second, investigators find themselves in many cases scrambling to gather evidence that may be less available because of the delay caused by the USAO's extended consideration of the case; this may be true for both witness testimony and categories of physical evidence. Third, inadequate and incomplete preliminary investigations may limit the ability of the UFRB to commence disciplinary action because of the 90-day clock, which restarts once the USAO's declination sends the case back to MPD.

Our observation of the UFRB's meetings and discussions confirmed these difficulties caused by IAD's setting the administrative case aside while the USAO investigates and considers it. The Use of Force Review Board General Order states that, "Absent special circumstances, the [UFRB] shall meet twice monthly to review use of force incidents."¹²³ In fact, the UFRB meetings that took place from April through September 2015 were scheduled erratically to meet fast-approaching 90-day deadlines rather than on a recurring, predictable basis.¹²⁴ In many cases, the UFRB met to consider a case within a very few days before the 90-day deadline: of the 23 cases heard by the UFRB over a six month period, 12 were considered with seven days or less left in the 90-day period. In a number of cases, this timing problem forced the UFRB to confront the difficult choice of deciding whether to direct IAD to conduct further investigation, with the knowledge that doing so would bar the imposition of any discipline on the officer, or deciding the case based on an incomplete or inadequate record.

We were unable to determine with certainty why the vast majority of IAD cases to come before the UFRB were completed so late on the 90-day calendar, and no one within MPD provided any justification for failing to advance the administrative investigations and compile the investigative file while the cases

¹²³ GO-RAR-901.09, at 4. A copy of the Use of Force Review Board General Order is attached as Exhibit G.

¹²⁴ The UFRB meetings took place on April 14, May 4, June 5, July 1, August 11, August 18, August 28, September 21, and September 25.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

are pending at the USAO. The Review Team has concluded that these unnecessary delays in completing the administrative investigation interfere with the ability of the UFRB to do its important job.

- **The Review Team recommends that the IAD administrative investigation move forward expeditiously while a case involving a serious use of force is being considered by the USAO. The objective should be to minimize any additional investigation once the case has been returned to MPD, and to complete the IAD administrative investigation and investigative report within 30 days of the time the letter of declination is received. IAD investigator performance evaluation should explicitly consider the timeliness of the investigations he or she conducts. (Recommendation No. 17).**

2. Operation of the UFRB

As mentioned above, the Review Team observed the UFRB's consideration of 20 cases over the course of seven separate sessions between early June and late September. In one of the earliest UFRB sessions, the discussion of one case lasted less than five minutes and was devoid of any meaningful analysis. This was similar to some of the deficiencies identified by the Independent Monitor in the early days of the reconstituted UFRB. We raised our concerns with a senior member of the MPD command staff, which had an almost immediate effect on subsequent sessions of the UFRB that we observed. We did not see such cursory treatment repeated in any of the subsequent cases that came before the Board.¹²⁵

In those later cases, we saw on a consistent basis far more serious and systematic discussion of the facts of individual cases. In most cases, we saw the UFRB function as it should – intelligent and experienced MPD personnel, having mastered the factual record of the case, engaging in a detailed discussion of serious uses of force, including in several cases involving fatalities. That is a credit to the seriousness with which the majority of UFRB members take their responsibilities.

Even so, we were concerned that some aspects of the UFRB's operations are inconsistent with the policies and procedures that govern it. As we noted

¹²⁵ Multiple MPD officials confirmed that our initial feedback caused discussions with various members of the Board that affected its review of cases.

The Bromwich Group

above, the UFRB is supposed to meet on a twice-monthly basis, “absent special circumstances.” In fact, the UFRB’s schedule of meetings during the period April through September was quite irregular, seemingly driven more by the urgency of considering and resolving cases before the expiration of the 90-day deadlines than by any other factor. In addition, four out of the six members of the UFRB constitute a quorum and the absence of any member, at the time, required permission from the UFRB Chair.¹²⁶ On one occasion, a UFRB meeting had to be cancelled abruptly because of the absence of a quorum, but on many other occasions at least one of the UFRB members was absent, and without any suggestion by the UFRB Chair that he had excused the absence.¹²⁷

To gain a better understanding of the UFRB’s operations, we interviewed four of its six members.¹²⁸ Other than the Chair, none of the UFRB members had received any meaningful orientation or training before beginning their service on the Board; one highly regarded member of the Board was unfamiliar with the existence of a General Order governing its operations; several members were unfamiliar with specific requirements that govern the Board’s operations. As to the substance of their work, the UFRB members were critical of the quality of the IAD investigations they reviewed – one UFRB member awarded the investigations a collective letter grade of C-minus and another awarded a straight C. Their reasons for assigning such low grades included the overall poor quality of the investigative reports, the existence of frequent gaps in those reports, and the formulaic “cut-and-paste” quality of most reports.

The UFRB GO requires the selection of a Board Administrator who is responsible for coordinating the submission of IAD cases to the Board, working with the Chair to schedule meetings, and ensuring that relevant materials are available when the Board considers a case. In addition, the Administrator is responsible for preparing a “Decision Point Matrix Analysis” for each investigation. We learned that such analyses are no longer prepared because a former head of IAD concluded that UFRB members were relying on these analytic summaries as a crutch and were not immersing themselves in the primary investigative materials. We are unaware of any authority that exists to

¹²⁶ The October 2, 2015, UFRB Order requires permission to be provided by the Chief of Police rather than the UFRB Chair. *See* Exhibit G.

¹²⁷ A new General Order governing the UFRB, GO-RAR-901.09, was issued on October 2, 2015, replacing the previous version of the Order. It made several changes, including expanding the discretion of the Assistant Chief in charge of the Internal Affairs Bureau to refer cases to the UFRB and, as mentioned above, requiring the Chief of Police rather than the Chair of the UFRB to approve any absences.

¹²⁸ The interviews took place in August 2015. Shortly thereafter, two of the UFRB members rotated off the Board and two new members took their place.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

ignore specific requirements in a GO, but in any event we believe that if properly used as an analytic aid rather than a substitute for detailed review of the investigative record, the structured analysis provided by the Decision Point Analysis can serve an extremely constructive role.

Although not required by the UFRB Order, we think it would also be helpful for the Administrator to highlight for the members of the Board the most significant pieces of evidence so that each member makes sure to examine those items with special care. If presented properly, with no suggestion that the members of the Board should ignore any part of the record, this designation of significant parts of the record would help the Board members focus more of their attention on the most significant parts of the investigative file.

In addition to determining whether a particular use of force is justified and consistent with MPD policy, the UFRB is required to determine whether: 1) proper tactics were used by the involved members, 2) whether risk management issues are implicated by the conduct of the officers, and 3) whether the training provided by MPD on the specific form of force used in the case under review is adequate.¹²⁹ A comprehensive decision point analysis would identify and assess key decisions made by all involved officers, facilitating the Board's evaluation of those decisions as measured by MPD policy, training, and best practices.

Although the Chair attempted on various occasions in the sessions we observed to touch on the issues of proper tactics and the adequacy of training, these issues were not addressed in depth, and the Board would have been substantially assisted if IAD had addressed these issues in their investigative reports – and if those issues had been examined as part of the decision point analysis.

Finally, the UFRB has not in recent years been providing meaningful Department-wide oversight over MPD's use of force investigations. Most MPD use of force investigations are conducted within the chain of command rather than by IAD. Although the UFRB has the authority to review cases forwarded to the Board by the Assistant Chief in charge of Internal Affairs, we were advised by MPD that *no* cases have been referred through this channel in quite some time. This is less the fault of the UFRB – which cannot consider cases or issues

¹²⁹ GO-RAR-901.09, at 5.

The Bromwich Group

not submitted to it – and more the responsibility of IAD to ensure that appropriate chain of command use of force cases are referred to the UFRB.¹³⁰

The Review Team recommends that at the time new members are appointed to the UFRB, they receive specific orientation and training on their responsibility as UFRB members and the responsibilities of others involved in the UFRB process, including the UFRB Administrator, the Assistant Chief of IAB, the Commander of IAD, and IAD investigators. (Recommendation No. 18).

The Review Team recommends that the UFRB actively monitor the IAD's progress in completing use of force investigations and raise concerns about the timeliness of use of force investigations with the Assistant Chief of IAB and, if necessary, the Chief of Police. This will help to avoid cases in which the UFRB's freedom to take appropriate action is hamstrung because it receives the investigative report so late in the process. (Recommendation No. 19).

The Review Team recommends that the requirement that a Decision Point Analysis be prepared for each case that comes before the UFRB be followed, but we also recommend that MPD consider transferring the responsibility for preparing the Analysis to the IAD investigator rather than the UFRB Administrator. (Recommendation No. 20).

The Review Team recommends that the Board Administrator highlight the most significant pieces of evidence so that each member makes sure to examine those items with special care. (Recommendation No. 21).

The Review Team recommends that the UFRB consult with the Assistant Chief of IAB and the Commander of IAD on a quarterly basis to provide feedback on the quality and timeliness of recent IAD use of force investigations. (Recommendation No. 22).

D. PPMS and Supervisory Support Program

The MOA required MPD to develop a computerized early warning system that would, among other things, provide a means for MPD managers to track uses of force by officers throughout the Department. In 2001, the MOA summarized the requirements as follows:

¹³⁰ The recently revised UFRB Order provided the Assistant Chief for Internal Affairs with discretion to refer such cases to the UFRB on her own initiative. The previous version of the Order required such cases to be identified by FIT/IAD.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

MPD has invested a significant amount of time and energy in developing a Request for Proposal to create a Personnel Performance Management System ("PPMS"). In connection therewith, the City has committed to develop and fully implement a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of MPD and its personnel. The computerized data shall be used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts. It shall be used to promote accountability and proactive management and to identify, manage, and control at-risk officers, conduct, and situations. This system shall be a successor to, and not simply a modification of, MPD's existing automated systems.¹³¹

From the beginning, PPMS was a star-crossed project. Budget complications, contractor issues, technical difficulties, and other problems prevented MPD from meeting the requirements of the MOA. In his Final Report, the Independent Monitor found that MPD had failed to come into substantial compliance with the PPMS-related requirements of the MOA by the time the monitorship ended – and the MOA was terminated in April 2008. Indeed, PPMS was one of the three issues for which MPD had continuing reporting responsibilities to DOJ after the MOA's termination.¹³² Because of manpower issues and other priorities within DOJ, there was little oversight of MPD's development of PPMS between the end of 2008 and the first half of 2011. The final communication between MPD and DOJ on this issue was in early 2012, but in fact the continuing DOJ oversight over MPD's development of PPMS, originally contemplated when the MOA was terminated in April 2008, amounted to very little.

After a significant number of false and disappointing starts over close to a decade, the current version of PPMS was installed and made available to all members of MPD in 2011. The Review Team did not conduct an exhaustive review of PPMS, nor did we formally interview a substantial number of PPMS users within MPD about their experience in using it and whether it meets their needs. However, based on our discussions with MPD personnel and USAO personnel with access to PPMS, our impression is that PPMS meets basic needs

¹³¹ MOA ¶ 106.

¹³² Independent Monitor, Final Report, Appendix D.

The Bromwich Group

regarding information on individual officers, but that it nonetheless falls somewhat short of the MOA's requirement for the system to be

used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts.¹³³

MPD personnel at all levels are well aware of the limitations of PPMS.

The Review Team examined in greater depth MPD's Supervisory Support Program (SSP), a risk management tool developed as a component of PPMS. According to MPD, the purpose of the SSP is "to assist supervisors/managers in monitoring the performance and behavior of their members so that they can provide guidance, assistance, and training."¹³⁴ It assists MPD managers and supervisors in identifying problematic behavior by MPD officers and addressing it to protect the officer, MPD, and the community. The structure of the program was established by a 2007 PPMS and SSP Standard Operating Procedure.¹³⁵

SSP operates on a points system, with certain categories of officer behavior assigned a certain number of points within PPMS. Points are assigned for uses of force and for non-force categories of misconduct, as follows:¹³⁶

- Uses of force found to be Not Justified : 100 points.¹³⁷

¹³³ MOA ¶ 106.

¹³⁴ MPD May 19, 2015 Slide presentation.

¹³⁵ *Standard Operating Procedures for PPMS and the SSP*, available at https://go.mpdconline.com/GO/SOP_PPMS_and_SSP.pdf.

¹³⁶ For example, all uses of force determined to be unjustified are assigned 100 points; a justified use of force that called for tactical improvements is assigned 10 points; a sustained harassment allegation is assigned 50 points; and an unjustified vehicle pursuit is assigned 50 points.

¹³⁷ The efficacy of the points system has, unfortunately, been at least somewhat adversely affected by the changes in use of force reporting and investigation thresholds. Officers who would have been previously identified for the SSP – for example, when individual takedowns were in all circumstances reportable and investigated uses of force, and found to be not justified – are no longer identified in circumstances in which the use of force would be found to be not justified, unless they result in an injury or complaint of injury. Therefore, officers who engage in such unjustified uses of force – e.g., the officer engages in an individual takedown where that use of

(footnote continued)

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- Sustained misconduct charges: 5-100 points depending on the severity of the charge.
- Preventable accidents and pursuits found to be not justified: 50 - 100 points.
- Annual Performance Rating of “Needs Improvement,” “Below Average” or “Unsatisfactory”: 100 points.
- Use of Force found to be Justified, but with a finding of a policy violation or the need for tactical improvement: 10 points.

Points are assigned prior to the disposition of an allegation and then adjusted if the use of force is determined to be justified or the allegation is not sustained.¹³⁸

Once an officer reaches the threshold – 100 points or more – an SSP “case” is created and reviewed by the SSP administrator. The SSP administrator then transmits the SSP case to the Director of Programming and Policies (IAB) for review, who then transmits it to the officer’s direct supervisor and the officer’s second-level supervisor (“manager”). Both the manager and the direct supervisor review the SSP case. The direct supervisor completes the initial part of the assessment, the core of which is a meeting with the subject officer. The manager is responsible for completing the assessment of the subject officer and devising an intervention plan. The manager must review both the assessment and the intervention plan with the individual officer. According to the SSP administrator, the direct supervisor may or may not be involved in this review. Because we believe the direct supervisor is a key participant in this process, **the Review Team recommends that the officer’s direct supervisor should in all cases be involved in this review. (Recommendation No. 23).** The entire process from PPMS creating the SSP case to the creation of the intervention plan is to be completed within four weeks.

force was not justified – are not flagged by the system as candidates to have their behavior remediated under the SSP.

¹³⁸ In addition to the SSP’s points system, certain categories of incidents require automatic intervention and referral to MPD’s Employee Assistance Program. These include domestic violence incident; domestic violence, with a temporary protective order or civil protective order; alcohol – either on-duty (any) or off-duty (excessive); DUI or DWI; and sexual misconduct.

The Bromwich Group

The intervention plan designed for the individual officer must address the underlying behavior, address each incident, and include both oral and written counseling by the officer's direct supervisor. The intervention plan may include training, increased field supervision, and referral to various types of counseling and medical services, if appropriate.

Following the assessment and the creation of the intervention plan, the manager reviews the status of the subject officer six months after the creation of the original SSP case to determine whether the behavioral issues have been corrected. The system automatically notifies the SSP administrator if information relating to the follow up is not properly and timely entered into the system. Once notified, the SSP administrator adds the SSP case to a weekly overdue list and sends it to the officer's administrative captain. If not completed, the overdue SSP case will be raised in the regularly scheduled administrative meetings with the Assistant Chief for IAB, meetings which occur no less frequently than every two weeks and which, among other things, address overdue reports.

In addition to reviewing the basic structure of the Program, the Review Team received additional information about the SSP during multiple discussions with the MPD lieutenant responsible for administering the SSP. We also reviewed various documents related to the SSP Program.¹³⁹ MPD advised us that only 50% of the cases created through the SSP result in a form of intervention; in the other 50% of the cases, the manager and direct supervisor determine that no intervention is required. A summary of the review and determination that an intervention is not necessary must be submitted to the SSP administrator. According to MPD, 15-20% of SSP cases result in referrals to EAP.

As part of our review of SSP, we were provided with a redacted SSP Assessment and Intervention Plan for an MPD officer. This particular plan was in response to two incidents – an allegation that the officer had made threats, which was not substantiated due to the absence of sufficient facts, and the officer having lost MPD property – and resulted in an intervention plan that called for oral counseling and a referral to MPD's EAP. The SSP report contains a sign-off sheet that requires the signatures of the officer, supervisor, and manager.

The SSP administrator also prepares monthly and quarterly reports providing the total numbers of SSP cases within a quarter, broken down by gender, race, assignment, shift, and types of allegations. The quarterly reports we reviewed showed some variations per quarter, but these were not variations to

¹³⁹ We reviewed a listing of SSP Indicators/Points, a Redacted SSP Assessment and Intervention Plan, SSP Trend Reports, dated April 1, 2015 and July 6, 2015, and SSP Statistical Reports for the periods May through June 2015.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

which we could attach any significance. The most common types of cases and allegations involve accidents and violations of MPD orders or directives.

MPD was candid with us about the current shortcomings of the SSP system, which are largely the result of the failure of MPD supervisors and managers to invest the time, energy, and effort necessary to make the system work as designed. MPD cited the following factors that currently contribute to the SSP failing to achieve its goals:

- Managers frequently fail to submit timely assessments and intervention plans;
- The assessments and intervention plans are poorly written and frequently fail to adequately address the issues that gave rise to the officer's SSP case being generated; and
- Managers frequently provide insufficient justification for not completing an intervention plan or rejecting the need for one.

In addition, MPD shared with the Review Team its own preliminary view of shortcomings in the SSP program that need to be addressed. These include the retraining of MPD supervisors to familiarize them fully with their responsibilities under the SSP program, including the need to conduct thorough reviews of the background records of the subject officer; to improve poorly designed, poorly written, and untimely assessments and plans; and to eliminate mismatches between the intervention plans and the behavioral indicators that brought the officer into the SSP.

Supervisors received initial training on PPMS/SSP in 2012, and newly promoted supervisors receive SSP training at the time of their promotion. MPD does not currently provide periodic training, nor does it provide training that would best equip supervisors to provide SSP-related counseling to officers. The training for supervisors should address the need to conduct thorough reviews of the subject officer's records, and also provide guidance on how to formulate well-designed and timely intervention plans that address the behavioral indicators that brought the officer within the SSP.

In addition to the weaknesses readily acknowledged by MPD, we identified several additional concerns. PPMS/SSP does not require an assessment in cases where an officer has received numerous complaints but MPD investigations of the allegation have found insufficient facts to substantiate the

The Bromwich Group

allegations. Multiple complaints of excessive force or other misconduct that have not been substantiated because of insufficient facts may nevertheless provide an important warning flag for a possible at-risk officer; multiple complaints against an officer alleging similar conduct should flag that officer for review.¹⁴⁰

Although the PPMS/SSP system does not currently generate SSP cases on this basis, we are not aware of any reason why the software could not be adjusted to do so, with the formal assessment and intervention plan being discretionary rather than mandatory. In addition, supervisors can on their own initiative review the histories of officers under their supervision and conduct an assessment based on this data. MPD advised us that this had happened on only two occasions since 2012. **The Review Team recommends that the SSP be modified to flag officers against whom multiple use of force or misconduct allegations have been lodged even if those allegations were not substantiated. (Recommendation No. 24).**

MPD also acknowledged that the PPMS/SMS system is currently used only to look at individuals. This is inconsistent with the requirements of the MOA. The MOA specifically required PPMS to be used “to detect any pattern or series of incidents that indicate that an officer, group of officers, or an MPD unit” may be engaging in at-risk behavior, and that information in PPMS be used to determine when to “undertake an audit of an MPD unit or group of officers.”¹⁴¹ Examining data on officers assigned to a particular supervisor may identify not simply an individual at-risk officer but an at-risk group of officers, or even an at-risk unit. Needless to say, if the problem is not confined to an individual officer, the risks to MPD and the public are increased substantially. Identifying problems that are more pervasive could allow MPD to identify policy or training deficiencies that need to be remedied. **The Review Team recommends that MPD’s analysis of PPMS data focus not only on individuals but also on units and sub-units within MPD. (Recommendation No. 25).**

E. Professional Conduct and Intervention Board (PCIB)

At the April 29 kickoff meeting, and again at the May 19 meeting, MPD described to the Review Team the Professional Conduct and Intervention Board (PCIB), an entity created in early 2014 to address patterns of officer behavior outside the context of a specific case. The PCIB is an MPD institutional

¹⁴⁰ One of the costs of raising the threshold of use of force reporting so that it no longer includes forcible cuffing, contact controls, or takedowns is that these incidents go unreported and, for the purpose of the SSP, unless there is an injury or complaint of pain, did not occur. The result is a loss of potentially valuable information.

¹⁴¹ MOA ¶ 112 (a),(f).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

innovation designed to address individual MPD members whose behavior has caused concerns within MPD. In her description of the PCIB, Chief Lanier said her team began the process that culminated in the PCIB by analyzing five years of data for officers arrested or fired for misconduct to identify common characteristics and assist MPD in identifying officers with similar risk profiles. They discovered common themes: alcohol abuse, low sick leave balances, injuries suffered by the officers, domestic violence, and relationships of male officers with very young women. The reviews that have become the core of the PCIB were designed to go well beyond the SSP, and to be proactive in identifying at-risk officers and ensuring management accountability; Chief Lanier described various techniques used by MPD, including the use of integrity checks—*i.e.*, the creation of artificial scenarios requiring police intervention for the purpose of observing and evaluating the officer's conduct—in order to prevent and detect officer misconduct.¹⁴²

During the period of our review, and after extensive consultations with the police union, MPD issued a General Order defining the role and responsibilities of the PCIB.¹⁴³ According to the GO, the purpose of the PCIB is to “identify and examine past events and circumstances surrounding documented and repeated misconduct incidents involving a small number of [MPD] members in order to identify management improvement areas and to ensure management accountability.” It states as the Board's goal “to intervene, provide support, prevent future misconduct, promote improvements in work performance, and identify trends that negatively impact the Department and the citizens of the District of Columbia.”¹⁴⁴ The GO establishes the diverse membership of the Board ranging from the Assistant Chief for Internal Affairs, who chairs the PCIB, to the Director of MPD's Medical Services Branch.¹⁴⁵

¹⁴² When asked whether the PCIB has been based on a program or pilot project in another law enforcement agency, Chief Lanier said it was not. Instead, she advised that it was based on the recognition that efforts to be proactive in identifying at-risk officers ran up against various institutional and data limitations. As a result, she requested an analysis to identify the common characteristics of officers who had received significant punishment for misconduct without being spotted as warning flags by other MPD systems of review and evaluation.

¹⁴³ GO -PER-120.29 (September 29, 2015). A copy of the Professional Conduct and Intervention Board General Order is attached as Exhibit H.

¹⁴⁴ *Id.* at 1.

¹⁴⁵ The PCIB includes a total of 14 members, including the heads of many MPD functional units.

The Bromwich Group

The Board meets on a monthly basis to review a small number of cases involving officers who have been selected for PCIB consideration. The criteria for referral are quite broad: they include past documented uses of force, citizen complaints against the officers, requests from supervisors for Board review and intervention, and multiple poor performance evaluations. The Board reviews previous efforts by the officer's managers and supervisors to address the officer's conduct to determine any shortcomings in those efforts. Based on recommendations of the Board members, the Chair determines what intervention or other action to take with respect to the officer, and which members of the Board will be responsible for implementing them.¹⁴⁶

According to MPD, 17 officers were considered by the PCIB in the year following its 2014 creation. The Board's recommendations have included reviews of certain MPD policies, recommendations regarding training, and recommendations relating to expansion of the criteria to be used in conducting personnel evaluations.

In July and September 2015, we observed the PCIB's meetings in person. At the July meeting, PCIB discussed the conduct of three officers during a 90-minute session. In advance of the meeting, the MPD history of each officer was disseminated to the members of the Board, including biographical information, historical assignments within MPD, performance evaluations, and an exhaustive listing of use of force incidents, citizen complaints filed with MPD and the Office of Police Complaints, and other alleged violations of MPD directives or requirements. For one officer, the number of entries totaled more than 100 over the past 16 years, including numerous uses of force found to be unjustified. For the other two officers, who had spent less time with MPD, the number of incidents was smaller but still quite significant – for one officer, the Board was presented with a summary that included 35 entries; for the other officer, the summary contained more than 50 entries.¹⁴⁷

In each of the three cases, different members of the Board were personally familiar with the officer under discussion and provided helpful context and background information on the officer based on their experiencing in working with him. Their perspective was valuable in part because it helped the Board to formulate forms of intervention and remediation that had a reasonable prospect of being accepted by the officer. In each case, specific forms of training were

¹⁴⁶ *Id.* at 4.

¹⁴⁷ MPD had found most (though not all) of the uses of force by these officers to be justified, and the vast majority of allegations of excessive use of force were not substantiated. Even so, the sheer number of incidents was viewed as a signal that the officer was presenting risks to the public, MPD, and himself on a continuing basis.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

recommended, and in one case the recommendation was for the officer to be issued a body-worn camera as soon as possible.

More broadly, because the Board had concerns about all three of the officers relating to use of force-related issues, the Board discussed the importance of expediting the development of MPD's de-escalation training, the goal of which is to train officers to work toward avoiding the use of force through discussion and persuasion. In the case of one of the officers considered at the July meeting, the Board recommended that the officer be personally involved in the development of de-escalation training in the hope that his involvement would have positive effects on his own behavior.¹⁴⁸

We also attended the PCIB's September meeting.¹⁴⁹ At the September meeting, the Board revisited the status of four officers whose cases it had initially reviewed in 2014 rather than taking up the cases of officers for the first time. In advance of the meeting, Board members received: 1) the MPD history of each officer; 2) a list and description of incidents involving the officers that had arisen since their cases were originally considered in 2014; and 3) an update regarding the implementation of the Board's prior recommendations. Of the four officers whose cases were reviewed, one officer had been terminated from MPD, and a second officer had been recommended for termination through the existing MPD disciplinary process but was still employed by MPD.¹⁵⁰

Our exposure to the PCIB did not fully match the original description provided by MPD. The PCIB GO does not mention the specific characteristics originally mentioned by MPD as predictors of at-risk conduct: alcohol abuse, low sick leave balances, injuries suffered by the officers, domestic violence, and relationships of male officers with very young women. The same was true of the materials distributed for the July and September meetings, and the discussions that took place during the PCIB meetings. Indeed, the selection of cases for the

¹⁴⁸ In its comments on the draft report, MPD noted that it is developing a standalone module of de-escalation training that will be required in 2016 for all sworn members. In addition, MPD identified other aspects of its training that are incorporating and focusing on de-escalation techniques. The Review Team views MPD's plans for such training to be timely and important.

¹⁴⁹ The PCIB did not hold a meeting in August for various reasons, including the unavailability of Board members and because of the logistical demands created by planning for Pope Francis's September visit to Washington.

¹⁵⁰ The Board has no power to either recommend or impose discipline.

The Bromwich Group

two sessions we attended seemed to be based almost exclusively on use of force incidents and citizen complaints. Because our exposure to the PCIB was limited, the case selection we observed may not be fully representative of the cases most often considered by the PCIB or the criteria for selecting those cases.

Although our window on the PCIB was limited, the Review Team was impressed by the PCIB's goals, its broad and diverse membership, and the seriousness with which its members appear to take their responsibilities. The PCIB reflects recognition that the investigative and disciplinary mechanisms within MPD cannot address all of the personnel that create risk through their use of force and their interactions with the public. The PCIB appears to be a creative and promising new tool to manage personnel who have engaged in behavior that risks antagonizing the public, endangering relationships with the community, and creating litigation risk for MPD and the city.¹⁵¹

Based on our review of the PCIB and our understanding of its goals, we have several recommendations that we think would sharpen its focus and improve its operations.

- **We recommend that the PCIB Administrator prepare an analysis of each case in advance of PCIB meetings. At present, substantial raw material is provided to the PCIB but no analysis. (Recommendation No. 26).**
- **We recommend that the PCIB Administrator outline a set of possible remedial options based on review of the officer's record and the PCIB's actions in prior similar cases.¹⁵² (Recommendation No. 27).**
- **We recommend that the Assistant Chief of IAB direct the PCIB Administrator to circulate in writing, on a quarterly basis, developments in cases previously considered. (Recommendation No. 28).**

¹⁵¹ Because the selection of officers to be considered by the PCIB is highly discretionary, there is a risk that it could be misused to target officers who are unpopular with high-level supervisors, or who are whistleblowers. Although we think that this risk cannot be ignored, it is reduced because of the broad representation of MPD institutional interests on the PCIB.

¹⁵² In fact, the forms used to summarize the raw information for each officer has a section at the end of the document entitled, "Possible Recommendations." However, in the documentation we were provided, that part of the form was consistently left blank.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- **Because of the small number of cases the PCIB is able to review in depth, we recommend that PCIB meetings be used to discuss new cases rather than review cases previously discussed. Developments in prior cases should be addressed in writing, distributed to Board members, and can be placed on the agenda if requested by a Board member. (Recommendation No. 29).**

F. Audits and the Office of Risk Management

MPD's Office of Risk Management (ORM) was created during the MOA to demonstrate MPD's ability to conduct rigorous and objective reviews in the subject areas covered by the MOA. In late 2005, MPD created the predecessor of the Office of Risk Management, the Quality Assurance Unit, within the Office of Professional Responsibility. At the time, the Independent Monitor noted the potentially important role of this unit in sustaining MPD's progress on the issues covered by the MOA:

For MPD to build on its significant progress over the past several years in implementing reforms under the MOA, it must develop an effective internal audit function to track and evaluate its success in maintaining substantial compliance with the MOA's standards.

Over the past several quarters, MPD has been developing such an internal audit function. MPD now has established within its Office of Professional Responsibility ("OPR") a Quality Assurance Unit ("QAU"), the mission of which is to perform Department-wide inspections and audits to regularly assess MPD's compliance with the MOA as well as the Department's policies and procedures.

...Establishment of the QAU is a significant development because a properly functioning and effective internal audit and monitoring function is essential to MPD's ability to achieve and maintain substantial compliance with the MOA as well as to assure compliance with the Department's policies.¹⁵³

During 2006, 2007, and early 2008, the Independent Monitor team worked closely with the QAU, providing it with technical assistance as well as assessing its

¹⁵³ Office of the Independent Monitor, Fifteenth Quarterly Report, at pp. 1-2.

The Bromwich Group

competence.¹⁵⁴ In his Twenty-First Quarterly Report, in July 2007, the Independent Monitor found that:

MPD is well on its way to establishing a robust internal audit and monitoring function – the QAU – even though development of such a capability is not expressly required by the MOA. The QAU, as long as it remains properly staffed and is provided adequate resources, is an institution critical to ensuring that the significant reforms implemented by MPD pursuant to the MOA are sustained even after the Department no longer is subject to outside monitoring.¹⁵⁵

As part of the MPD's broad, September 2007 reorganization, the QAU was renamed the Office of Risk Management (ORM), but continued to undertake many of the types of reviews conducted by the Independent Monitor.¹⁵⁶ In its Final Report, the Independent Monitor team explicitly tied its recommendation for early termination of the MOA to the ongoing work of ORM. The Final Report noted the competence and professionalism of ORM's personnel and MPD's commitment to providing ORM with adequate resources to conduct objective reviews and audits, observing that the commitment was "one of the strongest signs that there will be no backsliding by MPD as a result of the termination of the MOA."¹⁵⁷

Unfortunately, our review of the audits performed by the ORM during the period 2010-2014 shows that the expectation that ORM would continue to serve as an effective force for ensuring the durability of MPD's MOA-related reforms was unfounded. The decline in ORM's performance was not immediate – it conducted several MOA-related audits in 2009, including audits on use of force reporting (covering a six-month period in 2008), chain of command

¹⁵⁴ The Independent Monitor's Nineteenth Quarterly Report noted the substantial technical assistance the monitoring team provided to the QAU, including a list of audit focus areas relevant to the MOA. Office of the Independent Monitor, Nineteenth Quarterly Report, Executive Summary, at pp. 2-3.

¹⁵⁵ Office of the Independent Monitor, Twenty-First Quarterly Report, Executive Summary at pp. 4-5.

¹⁵⁶ For example, in its Twenty-Second Quarterly Report, the independent monitor worked with the ORM to develop its internal auditing and monitoring program and noted its recent work on such important MOA-related topics as the completion of UFIRs and the UFRB. Independent Monitor, 22nd Quarterly Report, October 2007, Executive Summary, pp. 8-10.

¹⁵⁷ Independent Monitor, Final Report, June 2008, p. 9 (quoting Independent Monitor Letter from Michael R. Bromwich to Shanetta Y. Cutlar, Cathy L. Lanier, and Philip K. Eure regarding "Early Termination of MOA Provisions Pursuant to Joint Modification No. 4" (April 1, 2008)).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

investigations, UFRB recommendations, and canine deployments. We reviewed these reports and found that the audits were performed capably and professionally, under the same leadership as when the MOA terminated in 2008.

However, the quality and extent of ORM's coverage of MOA-related issues declined steeply throughout the period 2010-14. Of the 43 audits conducted by ORM in 2010, after ORM had been placed under new leadership, the only MOA-related audits focused on the limitation of work hours (three separate audits),¹⁵⁸ and a portion of an audit of "Customer Service Standards" that focused on citizen complaint procedures. In 2011, ORM conducted only two MOA-related audits out of a total of 47 completed – both focused on the limitation-of-work-hours issue. In 2012, ORM conducted only a single audit on an issue even tangentially related to the MOA, a review of customer service to victims of crimes, out of a total of 33 completed audits. The same was true in 2013, when ORM's only MOA-related audit focused on the extent and timeliness of contact with victims of crime; the total number of audits undertaken in that year was 52. Finally, in 2014, a year in which ORM conducted 32 audits, the only MOA-related audits were of chain of command administrative investigations, as well as a multi-part audit of various aspects of the citizen complaints process.

In short, over this five-year period crucial for the further strengthening the reforms implemented under the MOA, serious oversight by ORM of MOA-related reforms was virtually non-existent. Of 204 audits completed during that five-year period, only 10 (5%) examined MOA-related issues. In fact, during this five-year period, no audits whatsoever were conducted on some of the most important reforms implemented by MPD between 2002 and 2008. The deficiencies in the coverage of MOA-related issues during this period were matched by the poor quality of the few audits that were conducted. Our review of the MOA-related audits from 2010 and 2014 demonstrates that they were of vastly inferior quality to the audit reports reviewed by the Independent Monitor during the period when the MOA was in force. The reports were generally poorly organized, included extensive (and unnecessary) block quotations from

¹⁵⁸ Paragraph 159 of the MOA required MPD to develop a plan to limit the number of hours an officer was permitted to work, a limitation on total work for MPD and any outside employment. The purpose of the MOA provision was to prevent officer fatigue. Audits of compliance with MPD's limitation of work hours requirements serve the additional purpose of identifying officers earning the most overtime pay. Controlling overtime costs is an important budget issue.

The Bromwich Group

MPD rules, and contained very little meaningful analysis and very few recommendations.¹⁵⁹

MPD provided us with three MOA-related audit reports performed in FY 2015, after ORM had once again been placed under the MPD official who headed the office from 2005 to 2009. We found those reports – including an audit of canine deployments and an audit of the system by which probationary officers are trained in the field following their recruit training – to be dramatic improvements over the reports completed during the previous five-year period.¹⁶⁰

In addition, in early November, MPD provided us with a list of MOA-related audits included in ORM’s audit plan for FY 2016. These include scheduled audits of canine deployments, the SSP, use of force reporting, chain of command misconduct investigations, and two separate audits on UFRB recommendations. These audits will focus on significant MOA-related issues long neglected by ORM, and are in addition to its quarterly audits of the work-hour-limitation issue. For the first time in many years, audits of MOA-related reforms make up a significant share of ORM’s audits: 11 out of 47 (23%).

We welcome the recent refocusing of ORM on important issues relating to the use of force by MPD officers. MPD must ensure that ORM operates under leadership that recognizes the importance of reviewing, at periodic intervals, the important issues covered by the MOA, and that is capable of carrying out such audits in a responsible and professional manner. We are sympathetic to MPD’s argument that priorities for such audits change over time, and that the resources for conducting such audits are limited. We also understand that certain audits are mandatory, further reducing the resources available to conduct MOA-related audits. Even so, there should never be a time when MOA-related issues are ignored to the extent they were during the period 2010 to 2014.

Based on our review of ORM’s work product over the past several years, **the Review Team recommends that ORM be operated under leadership**

¹⁵⁹ At the May 19 meeting, we were advised in general terms that the priorities for MPD’s audits change over time and, according to MPD, audits are planned and conducted based on issues most relevant at the time of the audits. In addition, certain audits, such as bond and collateral audits, are mandatory. We view this as insufficient justification for the virtual absence of MOA-related audits during a five-year period.

¹⁶⁰ The audit of the field training of probationary officers was an extremely critical report that promptly captured the attention of field personnel and required reporting back on remedial actions to address the problems of documentation of field training identified by the audit. The report pledged to conduct a follow-up report within the subsequent six month, but we have been advised that such an audit did not take place.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

capable of formulating and directing substantive audits, including MOA-related audits. (Recommendation No. 30).

The Review Team recommends that ORM’s annual audit plan contain a significant percentage of audits focused on MOA-related issues. (Recommendation No. 31).

The Review Team recommends that ORM provide its annual audit plan to the District of Columbia Auditor and District of Columbia Office of the Inspector General. (Recommendation No. 32).

G. Review of Officer-Involved Fatal Shootings

As described above, the Review Team was asked to review cases of three officer-involved fatal shootings to assess the adequacy of the use of force investigations conducted by MPD.¹⁶¹ Our mandate was to assess MPD’s actions in investigating and analyzing the conduct of the officers involved and to determine whether those actions are consistent with the requirements of the MOA. The cases involve the deaths of Raphael Briscoe, on April 26, 2011; Michael Abney, on October 4, 2014; and Gregory Marcus Gray, on December 24, 2014.¹⁶²

1. Raphael Briscoe

In reviewing MPD’s handling of the investigation into the April 26, 2011 fatal shooting of Raphael Briscoe, we had access to the entire investigative file compiled by FIT. A sergeant and a detective were assigned as the primary FIT investigators,¹⁶³ and a Sergeant from MPD’s Gun Recovery Unit was assigned as the lead criminal investigator.

¹⁶¹ The Briscoe and Gray cases were referred to the USAO to determine whether criminal charges should be brought against the officers involved in the fatal shootings; because the Abney case involved a Deputy United States Marshal, the Criminal Section of DOJ’s Civil Rights Division rather than the USAO conducted the review. We had no access to the USAO’s or Criminal Section’s criminal investigations.

¹⁶² In its comments on the draft report, MPD requested the Review Team to provide the reasons why these three officer-involved shootings were selected for review. As we have previously advised MPD, the DC auditor selected those cases.

¹⁶³ Of the three fatal shooting cases we reviewed, this was the only one that occurred prior to the merger of FIT into IAD.

The Bromwich Group

The Chronological Narrative of FIT's Final Investigative Report, dated May 25, 2012, described the facts as follows:

The below synopsis is a summary of events based on information gathered and known at the time of this final report. On Tuesday, April 26, 2011, at approximately 2:20 PM, . . . Officer Chad Leo and additional GRU members were working [in the 2400 block of Elvans Road, SE] . . . and wearing MPD tactical vests and casual clothing. . . .

Officer Leo was the driver of an unmarked MPD Ford Explorer. Officer Jordan Katz was seated in the front passenger seat, Officer Thomas Sheehan was seated in the right rear passenger seat and Officer Roberto Torres was seated on the left rear passenger seat. The officers had driven through the apartment complex

The officers observed Mr. Rafael Briscoe¹⁶⁴ (deceased) as he walked from the complex grounds toward the street Officer Sheehan asked Mr. Briscoe if he had any guns or narcotics on him, but Mr. Briscoe related that he did not. As officers Sheehan and Katz exited the MPD vehicle, Mr. Briscoe began walking at a fast pace and then ran from the officers.

As Mr. Briscoe ran, the officers observed him holding the right side of his waistband. Mr. Briscoe continued running in the 2400 block of Elvans Road, Southeast, while placing his hand into the right side of his waistband. Mr. Briscoe was running a few feet in front of the unmarked MPD vehicle operated by Officer Leo; Officer Leo observed a handgun in Mr. Briscoe's right hand as he fled on foot. Officer Leo continued driving behind Mr. Briscoe while in the MPD vehicle as Officers Sheehan and Katz pursued Mr. Briscoe on foot. (Officer Torres remained in the back seat of the MPD vehicle).

Officer Leo drove behind Mr. Briscoe as he approached a driveway along side of 2409 Elvans Road, Southeast, and caught up to Mr. Briscoe. Officer Leo and Officer Torres observed the suspect turn with the handgun in his right hand (still near his waist) and aim it in Officer Leo's direction. Officer Leo discharged (while seated in the MPD vehicle) two rounds at Mr. Briscoe, striking him in the upper torso area.

¹⁶⁴ We note that the FIT investigative report consistently misspells Mr. Briscoe's first name. His name was "Raphael"; the FIT report spells it as "Rafael" throughout the investigative file and in the report. We saw no basis in the file for this incorrect spelling and its consistent use reflects a surprising lack of attention to detail.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

In addition to the Chronological Narrative and identification of the investigators, the Final Report includes the following attachments:

- Attachment 1: PD 251 – Report of Incident/Event;
- Attachment 2: Description of Mr. Briscoe;
- Attachments 3: Detailed descriptions of injuries suffered by Mr. Briscoe;
- Attachment 4: Autopsy and Toxicology Report
- Attachments 5-6: Statements of Officer Leo;
- Attachment 7: Use of Force Incident Report (UFIR), dated February 8, 2012;
- Attachments 8-11: Summaries of Involved Officers Statements;
- Attachment 12: Civilian witness statement;
- Attachments 13-19: Evidence and documentation relating to firearms, electronic transmissions, and consultation with USAO; and
- Attachment 20: Email from Police Academy comparing use of force curriculum to actions of officers.

The Final Report also includes sections entitled Summary and Conclusions, Findings, and Final Recommendation.

Our independent review of the entire FIT investigative file confirmed that the Chronological Narrative is a fair reflection of the majority of interviews, with one exception: the statement in the Narrative that, “Officer Torres observed the suspect turn with the handgun in his right hand (still near his waist) and aim it in Officer Leo’s direction.” This assertion was not adequately explored by the

The Bromwich Group

investigator, who should have asked how, according to Officer Torres, Mr. Briscoe “pointed” the gun at the officers who were to his left, with the gun at his waist and in his right hand.

In addition, the FIT investigators had access to video footage obtained from a camera located on the 2400 block of Elvans Road. As stated in the Final Report, “CCTV [video] was viewed by this investigator. The footage was extremely grainy. However, it shows Mr. Briscoe running on Elvans Road away from the officers. There is an object in his right hand as he flees.” The USAO forwarded the CCTV footage to the FBI for video enhancement. The Review Team had the opportunity to view footage that clearly shows Mr. Briscoe running with what appears to be a gun in his hand. The recommendation of FIT, and the final determination by the UFRB, was that the firearm discharges by Officer Leo that killed Mr. Briscoe should be classified as “Justified, Within MPD Departmental Policy.”

While MPD’s classification is supported by the evidence, including the interviews and CCTV, the Review Team identified a number of issues with the FIT investigation.

a. Original Reason for Pursuit

According to the Chronological Narrative of the FIT Final Report, at 2:26 pm on April 26, 2011:

The officers observed Mr. Rafael [sic] Briscoe (deceased) as he walked from the complex grounds toward the street. . . Officer Sheehan asked Mr. Briscoe if he had any guns or narcotics on him, but Mr. Briscoe related that he did not. As officers Sheehan and Katz exited the MPD vehicle, Mr. Briscoe began walking at a fast pace and then ran from the officers.

According to the summary of FIT’s interview of Officer Sheehan, confirmed by the tape recording of his interview, Officer Sheehan “related that he observed a bulge on the right side of Mr. Briscoe’s waistband and alerted the other officers to his observations.” Summary of Officer Sheehan Interview, dated April 26, 2011. But in fact none of the other officers interviewed as part of the investigation said that they observed this “bulge,” and none said that this observation served as a basis for their decision to pursue Mr. Briscoe. In addition, we found no evidence that the FIT investigators asked any of the other officers involved in the incident whether they heard Officer Sheehan make this observation. To the contrary, when Officer Katz was specifically asked whether he observed the bulge in Mr. Briscoe’s waistband, he replied, “I didn’t see that bulge in his waistband I didn’t see any bulge or anything.”

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Instead, it appears that the officers pursued Mr. Briscoe largely if not solely because he fled when the officers approached him. This conclusion is supported by the interview of Officer Leo, who said: “[The] suspect began to walk faster, and he started running. Officer Katz and Officer Sheehan got out of the car, and chased him on foot.” Interview of Officer Leo, April 26, 2011, at 2.

Question. And the reason for stopping him, when, well when you saw, did someone see something that made you want to stop them?

Answer. Just his suspicious behavior I guess, walking at a fast pace, based on our experiences [inaudible] people who are trying to get away, and may have been trying to conceal some type of contraband. So when Officer Katz asked him if he had any guns on him that’s when he picked up his pace, and then started running.¹⁶⁵

b. Leading Questions

As we discussed above, the MOA established specific requirements for appropriate investigative and interviewing practices.¹⁶⁶ One of the central principles of proper interviewing is not to ask leading questions – questions that suggest their own answers. Our review of the investigative file found multiple instances of leading questions, asked by three different interviewers:

Question. And the reason for stopping him, when, well when you saw, did someone see something that made you want to stop them?

Answer. Just his suspicious behavior I guess, walking at a fast pace, based on our experiences [inaudible] people who are trying to get away, and may have been trying to conceal some type of contraband. So when

¹⁶⁵ The Review Team raised with MPD and USAO personnel the question whether flight by a suspect, without additional indicia of criminal activity, is sufficient to justify pursuit by MPD officers – an issue raised by the pursuit of Mr. Briscoe. We received inconsistent information on the issue from the three groups of personnel with whom we discussed it. We heard, variously that flight without more is sufficient to pursue a suspect but not to stop him; that flight alone is not sufficient for either pursuit or a stop; and that flight alone is sufficient for both pursuit and a stop. This is a legal issue of substantial significance in MPD’s enforcement activities, and we note it here only to suggest that MPD officers at all levels need to have a common understanding of the correct legal standard governing the actions of MPD officers.

¹⁶⁶ MOA ¶¶ 81, 84.

The Bromwich Group

Officer Katz asked him if he had any guns on him that's when he picked up his pace, and then started running....

Question: Ok. And, is that where he turned with the weapon?

Answer. Yes, where he rotated his upper body, and I saw the, the gun coming up, and that's when I discharged my weapon.¹⁶⁷

Question. Ok. So, tell me what happened with, so when the subject turned, did he stop and turned with the, what, you, with the weapon? And, it's at that point, is that when Officer Leo discharged his weapon?

Answer. Oh, yes.

Question. Ok. So, do you recall where about that occurred? When he turned towards, well let's, lets go back overtop [sic] of it. Let's go back over, I, 'cause I got to make this real clear. When he turned towards the vehicle? 'Cause we're, we're on tape. Describe it? Can you describe it more thoroughly? He had his, had the weapon in his right hand, correct?

Answer. Correct.

Question. My question to you is when he turned, did you feel threatened when he turned?

Answer. Well, there, yeah, I was threatened.¹⁶⁸

Question. You guys approached Mr. Briscoe while working in the 2400 block. . . . and it appeared that he had a weapon in his right waistband?

Answer. I didn't see that bulge in his waistband . . . I didn't see any bulge or anything.

Question. At any point did you see the weapon or did he actually brandish or pull the weapon out?

¹⁶⁷ Interview of Officer Leo (April 26, 2011) at pp. 3, 5.

¹⁶⁸ Interview of Officer Torres (April 26, 2011) at pp. 2-4.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Answer. I didn't see it till I saw it on the ground.¹⁶⁹

Not only is the number of leading questions asked of the central officer witnesses unacceptably high, the statements actually provided by Officer Katz during the interviews are inconsistent with the FIT investigator's summaries of those interviews in the Final Investigative Report. The Report states, "Officer Katz reported that he was riding in the front passenger side of the vehicle, he observed that Mr. Briscoe appeared to have something in his waistband." As the excerpts from Officer Katz's taped interviews make clear, he said the opposite.

c. Transcription of Interviews

Given the gravity of officer-involved fatal shootings, the Review Team strongly recommends that all witness interviews in officer involved fatalities be transcribed. The interviews of Officer Katz were not transcribed, which may well have led to the mischaracterization of his testimony in the investigative report completed by FIT and submitted to the UFRB. The discrepancy between Officer Katz's actual statements and the way they are characterized in the report would most likely have been avoided had a tape transcription been available when the investigative report was being prepared. We do not mean to excuse the failure of the investigator to identify the discrepancy even in the absence of a tape transcript, but it is far easier to check a printed transcript than to hunt for the relevant portion of an audiotape.

d. No Determination Whether Use of Force Consistent with Training

As stated earlier in this report, a FIT investigation's proposed findings should include a determination of whether the use of force is consistent with policy and training; a determination of whether proper tactics were employed; and a determination whether lesser force alternatives were reasonably available.¹⁷⁰

With respect to the fatal shooting of Mr. Briscoe, the FIT investigator determined that, "Officer Leo was in conformity with the guidelines established

¹⁶⁹ Supplemental Interview of Officer Katz, April 28, 2011 (no transcript – based on review of audiotape).

¹⁷⁰ MOA ¶ 62.

The Bromwich Group

by the provisions of General Order GO 901.7 Part D1 (Defense of Life)” Final Report at 12. In addition, the investigative report includes an email from the academy to the investigator supporting the view that the actions taken by Officer Leo at the moment of the firearm discharge were not inconsistent with MPD’s use of force curriculum.

While we agree that, at the moment of discharge, Officer Leo’s actions could be considered consistent with MPD’s policies and training curriculum, that analysis is superficial and falls short of the requirements of the MOA and MPD’s General Order on Use of Force Investigations.¹⁷¹ Curriculum review is not the same as tactical analysis. Tactical analysis requires a comprehensive analysis of the situation initially faced by the officers, the tactics they used and the decisions they made at every stage leading up to the firearms discharge, and possible alternative tactics that might have changed the outcome – in this case, the fatal shooting of Mr. Briscoe. Specifically, in all serious use of force cases, there should be an assessment of the tactics and decisions leading up to the decision to use force. Ideally, this should be completed by training personnel and reviewed by IAD.

In this case, a comprehensive tactical analysis would have included the following:

- The video of this incident shows two MPD officers in a police vehicle pursuing Mr. Briscoe, who is initially observed loitering and then is observed with what appears to be a firearm in his hand. The investigation failed to establish that the subject ever actually pointed the firearm at the officers while running away from them.
- An MPD officer was sitting in the passenger side of the vehicle, in the rear seat, putting him closer to Mr. Briscoe, who was believed to be armed.
- The driver pulled the vehicle alongside the subject, thus placing his fellow officer in greater danger than the driver. There was virtually no cover between the passenger and the subject. Furthermore, it was the driver who fired at the subject while he was also controlling the vehicle. The officer on the passenger side of the vehicle did not draw his weapon.

¹⁷¹ GO-RAR-901.08, ¶ V.K(3).

The Durability of Police Reform The Metropolitan Police Department and Use of Force

- Shooting from a moving vehicle can be in violation of MPD policy:

“No member of the Metropolitan Police Department shall discharge his/her firearm under the following circumstances . . .

At or from a moving vehicle unless deadly force is being used against the officer or another person Members shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them.¹⁷²

In this case, the investigation included no discussion whatsoever of the tactics used by the shooting officer, and no discussion about whether or not the tactics used by the shooting officer were consistent with training provided to officers. In short, although we do not question the conclusion reached by FIT and the UFRB that at the moment the shots were fired, Officer Leo’s actions were justified, we are extremely troubled by the shortcomings of the investigation into such an important incident and the failure to conduct a serious examination of the tactics that were used.¹⁷³

e. Timeliness

The United States Attorney’s Office (USAO) provided a Letter of Declination to MPD on January 25, 2012. The Final Investigative Report is dated May 25, 2012, the same date the investigation was forwarded to the UFRB. The deadline for initiating disciplinary action against the officers involved in the incident was June 1, 2012. Although there is evidence of some limited investigative activity following the Letter of Declination, we could not determine the reason why the remainder of the administrative investigation took four full months, thus limiting the ability of the UFRB to take appropriate action. We understand that there are additional investigative steps – most notably, the interview(s) of the officer(s) whose conduct is under review – that may need to await the declination, but the bulk of the investigation should be completed and

¹⁷² GO-RAR-901.07, IVA(3).

¹⁷³ This investigation was conducted by FIT prior to the FIT/IAD merger, confirming that the decline in investigative quality noted earlier in this report, even in the most serious of use of force cases, is not solely attributable to the merger or any failure to adequately train IAD investigators unfamiliar with use of force investigations.

The Bromwich Group

the investigate file assembled by the time the declination is received from the USAO.

This case is a prime example of why FIT/IAD needs to finalize as much of the administrative investigation as possible, without violating any officer's rights, while waiting for the determination from the USAO. In this case, in the event more time had been provided to the UFRB, it may have realized the need for the type of tactical analysis that the investigation lacked, may have asked for further investigation, and may well have reached a different conclusion – for example, that the use force was justified, but the officer's actions violated MPD policy; or at a minimum that the use of force was justified but it presented a tactical improvement opportunity.¹⁷⁴

¹⁷⁴ GO-RAR-901.08 V K (11). We note that the death of Mr. Briscoe was the subject of civil litigation brought by members of Mr. Briscoe's family, litigation that included depositions of the police officers that focused in detail on these events. After a trial in the United States District Court for the District of Columbia, a jury returned a verdict in favor of Officer Leo and the District of Columbia on a variety of constitutional and common law tort claims brought by Mr. Briscoe's family. In denying the plaintiff's post-verdict motion for a new trial, the Court criticized the conduct of MPD in harsh terms:

The GRU's mission – to remove handguns from the streets so they cannot be used in crimes – is worthy. Its tactics in this case, however, were anything but. Raphael Briscoe was not suspected of any crime and by all accounts was minding his own business when the GRU team entered the apartment complex. The officers purportedly became suspicious and approached him only because he began to walk away when he saw them, which of course he was fully entitled to do. Wishing not to be questioned, Briscoe "quicken[ed] his pace" after one officer asked if he had a gun and sprinted away when two of them jumped from the vehicle. None of the officers ordered Briscoe to stop, and Officer Leo did not blare the siren of his unmarked vehicle. Nor did Leo take any steps to avoid an armed confrontation, such as by simply letting Briscoe go and conducting a further investigation to support a warrant for a later search for a gun. Instead, without checking the field of vision beyond Briscoe to see if other citizens might be in the line of fire, he ran Briscoe down and shot him in the back from a moving vehicle as he was attempting to flee.

Did Briscoe put himself and others at risk by running away from the police with what appeared to be a real gun in his hand? Certainly. Did Officer Leo somehow feel threatened? The jury so found. But urban policing is inherently dangerous, particularly when guns are involved, and law enforcement officers often face serious risks in the course of their duties. Rather than pursuing more prudent alternatives, Officer Leo exacerbated the danger, hastened the fatal conclusion of the chase, and contributed to the needless death of a teenager. While the high standard for setting aside a jury verdict is not met here, Raphael Briscoe's death should nonetheless give MPD pause to consider whether the provocative tactics employed by the GRU in this case best serve the citizens of the District of Columbia. This Court doubts they do.

Lane v. District of Columbia, __ F. Supp. 3d __ (D.D.C 2015). The District Court's withering criticism of MPD's tactics in this case, after a full review of an extensive trial record, further highlights the failure of FIT to adequately consider the poor tactics used by the officers in the

(footnote continued)

The Durability of Police Reform The Metropolitan Police Department and Use of Force

2. Abney

In reviewing MPD's investigation into the October 5, 2014 fatal shooting of Michael Abney, our access was limited to the preliminary investigative file.

According to the summary of IAD's Preliminary Investigative Report, dated October 5, 2014, the incident that led to Mr. Abney's death unfolded as follows:

On October 5, 2014, at approximately 2341 hours, the United States Marshals Service (USMS) requested the assistance of the Metropolitan Police Department (MPD) with the execution of an arrest warrant . . . for Mr. Michael Abney, at 3211 Wheeler Road . . . Mr. Abney had an outstanding felony warrant for Assault with a Deadly Weapon (ADW) Gun. MPD Officers Eboni Merritt, Roderick Saunders, Jeffrey Brown, Sean Rutter, Angel Roman, and Sergeant Marlon Ollivierre of the Seventh District responded to assist.

USMS Deputy Six knocked on the front door and announced their police presence without force. A female . . . allowed members to enter the premises.

USMS Deputy Six entered the apartment . . . and was followed by USMS Deputy Gause and MPD Officer Merritt. USMS Deputy Six immediately encountered Mr. Abney . . . sitting on a couch . . . armed with black Star nine (9) millimeter handgun. USMS Deputy Six ordered Mr. Abney to drop his weapon, but he refused. Mr. Abney pointed the handgun in USMS Deputy Six and Officer Merritt's direction . . . Deputy Six discharged five (5) rounds from his service pistol, striking Mr. Abney . . . Officer Merritt discharged one (1) round from her service pistol striking Mr. Abney. . . Abney sustained multiple gunshot wounds . . . as a result of the police involved shooting. . . .
Mr. Abney was later pronounced dead at 0500 hours. . .

In addition to the Event Summary and identification of the IAD investigator, the IAD Preliminary Report includes the following:

Briscoe case, and the failure of the UFRB to identify the substantial deficiencies in the FIT investigation.

The Bromwich Group

- Descriptions of Officer Merritt and Mr. Abney, including his arrest record;
- Description of injuries, including death report and autopsy report;
- Description of scene;
- Summaries of five officer witness statements;
- Summary of involved officer statement;
- Summaries of six civilian witness statements;
- Summary of evidence and firearms recovered and to be processed;
- Additional items:
 - Documentation reflecting injury suffered by officer responding to scene;
 - Next of kin notification; and
 - List of prepared and pending reports, MPD Notifications, and On-Scene response personnel.

The investigative file also contained PPMS and payroll information about Officer Merritt, as well as the Letter of Declination from the Criminal Section of DOJ's Civil Rights Division, dated August 4, 2015.¹⁷⁵

The Preliminary Report lacks any evidence that a witness canvass was conducted. The report includes a summary of two civilian witness interviews, but does not explain how those witnesses were located. When conducted properly, a witness canvass should result in a detailed report that includes: date and time of canvass; the names of the officers conducting the canvass; the addresses canvassed; the names of any persons contacted, even if the person states he or she witnessed nothing; and the results for each address canvassed, including locations where there was no response.

¹⁷⁵ As mentioned above, we were advised that the Criminal Section of the Civil Rights Division, rather than the USAO, conducted the criminal investigation of this matter because of the involvement of the United States Marshals Service, as well as MPD officers.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Our independent review of the IAD preliminary investigative file confirmed that the Event Summary is a fair synthesis of the witness interviews, except that it fails to note that witnesses stated that there was a slight delay before the last one or two shots were fired – and the recollection of the witnesses differed on whether there was one shot or two. According to statements, Mr. Abney raised the gun again after initially being shot.

Based on our review of the interview audiotapes, the witness interviews were conducted appropriately: questions were non-leading and the interviews covered the relevant issues. However, our review of the investigative file in September 2015 reflected seven interviews that were not addressed in the Preliminary Report – four MPD personnel, two Deputy United States Marshals, and one civilian – as well as relevant radio transmissions, and a firearms report. Although the Firearms Report was received on May 19, 2015, our review of the IAD file in late September 2015 reflected the absence of any investigative activity, as reflected in the investigative file, between January 28, 2015 and the receipt of the DOJ Letter of Declination on August 4, 2015.

As we have discussed in connection with our assessment of the UFRB, and in our discussion of the Briscoe case, MPD must continue to actively develop and assemble the evidence for the administrative investigation during the period the matter is being considered by the USAO. That is true as a general matter, but it is particularly true in the context of officer-involved fatal shootings.

In the Abney case, we know of no reason why the following investigative steps could not have been taken while the case was being considered by DOJ:

- Summary of the various interviews and evidence not incorporated in the Preliminary Report;
- Locate and include a copy of the Tactical Preparation Plan referred to in one of the interview summaries but not included in the Investigative Case Folder;
- Additional witness interviews, including at a minimum, the two Deputy US Marshals, to obtain further necessary information;
- Transcriptions of Taped Interviews; and
- Tactical analysis, including notification, preparation, and response.

The Bromwich Group

In addition, IAD investigators should attempt to reconcile any discrepancies reflected in information developed early in the investigation.

For example, in his taped interview, Officer Brown stated that he was part of an email distribution list of MPD members who receive emails about law enforcement official business, including requests to assist the USMS. Officer Brown said that on October 4, 2014, at 11:16 pm, he received an email that read, "Anyone available in 7D for assistance with a fugitive apprehension?" Officer Brown responded to the message and then proceeded, together with Officer Wince, to assemble a group of MPD officers to assist the USMS with the fugitive apprehension. The investigator interviewing Officer Brown sounded surprised that Officer Brown had received the email from USMS and asked for a copy of email to be forwarded; Officer Brown agreed to do so. We could not find a copy of the email in the IAD Investigative File.

This account seems to be in conflict with the statement by Detective Hunsucker who stated that Officer Richard Wince advised her that he was flagged down by U.S. Marshals and advised that they were executing a warrant at the aforementioned address. This is different from Officer Brown's assertion concerning how MPD came to be involved in the events that led to the death of Mr. Abney. Both of these accounts, in turn, seem to conflict with the interview summary of Deputy U.S. Marshall Gause, who stated that Gause placed a telephone request to the Capitol Area Regional Task Force requesting assistance from members to execute the high risk warrant on Mr. Abney. Although it is possible that notifications were transmitted through three separate channels of communication, we saw no evidence in the investigative file that the potential conflict between the three accounts had been recognized, much less evidence of any effort to reconcile these accounts of how MPD came to be involved in the matter. We are concerned that any effort to reconcile these accounts a year after the event took place would be extremely difficult.

In addition, as we have noted, the initial witnesses who were interviewed provided conflicting testimony about whether one or two shots were fired after the initial shots were followed by a brief delay. Follow-up interviews could help reconcile this discrepancy; although we recognize the difficulty of reconciling conflicting accounts a year after the event took place.

Our principal concern with MPD's administrative investigation of the Abney case relates to the lack of diligence by IAD in developing and assembling the administrative investigation. As we have discussed, MPD has legitimate concerns about the time it takes to obtain certain forensic reports, and grave concerns about the time it takes the USAO takes to issue its letters of

The Durability of Police Reform The Metropolitan Police Department and Use of Force

declination.¹⁷⁶ The forensic firearms report in the Abney case was received on May 19, 2015—seven months after the incident—and the letter of declination was received from DOJ on August 4, 2015. At the time we reviewed the IAD investigative file, approximately 45 days after the declination, we saw no evidence in the file of any recent investigative activity, suggesting that additional investigation would be conducted at some later point prior to the expiration of the 90-day period in early December. Delays in conducting the administrative investigation and assembling the investigative file impair the quality of the investigations and create cascading problems that adversely affect the ability of MPD to properly investigate and adjudicate the most serious uses of force that occur. Our ability to conduct a full review of the Abney case was limited by the state of the investigation at the time we reviewed the investigative file.¹⁷⁷

3. Gray

On December 24, 2014, at approximately 3:15 pm, Sixth District MPD officers shot and killed Gregory Marcus Gray at a location near 2806 Naylor Road, SE. According to MPD police reports and media accounts, the events that led to Gray's death began with his assault and robbery of two men near an M&T bank branch on Alabama Avenue near the Good Hope Marketplace in Southeast. Mr. Gray allegedly struck one of the victims on the head with a black handgun, pointed the gun at his head, and demanded money from both men. He then took from the two men several bags they were carrying.¹⁷⁸

¹⁷⁶ In the Abney case, because of the involvement of the USMS, the Criminal Division of DOJ rather than the USAO reviewed the matter for potential criminal prosecution and issued the letter of declination.

¹⁷⁷ In its comments on the draft report, MPD objected to the Review Team's description of the consequences of delays in the administrative investigative, arguing that in some instances there may be good reasons for delaying—*e.g.*, when the investigator needs forensic reports before conducting certain interviews. We agree with MPD that delays may be justified in some circumstances, but IAD should make every effort to minimize those delays and complete as many aspects of the investigation as possible for which delays are neither necessary nor reasonable.

¹⁷⁸ Peter Hermann and Arelis R. Hernandez, *Police identify man fatally shot by officers after a robbery in Southeast Washington*, Washington Post, December 26, 2014, updated December 29, 2014, available at https://www.washingtonpost.com/local/crime/police-identify-man-shot-killed-by-officers-after-a-robbery-in-southeast-washington/2014/12/26/a91faff4-8d15-11e4-8ff4-fb93129c9c8b_story.html ; MPD Public Incident Report, CCN #14197507, December 24, 2014.

The Bromwich Group

MPD officers responded to the scene, spoke with the victims, and obtained a physical description of the man who had allegedly assaulted them. According to public information provided by MPD, shortly after speaking to the victims, the officers saw a man matching the description and followed him to a dead end at Erie Street and Naylor Road. At that point, according to MPD, Mr. Gray turned and fired his weapon at three MPD officers. They fired back, killing Mr. Gray.¹⁷⁹

Initially, MPD misidentified Mr. Gray, believing him to be a man named Raymond Robinson. MPD notified Mr. Robinson's next of kin. On December 29, five days after the shooting, MPD issued a statement correcting the name of the man MPD officers had shot and killed from Mr. Robinson to Mr. Gray. According to MPD, "Proper protocol was not followed in the identification process. The department is investigating how this occurred so it does not happen again."¹⁸⁰ As with all serious use of force cases, the fatal shooting of Mr. Gray was referred to the USAO for criminal investigation.

At the outset of the Review Team's work, we advised MPD that we would be reviewing the officer-involved fatal shooting of Mr. Gray along with the cases involving Mr. Briscoe and Mr. Abney. After lengthy delays, we obtained the preliminary IAD investigative file in September. We reviewed and analyzed the sparse contents of that file. We were aware that the criminal investigation of the officers involved in the Gray case remained open at the USAO throughout the period of our review, and we periodically checked with MPD to determine whether the USAO had completed its review. We prepared an analysis of the Gray investigation based on our review of the IAD preliminary investigation file and included it in the draft report circulated to MPD and the USAO in early December.

In its comments to the draft report, dated December 21, 2015, the USAO objected to the discussion of the Gray case. The objection was cast broadly in terms of ongoing investigations, but the only matter in the draft report to which it applied was the Gray case. According to the USAO,

¹⁷⁹ Press Statement, December 24, 2014, updated December 29, 2014, available at <http://mpdc.dc.gov/release/updated-mpd-investigating-fatal-police-involved-shooting-2800-block-naylor-road-se>.

¹⁸⁰ Peter Hermann, *Family of man killed by DC Police wants to know why he was misidentified for days*, Washington Post, December 30, 2014, available at https://www.washingtonpost.com/local/crime/family-of-man-killed-by-dc-police-want-to-know-why-he-was-misidentified-for-5-days/2014/12/30/0f4b6a68-9057-11e4-ba53-a477d66580ed_story.html.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

As a contractor working on behalf of the District of Columbia, it is possible that the Review Team's statements might be viewed as party admissions and that its files related to those investigations may be deemed discoverable if the Review Team makes admissions. When assessing whether to bring charges, we will necessarily have to consider any public statements that the Review Team has made about our ongoing investigations and have to consider what impact, if any, those statements have on the viability of any prosecution we might be contemplating. As such, it is possible that the Review Team's statements, alone, could be a dispositive factor in determining whether we proceed with a criminal prosecution. And if we do proceed with a criminal prosecution of a matter on which the Review Team has opined publically [sic] we will need to obtain all discoverable information in its possession related to the matter on which it opined.¹⁸¹

The USAO's response was unwarranted and inappropriate. The draft report contained a benign four-page treatment of the Gray case; it had no genuinely sensitive material (in part because the file was so thin) or any criticism of the conduct of the MPD officers. The suggestion that any of that material could have any impact on "the viability of any prosecution we might be contemplating" struck the Review Team as exaggerated and misplaced.

In response, and out of concern that some material in the discussion of the Gray case might somehow in unforeseen ways affect the criminal investigation, the Review Team asked the USAO to "specifically advise which aspects of our discussion of the Gray case implicates the concerns about party admissions mentioned in your comments and, most importantly, which statements in the draft report could pose a threat to 'the viability of any prosecution [the USAO] might be contemplating.'"¹⁸²

In a letter to the Review Team, dated December 24, 2015, the USAO specifically declined to identify any such sensitive material, stating, "Because the Gray matter is an ongoing investigation, and because our correspondence with you on this topic may become public before or after completion of our review, we cannot be any more specific in our objection to the Report commenting on

¹⁸¹ See Exhibit K, at pp. 1-2.

¹⁸² Email from Michael R. Bromwich to Jonathan M. Malis, December 22, 2015.

The Bromwich Group

ongoing investigations.”¹⁸³ Not even the Review Team’s subsequent pledge not to disclose publicly any specific reasons provided by the USAO was sufficient to persuade it to provide support for the broad claims of potential prejudice. In our judgment, the USAO has not provided such reasons because they do not exist.

On December 28, MPD advised us that it supported the USAO’s objection to the discussion of the Gray case on the grounds that it remained an open criminal investigation. In addition, MPD cited for the first time non-disclosure agreements signed in May 2015 by the members of the Review Team that prevented disclosure of any non-public information without MPD’s consent. Even though MPD had been aware of the Review Team’s intention to address the Gray case for six months, even though it had received a draft of the report three weeks earlier, and even though it had submitted a lengthy written response and engaged in a lengthy meeting without ever mentioning concerns about the Gray case, it was not until December 28 that it asked the Review Team to eliminate from the report any discussion of the Gray case that relied on non-public information. MPD candidly acknowledged that it should have provided earlier notice of its concerns and that it regretted not raising the issue previously.

After further discussions with MPD, and after we were advised that the USAO’s prosecution decision in the Gray case was not imminent, we decided to accede to MPD’s and the USAO’s request not to include a discussion of the Gray case that relied on non-public information we received from MPD. We want to emphasize that we do not believe there is anything sensitive, prejudicial, or problematic in the original write-up of the Gray case, or, despite the USAO’s unsupported claims, anything that could in any way have affected the USAO’s prosecution decision. Indeed, the USAO’s objection would have been far more credible if in addition to stressing the general principle of not commenting on ongoing investigations, it had provided specific reasons, after the disclosures had been made months earlier to the Review Team, and the section of the report had already been drafted, for objecting to the material in the report. Or, if no such specific reasons existed, relying solely on the fact that Gray remained an open criminal investigation.

We note that the Gray case has now been pending at the USAO for more than a year, lending further support to the Review Team’s view that the USAO’s consideration of officer-involved fatal shootings needs to move more swiftly.

¹⁸³ See Exhibit L, at p. 1.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Based on our review of the three officer-involved fatal shootings cases, the Review Team recommends the following:

- **In light of the Briscoe case, judicial criticism in the related civil litigation, and confusion among MPD officers, MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue. (Recommendation No. 33).¹⁸⁴**
- **MPD should provide specific intensive training for handling officer-involved shooting cases and limit the handling of those cases to a small number of skilled and experienced IAD investigators. (Recommendation No. 34).**
- **Once MPD completes the preliminary investigation of the officer-involved shooting in the first 24-72 hours after the incident and the case has been referred to the USAO, the investigator, in consultation with his or her supervisor, should develop a detailed investigative plan which, as recommended above, is designed to complete the MPD administrative investigation within 30 days of the incident, with the exception of forensic reports and interviews of the involved officers. (Recommendation No. 35).**
- **IAD investigators should scrupulously follow the requirements of MPD's Use of Force Investigations General Order in officer-involved shooting cases, which requires, among other things, that all relevant witnesses be interviewed, and that the investigator identify and attempt to resolve (if possible) inconsistencies in the accounts of witnesses to the incident. (Recommendation No. 36).**
- **MPD should modify its Use of Force Investigations General Order to address the problems created by using leading questions during investigative interviews and counsel IAD investigators to avoid using them to the maximum extent possible. (Recommendation No. 37).**

¹⁸⁴ In addition, a nationwide *Washington Post* study of all officer-involved fatal shootings in 2015 showed that approximately 25% involved a fleeing suspect, further underscoring the importance of establishing clarity on this issue, available at <https://www.washingtonpost.com/graphics/national/police-shootings-year-end/#>.

The Bromwich Group

H. Assault on Police Officer Review

We were asked to explore issues surrounding arrests and prosecutions in recent years for alleged assaults on police officers (APO) in the District of Columbia, and specifically whether the charge is used excessively and for conduct that is less serious than suggested by the phrase “assault on a police officer.” To this end, we examined in detail 150 APO cases to determine whether the officers reported the use of force in connection with cases in which assault on a police officer was charged.

The controversy about the APO issue traces back at least to 2006, when a crime surge in the District of Columbia led to the final enactment, in April 2007, of the Omnibus Public Safety Amendment Act of 2006,¹⁸⁵ a diverse collection of legislative proposals designed to address various categories of criminal activity.

The legislation created a two-tier statutory system for APO. The relevant statutory language reads:

...(b) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 180 days or fined not more than [\$ 1,000], or both.

(c) A person who violates subsection (b) of this section and causes significant bodily injury to the law enforcement officer, or commits a violent act that creates a grave risk of causing significant bodily injury to the officer, shall be guilty of a felony and, upon conviction, shall be imprisoned not more than 10 years or fined not more than [\$ 25,000], or both.¹⁸⁶

The intent was to broaden the statute to cover certain assaults on MPD officers that could not be prosecuted as felonies because the officers were not seriously injured, a requirement of the felony charge.

However, the creation of a misdemeanor APO charge brought within its scope incidents that did not involve assaults on police officers, including ill-defined behavior that “resists opposes, impedes, intimidates, or interferes,” with MPD officers. In 2010, MPD promulgated a General Order (GO-PCA-701.03) that

¹⁸⁵ D.C. Law 16-306, § 208, 53 DCR 8610 (2007).

¹⁸⁶ DC Code § 22-405.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

contained internal policies and procedures for handling APO cases. The procedures included requirements for obtaining the approval of an MPD supervisor to charge APO, and detailed requirements for documenting the underlying incident and collecting necessary evidence.

As experience accumulated with the misdemeanor prong of the statute developed, it proved increasingly problematic. The statute's vague language allowed arrests for conduct that did not meet the common understanding of assaultive behavior, and accorded MPD officers with broad discretion to make arrests for mere noncompliance with their commands. In some cases, relatively trivial instances of non-violent non-compliance with police officer commands led to misdemeanor arrests for assault on a police officer.

The defects in the misdemeanor APO statute were publicly recognized by MPD. In 2014 testimony before the DC Council's Judiciary and Public Safety Committee, Chief Lanier stated:

I agree that we need a legislative fix for the misdemeanor Assault on a Police Officer, or APO statute [T]he language in the statute is too broad and includes behavior that is not an assault, such as resisting, opposing, or impeding an arrest. However because the charge is called an "assault," it appears that police are overcharging someone who resists arrests, which naturally causes tensions between police and residents. While I firmly believe a misdemeanor APO statute is necessary, we must make sure the language and application is appropriate. When resisting arrest reaches a criminal level, it should be called resisting arrest, and not an assault.¹⁸⁷

In May 2015, an extensive investigation of this issue, conducted jointly by WAMU (88.5) News, the Investigative Reporting Workshop at American University, and Reveal (from the Center for Investigative Reporting), reported its

¹⁸⁷ Testimony of Cathy L. Lanier, on "Police Tactics," before the Committee on the Judiciary and Public Safety, Council of the District of Columbia, October 27, 2014, p. 4, available at http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/release_content/attachments/Testimony_Police%20Tactics_10%2027%2014%20FINAL.pdf .

The Bromwich Group

results.¹⁸⁸ Based on their analysis of court records for the period 2012-2014, the investigators reached the following conclusions:¹⁸⁹

- 90% of those charged with assaulting a police officer were black, far in excess of black representation in DC's population;
- Almost two-thirds of those arrested for APO were not charged with any other crime, raising questions about the legal justification for the original stop;
- More of the individuals arrested for APO required medical attention than the officers they were alleged to have assaulted;
- DC has made approximately three times as many arrests for APO as cities of comparable size, according to FBI and MPD data; and
- Forty percent of those arrested for APO were not ultimately prosecuted, suggesting that the cases were either legally unsustainable or factually unappealing because of the lack of meaningful assaultive behavior.¹⁹⁰

The WAMU investigation, and further media focus on the issue,¹⁹¹ examined not only aggregate data suggesting excessive use of the misdemeanor APO charge, but also specific cases in which the facts raised serious questions about the propriety of the arrests. Even in those cases in which misdemeanor APO arrests resulted in convictions, and even in those cases where the convictions were affirmed on appeal, the latitude provided MPD officers to make APO arrests for non-assaultive behavior exacted costs on both the individuals arrested on a slender factual basis and on MPD's relationship with the community. In an interview cited in WAMU's report, Chief Lanier

¹⁸⁸ *Assault on Justice*, available at <http://wamu.org/projects/assault-on-justice>.

¹⁸⁹ In its comments on the draft report, MPD requested that the entire discussion of the WAMU story be deleted because its findings are inaccurate and misleading. We have declined to do so not because we have independently verified the assertions in the WAMU story but because the story was widely circulated and became part of the discussion surrounding the APO issue. MPD's rebuttal to the WAMU story is at Exhibit I, pp. 21-23.

¹⁹⁰ *Id.*

¹⁹¹ See, e.g., David Alpert, "Assaulting a police officer" may not mean what you think, Greater Washington (May 26, 2011), available at <http://greatergreaterwashington.org/post/10619/assaulting-a-police-officer-may-not-mean-what-you-think/>

The Durability of Police Reform The Metropolitan Police Department and Use of Force

acknowledged the many issues, including community relations problems, created by a statute that allows arrests and prosecutions for APO that are not assaults at all: “There is the tension If you didn’t physically assault someone, to be charged with assault on a police officer wouldn’t feel fair.”¹⁹²

In response to the perceived flaws and inequities in the misdemeanor APO statute, the DC Council is currently considering legislation that would make significant changes to the law. On May 5, 2015, Council Member Mary Cheh introduced Bill 21-0189, the “Police and Criminal Discovery Reform Amendment Act of 2015,” which among other things would amend the misdemeanor APO statute.¹⁹³ The bill would eliminate the language that makes unlawful – and therefore authorizes misdemeanor arrests for – conduct that allegedly “resists, opposes, impedes, intimidates, or interferes” with a police officer and replace it with language requiring a “knowing[] assault” on a police officer “without justifiable and excusable cause.” In addition, anyone charged with misdemeanor APO would be entitled to a jury trial. The felony prong of APO, which requires serious injury to the police officer, would remain unchanged. On September 21, 2015, Council Chair Mendelson, at the request of Mayor Bowser, introduced Bill 21-0357, the “Public Safety and Criminal Code Revisions Act of 2015,” which proposed different and less sweeping changes in the APO statute. A hearing on both bills was held on October 21, 2015, before the Council’s Committees on the Judiciary and Health & Human Services. It remains pending before the DC Council.

We examined the APO issue from a different perspective than the media and legislature. We looked at the extent to which MPD officers reported using force in cases where arrests were made for felony or misdemeanor APO. We found that even with the reduced reporting thresholds described at length earlier in this report, officers were not consistently complying with existing reporting requirements for uses of force in cases in which force appeared to be used.

To assess whether UFIRs (or RIFs)¹⁹⁴ were being completed in APO cases (consistent with MPD’s use of force reporting policies), we requested a listing of Complaint Control Numbers of incidents occurring between January 2014 and

¹⁹² <http://wamu.org/projects/assault-on-justice/>.

¹⁹³ The legislation is co-sponsored by Council Chairman Mendelson and Council Member Bonds.

¹⁹⁴ “RIFs” are Reportable Incident Forms. They are the forms used when officers draw and point their firearm. Our references to UFIRs in the above discussion refer to UFIRs or RIFs.

The Bromwich Group

April 2015 where an arrestee was charged with APO. The likelihood of an officer using force is high in incidents where the officer claims that he has been the victim of an assault, especially in felony APO cases where the statute requires the officer to suffer “significant bodily injury.” From the list containing 1714 such incidents, we randomly selected two samples of APO cases – 75 felony cases and 75 misdemeanor cases.

We obtained and reviewed copies of the incident reports for each of those 150 cases and, using the revised reporting requirements as the threshold, identified 35 arrests where use of force was reflected in the incident reports and a UFIR should have been prepared. For 32 out of these 35 arrests, we found a completed a UFIR, but for three we could not, nor could MPD.¹⁹⁵ The cases in which UFIRs were missing included pointing a firearm (one case), and a struggle with visible injuries (two cases).

This review of the 150 APO cases allows us to draw only limited conclusions about MPD’s use of force during arrests for APO. First, our ability to draw meaningful conclusions is limited by the threshold that exists for reporting use of force. Because individual and team takedowns were, as of July 2014, no longer reportable uses of force, unless they resulted in injury or complaint of pain, we were unable to tell how many of the felony or misdemeanor arrests involved these forms of force, or other actions by MPD officers that would have been reportable under MPD’s original use of force reporting policies but that are no longer reportable

Second, and as a result of this change in use of force reporting standards, MPD has deprived itself of information relevant to evaluating the conduct of officers in contacts with members of the community that lead to arrests under a statute that MPD has acknowledged is problematic in its current form. Third, we would have expected that felony APO arrests would have involved a higher percentage of reportable uses of force than misdemeanor APO arrests. In fact, they did so – of the 75 felony APO arrests we reviewed, 21 (28%) involved reported uses of force; of the 75 misdemeanor APO arrests, only 11 (14.7%) involved reported uses of force. Although the low percentage of reported uses of

¹⁹⁵ Originally, we provided MPD’s IAD with a list of ten instances where it appeared that reportable force was used and where we could not find a UFIR in the relevant file. After making an independent search for the missing UFIRs, IAD reported to us that they could not locate UFIRs for any of the ten cases. After we reported the missing UFIRs to MPD senior managers, we were asked to provide the Complaint Control Numbers, which we did in early October. In early December, MPD reported that it had finally located the UFIRs for three cases and provided documentation for four other cases showing that the force used was not reportable or was not used by MPD officers. Of the ten cases we originally identified, that left three cases of APO arrests where UFIRs should have been completed but were not.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

force in misdemeanor APO cases supports the conclusion that it is used in a large number of cases in which there is no violent behavior towards the officer – nothing like the common-sense meaning of an “assault” – we would have expected a higher percentage of felony APO cases to involve reported uses of force. Our review was sufficiently limited that we were unable to determine whether the low percentage of reported uses of force in felony APO cases reflects the under-reporting of uses of force, the over-charging of felony APO, or some measure of both.

Based on our own review of APO cases, and the other recent assessments of the issue, **the Review Team recommends that the Assault on Police Officer misdemeanor statute be amended so that the elements of the offense require an actual assault rather than mere resistance or interference with an MPD officer. (Recommendation No. 38).**

VII. Summary of Recommendations

This report contains thirty-eight recommendations that the Review Team developed in the course of reviewing various issues relating to the MOA. This section brings together the recommendations we have made in different sections of the report. MPD’s responses to these recommendations are attached to this report as part of Exhibit I, and the Review Team’s replies to MPD’s responses is incorporated in Exhibit N.

A. Use of Force Policies

Recommendation No. 1

- MPD’s use of force policy should be modified to include more detailed treatment of neck restraints, and that any use of neck restraints by MPD officers be treated as a serious use of force and be investigated by IAD.

Recommendation No. 2

- MPD should comprehensively review and, if necessary, revise its use of force policies no less frequently than every two years.

Recommendation No. 3

- MPD’s canine policy should restrict off-leash deployments to searches for suspects wanted for violent felonies; searches for burglary suspects in

The Bromwich Group

hidden locations inside buildings; or searches for suspects who are wanted for a misdemeanor and whom the officers reasonably believe to be armed.

Recommendation No. 4

- MPD's canine policy should require that the number of verbal warnings provided prior to canine deployment be increased from one to three; and that in open field or block searches, an additional warning be given each time the canine team has relocated the equivalent of a city block from where the initial warnings were given.

B. Use of Force Reporting, Investigations and Training

Recommendation No. 5

- MPD should reinstate use of force *reporting* for hand controls and resisted handcuffing, even when there is no injury or complaint of pain.

Recommendation No. 6

- MPD should reinstate use of force reporting *and investigations* for individual and team takedowns, even when there is no injury or complaint of pain.

Recommendation No. 7

- MPD should make all substantive changes in use of force reporting and investigations policies through a transparent process that ensures that the public, all MPD stakeholders, and MPD officers have access to current MPD policies, rather than through limited internal communications.

Recommendation No. 8

- IAD should develop a comprehensive use of force investigations procedural manual that incorporates the requirements of the MOA, relevant General Orders, and an appropriate set of procedures based on the original FIT Manuals.

Recommendation No. 9

- MPD should require that all civilian witnesses and officer witnesses involved in a use of force matter be interviewed and that the interviews be

The Durability of Police Reform The Metropolitan Police Department and Use of Force

either audio and/or video recorded, except when a civilian witness declines to give consent to taping.

Recommendation No. 10

- MPD should transcribe all recorded statements in serious use of force cases and the transcript should be included in the investigative file for ease of reference and to ensure the accuracy of investigative reports.

Recommendation No. 11

- MPD should restructure the Internal Affairs Division so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this group should be officers who have demonstrated the proper attitude and skills for conducting use of force investigations.

Recommendation No. 12

- MPD should provide the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.

Recommendation No. 13

- MPD should reinstate the practice of requiring IAD investigators to respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.

The Bromwich Group

Recommendation No. 14

- MPD should require that IAD investigators be required to investigate all reported or claimed strikes to the head whether or not the head strike is confirmed by a field supervisor and regardless of whether there is an injury or corroborative evidence; and that IAD investigators be required to investigate all canine bites.

C. Use of Force Review Board

Recommendation No. 15

- MPD and the United States Attorney's Office for the District of Columbia should work together to reengineer the system for reviewing the most serious use of force cases involving MPD officers with the goal of eliminating lengthy delays.

Recommendation No. 16

- MPD and the USAO should establish a goal of completing the USAO review of serious use of force cases within six months, with that period to be extended only by explicit agreement between the US Attorney and the Chief of Police, and with specific reasons provided that justify the need for additional time.

Recommendation No. 17

- MPD should require that the IAD administrative investigation move forward expeditiously while a case involving a serious use of force is being considered by the USAO. The objective should be to minimize any additional investigation once the case has been returned to MPD, and to complete the IAD administrative investigation and investigative report within 30 days of the time the letter of declination is received. The IAD investigator's performance evaluation should explicitly consider the timeliness of the investigations he or she conducts.

Recommendation No. 18

- MPD should provide members newly appointed to the UFRB with specific orientation and training on their responsibility as UFRB members and the responsibilities of others involved in the UFRB process, including the UFRB Administrator, the Assistant Chief of IAB, the Commander of IAD, and IAD investigators.

The Durability of Police Reform The Metropolitan Police Department and Use of Force

Recommendation No. 19

- The UFRB should actively monitor the progress of IAD in completing use of force investigations and raise concerns about the timeliness of use of force investigations with the Assistant Chief of IAB and, if necessary, the Chief of Police. This will help to avoid cases in which the UFRB's freedom to take appropriate action is hamstrung because it receives the investigative report so late in the process.

Recommendation No. 20

- The UFRB should enforce the requirement that a Decision Point Analysis be prepared for each case that comes before the UFRB, but should consider transferring the responsibility for preparing the Analysis to the IAD investigator rather than the UFRB Administrator.

Recommendation 21

- The Review Team recommends that the Board Administrator highlight the most significant pieces of evidence so that each member makes sure to examine those items with special care.

Recommendation No. 22

- The UFRB should consult with the Assistant Chief of IAB and the Commander of IAD on a quarterly basis to provide feedback on the quality and timeliness of recent IAD use of force investigations.

D. PPMS and Supervisory Support Program

Recommendation No. 23

- The officer's direct supervisor, as well as the second-level supervisor, should in all cases be involved in the SSP review.

The Bromwich Group

Recommendation No. 24

- SSP should be modified to flag officers against whom multiple use of force or misconduct allegations have been lodged even if those allegations were not substantiated.

Recommendation No. 25

- MPD's analysis of PPMS data should focus not only on individuals but also on units and sub-units within MPD.

E. Professional Conduct and Intervention Board

Recommendation No. 26

- The PCIB Administrator should prepare an analysis of each case in advance of PCIB meetings. At present, substantial raw material is provided to the PCIB but no analysis.

Recommendation No. 27

- The PCIB Administrator should outline remedial options based on review of the officer's record and the PCIB's actions in prior similar cases.

Recommendation No. 28

- The Assistant Chief of IAB should direct the PCIB Administrator to circulate in writing, on a quarterly basis, developments in cases previously considered.

Recommendation No. 29

- The monthly PCIB meetings should be used to discuss new cases rather than review cases previously discussed. Developments in prior cases should be addressed in writing, distributed to Board members, and can be placed on the agenda if requested by a Board member.

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force**

F. Audits and the Office of Risk Management

Recommendation No. 30

- ORM must be operated under leadership capable of formulating and directing substantive audits, including MOA-related audits

Recommendation No. 31

- ORM's annual audit plan should contain a significant percentage of audits focused on MOA-related issues.

Recommendation No. 32

- ORM should provide its annual audit plan to the District of Columbia Auditor and the District of Columbia Office of the Inspector General.

G. Review of Officer-Involved Fatal Shootings

Recommendation No. 33

- MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue.

Recommendation 34

- MPD should provide specific intensive training for handling officer-involved shooting cases and limit the handling of those cases to a small number of skilled and experienced IAD investigators.

Recommendation No. 35

- Once MPD completes the preliminary investigation of the officer-involved shooting in the first 24-72 hours after the incident and the cases have been referred to the USAO, the investigator, in consultation with his or her supervisor, should develop a detailed investigative plan which, as recommended above, is designed to complete the MPD administrative investigation within 30 days of the incident, with the exception of forensic reports and interviews of the involved officers.

The Bromwich Group

Recommendation No. 36

- IAD investigators should scrupulously follow the requirements of MPD's Use of Force Investigations General Order in officer-involved shooting cases, which requires, among other things, that all relevant witnesses be interviewed, and that the investigator identify and attempt to resolve (if possible) inconsistencies in the accounts of witnesses to the incident.

Recommendation No. 37

- MPD should modify its Use of Force Investigations General Order to address the problems created by using leading questions during investigative interviews and counsel IAD investigators to avoid using them to the maximum extent possible.

H. Assault on Police Officer Review

Recommendation No. 38

- DC's misdemeanor Assault on Police Officer statute should be amended so that the elements of the offense require an actual assault rather than mere resistance or interference with an MPD officer.

VIII. Conclusion

Our review over the past several months has focused on whether MPD's policies, practices, and procedures have remained consistent with the June 2001 MOA and are consistent with current law enforcement best practices. As described in detail in this report, we have reached a mixed verdict.

MPD has generally kept in place the use of force policies and procedures that brought it into substantial compliance with the MOA more than seven years ago even though it was under no legal obligation to do so once the MOA was terminated in 2008. At the same time as the policies and procedures have remained in place, we have seen evidence of the MPD command staff's continuing commitment to those reform principles and to fair and constitutional policing. MPD's record in successfully reducing its use of the most serious types of force, including firearms, even during periods of increased crime in the District of Columbia, speaks for itself, and we have seen no evidence that the excessive use of force has reemerged as a problem within MPD. MPD is plainly a very different, and much better, law enforcement agency than it was when DOJ

The Durability of Police Reform The Metropolitan Police Department and Use of Force

began its investigation in 1999. In addition, Chief Lanier and her command staff have confronted the important issue of how best to identify officers whose behavior creates risk for themselves, MPD, and the public and have launched an innovative program (the PCIB) to address those risks, although at this point on a small scale.

However, we have found some significant deficiencies in some key areas covered by the MOA. We have found that certain use of force policies are in need of revision to reflect best practices in law enforcement. More significantly, we have found significant changes in the requirements for reporting and investigating use of force by MPD officers that we think have gone too far. Specifically, MPD no longer requires the reporting and investigation of certain relatively less serious uses of force, up to and including individual and team takedowns. We think those modified reporting and investigations thresholds, especially with respect to takedowns, are inconsistent with law enforcement best practices. The changes result in a large number of less serious uses of force going unreported and uninvestigated, and thus deprive MPD of valuable data that can help it to manage at-risk officers.¹⁹⁶

In addition, the Review Team found substantial evidence showing that the quality of serious use of force investigations has declined. MPD's elite use of force investigations unit – FIT – has been disbanded and merged into IAD, though declining FIT caseloads over time make this reorganization decision understandable. Unfortunately, the intensive and continuing training needed to maintain high-quality use of force investigations has not occurred. The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce unsatisfactory use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view.

As we have described in this report, the shortcomings in Internal Affairs investigations and investigative reports have had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the

¹⁹⁶ In its comments on the draft report, MPD argues that scarce MPD resources are better spent deploying supervisors on the street rather than having them prepare paperwork relating to less serious uses of force such as resisted handcuffing or takedowns when there is neither injury nor complaint of pain. We fully understand the resource argument but think that our recommendations on changing MPD's reporting and investigations requirements advance the goals of managing use of force within MPD without the excessive or inappropriate diversion of scarce MPD resources.

The Bromwich Group

use of force by MPD officers is consistent with MPD policies and law enforcement best practices. In examining the handling of the most serious use of force cases – including officer-involved fatal shooting cases – we found the system for conducting criminal and administrative investigations to be plagued by significant delays that impede the prompt resolution of these cases. We found that MPD and the USAO share responsibility for these delays in the most serious cases involving fatalities, and that much of the responsibility lies with the USAO. Even so, MPD needs to conduct its administrative investigations more expeditiously, and complete them promptly once the USAO's criminal investigation is complete. In addition, we found that the Office of Risk Management, the internal unit within MPD that audits programs and operations – and that was a vital part of ensuring the durability of MOA-related reforms – virtually stopped conducting MOA-related audits and reviews during a five-year period (2010-2014). This absence of oversight may well have contributed to some of the weaknesses we have identified.

Some of these shortcomings are less the result of explicit policy choices or conscious decisions to switch the emphasis away from use of force issues and more the result of other factors, many of them beyond MPD's control. These factors include the transfer and retirement of personnel who played key roles in MPD's system for dealing with use of force issues, an inevitable loss of focus on these issues after a period of intense attention to them, and the emergence of competing priorities. However, as described in this report, other changes have been conscious and deliberate, and they have reduced the number of uses of force that are documented, investigated, and reviewed.

Even though these deficiencies are significant, they are eminently remediable. We have been encouraged by the prompt and aggressive response of Chief Lanier and her command staff as we provided periodic briefings during the course of our review. Indeed, MPD has promptly and constructively responded to both the observations that we shared during the course of our work, and the recommendations contained in this report, as reflected in Exhibits I and N to this report. We believe that our recommendations, if accepted and fully implemented, will help address the weaknesses we have found to exist in MPD's system of self-governance regarding use of force.

In a time of extraordinary national attention on the conduct of law enforcement agencies and their relationship to the communities they serve, MPD operates from a position of substantial strength. Many years ago, MPD successfully adopted and implemented a full complement of reforms on most of the central issues involving use of force. Indeed, it transformed itself into a leader on these issues, a police department that many other law enforcement agencies turned to for advice and guidance.

**The Durability of Police Reform
The Metropolitan Police Department and Use of Force**

To ensure its continued leadership on use of force issues, MPD must protect and enhance the policy and practice reforms that transformed the department. It must continue to work hard to prevent the natural erosion of important reforms that comes naturally with the passage of time, and to make sure, through continuing focus on use of force issues, that those bedrock reforms remain embedded in the culture of the department.

January 2016



Michael R. Bromwich
The Bromwich Group LLC

Ann Marie Doherty
Dennis E. Nowicki

EXHIBITS

EXHIBIT A

MEMORANDUM OF AGREEMENT, UNITED STATES DEPARTMENT OF JUSTICE AND THE DISTRICT OF COLUMBIA AND THE D.C. METROPOLITAN POLICE DEPARTMENT

Read summary of agreement

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice

and the

District of Columbia and

the District of Columbia Metropolitan Police Department,

June 13, 2001

TABLE OF CONTENTS

I. INTRODUCTION

A. Background

B. General Provisions

C. Definitions

II. GENERAL USE OF FORCE POLICY REQUIREMENTS

A. General Use of Force Policy

B. Use of Firearms Policy

C. Canine Policies and Procedures

D. Oleoresin Capsicum Spray Policy

E. Implementation Schedule

III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

A. Use of Force Reporting Policy and Use of Force Incident Report

B. Investigating Uses of Force and Misconduct Allegations

1. Use of Force Investigations

2. Investigations of Misconduct Allegations

IV. RECEIPT, INVESTIGATION, AND REVIEW OF MISCONDUCT ALLEGATIONS

A. Coordination and Cooperation Between MPD and OCCR

B. Public Information and Outreach

- C. Receipt of Complaints
- D. OCCR Misconduct Investigations
- E. Evaluating and Resolving MPD Misconduct Allegations
- V. DISCIPLINE AND NON-DISCIPLINARY ACTION
- VI. PERSONNEL PERFORMANCE MANAGEMENT SYSTEM
 - A. Performance Evaluation System
- VII. TRAINING
 - A. Management Oversight
 - B. Curriculum
 - C. Instructors
 - D. Firearms Training
 - E. Canine Training
- VIII. SPECIALIZED MISSION UNITS
- IX. PUBLIC INFORMATION
- X. MONITORING, REPORTING, AND IMPLEMENTATION
 - A. Independent Monitoring
 - B. MPD Compliance Coordinator
 - C. Reports and Records
 - D. Implementation, Termination, and Enforcement
 - E. Compliance
 - F. Modifications

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice

and the

District of Columbia and

the Washington Metropolitan Police Department,

I. INTRODUCTION

A. Background

1. In January 1999, District of Columbia Mayor Anthony A. Williams and Chief Charles H. Ramsey requested the Department of Justice to review all aspects of the Washington Metropolitan Police

Department's use of force. This unprecedented request indicated the City and the Chief's commitment to minimizing the risk of excessive use of force in the Washington Metropolitan Police Department (MPD) and to promoting police integrity. Because of the unusual genesis of the investigation -- at the request of the agency to be investigated -- the Department of Justice agreed that, parallel with its pattern or practice investigation, it would provide MPD with technical assistance to correct identified deficiencies during the course of the investigation. The Department of Justice conducted the investigation requested by the City, and analyzed every reported use of force and citizen complaint alleging excessive use of force during the period from 1994 to through early 1999. The Department of Justice also examined MPD's policies, practices, and procedures related to use of force.

2. In addition to conducting an investigation, the Department of Justice has provided MPD with on-going technical assistance recommendations regarding its use of force policies and procedures, training, investigations, complaint handling, canine program, an early warning tracking system. Based upon these recommendations, MPD has begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues.

3. The Department of Justice, the District of Columbia, and the District of Columbia Metropolitan Police Department, share a mutual interest in promoting effective and respectful policing. They join together in entering this agreement in order to minimize the risk of excessive use of force, to promote the use of the best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues. The parties acknowledge that additional reforms may be appropriate in order to identify and to prevent discriminatory law enforcement. The parties are currently reviewing officer communications on Mobile Data Terminals to identify unlawful or otherwise inappropriate conduct. Based upon the outcome of this review, MPD agrees to implement appropriate reforms.

B. General Provisions

4. This agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 114141) to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprive individuals of rights, privileges or immunities secured by federal law.

5. Nothing in this Agreement is intended to alter the lawful authority of MPD police officers to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill their law enforcement obligations to the people of the District of Columbia in a manner consistent with the requirements of the Constitution and laws of the United States and the District of Columbia.

6. Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between the City and MPD employee bargaining units; or (b) impair the collective bargaining rights of employees in those units under law.

7. This Agreement constitutes the entire integrated agreement of the parties. With the exception of the latest working drafts and correspondence resulting from the technical assistance described in paragraph 2, no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

8. This Agreement is binding upon the parties hereto, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right

as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the District Columbia for its conduct or the conduct of MPD officers. This Agreement does not constitute an admission, adjudication, or finding on the merits in any action or proceeding. This Agreement does not authorize, nor shall it be construed to authorize, access to any City or MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Independent Monitor.

C. Definitions

9. The term "actively resisting" means the subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested.

10. The term "CCRB" means the Citizen Complaint Review Board.

11. The term "City" means the City of the District of Columbia.

12. The term "complaint" means any complaint by a member of the public regarding MPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by an MPD officer. All complaints shall be recorded on the complaint form described in paragraph 88. A complaint may be initiated by any of the methods set forth in paragraph 92. For purposes of this Agreement, the term "complaint" does not include any allegation of employment discrimination.

13. The term "complainant" means any person who files a complaint against an officer or MPD.

14. The term "consult" means an exchange of information in a timely manner between the parties intended to consider the parties' respective positions. This exchange of information shall include, but not be limited to, preliminary investigative files, reports, statements, photographs, and radio runs, as such items become available.

15. The term "deadly force" means any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.

16. The term "Department" means the Washington Metropolitan Police Department.

17. The terms "document" and "record" include all "writings and recordings" as defined by Federal Rules of Evidence Rule 1001(1).

18. The term "DOJ" means the United States Department of Justice and its agents and employees.

19. The term "effective date" means the day this Agreement is signed by all the parties.

20. The term "FIT" means the Force Investigation Team.

21. The term "including" means "including, but not limited to."

22. The term "Independent Monitor" or "Monitor" as used in this document means the Monitor established by Section X of this Agreement, and all persons or entities associated by the Monitor to assist in performing the monitoring tasks.

23. The term "MPD" means the Chief of Police of the Department and all employees under his or her command.

24. The term "MPD employee" means any employee under the command of the Chief of Police, including civilian employees.

25. The term "MPD unit" means any officially designated organization of officers within MPD, including Regional Operation Centers, Districts, Divisions, Groups, Patrol Service Areas, Teams, and specialized units.

26. The term "manager" means an MPD supervisor at the rank of lieutenant or above.

27. The term "non-deadly force" means any use of force that is neither likely nor intended to cause death or serious physical injury.

28. The term "non-disciplinary action" refers to action other than discipline taken by an MPD supervisor to enable or encourage an officer to modify his or her performance. It may include: oral or written counseling; training; increased field supervision for a specified time period; referral to Police/Fire Clinic; referral to the Employee Assistance Program; a change of an officer's partner; or a reassignment or transfer.

29. The term "OCCR" refers to the Office of Citizen Complaint Review.

30. The term "OPR" refers to the Office of Professional Responsibility.

31. The term "police officer" or "officer" means any law enforcement officer employed by MPD, including supervisors and managers.

32. The term "PPMS" means Personnel Performance Management System.

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

34. The term "supervisor" means sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers and managers.

35. The term "use of force" means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing. The term "use of force indicating potential criminal conduct by an officer" shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject.

II. GENERAL USE OF FORCE POLICY REQUIREMENTS

A. General Use of Force Policy

36. DOJ acknowledges that MPD has initiated a number of important use of force policy reforms. The provisions in this section build upon MPD's ongoing initiatives.

37. MPD shall complete development of a Use of Force Policy that complies with applicable law and current professional standards. The policy shall emphasize the goal of de-escalation and shall encourage officers to use advisements, warnings, and verbal persuasion when appropriate. The policy shall advise that the use of excessive force shall subject officers to discipline and possible criminal

prosecution and/or civil liability.

38. The policy shall define and describe the types of force and the circumstances under which use of such force is appropriate. The policy shall prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may escalate to the point where deadly force would be authorized.

39. The policy shall require officers, when feasible, to identify themselves as police officers and to issue a warning before discharging a firearm.

40. The policy shall require officers, immediately following a use of force, to inspect subjects for injury resulting from the use of force, and to obtain any necessary medical care.

B. Use of Firearms Policy

41. MPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official MPD channels, and shall specify the number of rounds MPD authorizes its officers to carry.

42. Within 30 days from the effective date of this agreement, the Mayor of the District of Columbia shall submit a request to the City Council for the District of Columbia for an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations. The requested amendment shall permit the Chief of Police to determine the policy concerning the off-duty carrying of firearms by MPD officers while in the District of Columbia, including, but not limited to appropriate prohibitions regarding the carrying and or use of firearms in situations where an officer's performance may be impaired.

43. The policy shall require that when a weapon reportedly incurably malfunctions during an officer's attempt to fire, the weapon shall be taken out of service and an MPD armorer shall evaluate the functioning of the weapon as soon as possible. The policy shall require that, following the evaluation by the armorer, MPD shall document in writing whether the weapon had an inherent malfunction and was removed from service, malfunctioned because it was poorly maintained, or if the malfunction was officer-induced and a determination of the causes.

C. Canine Policies and Procedures

44. DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.

45. The policy shall limit off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect, to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed. MPD shall continue to require canine officers to have approval from an immediate supervisor (sergeant or higher) before the canine can be deployed. If the handler is unable to contact a canine unit supervisor, approval must be sought from a field supervisor before the canine can be deployed. The approving supervisor shall not serve as a canine handler in the deployment. MPD shall continue to issue a loud and clear announcement that a canine will be deployed and advise the suspect to surrender and remain still if approached by a canine.

46. The policy shall also require that in all circumstances where a canine is permitted to bite or

apprehend a suspect by biting, the handler shall call off the dog at the first possible moment the canine can be safely released. Whenever a canine-related injury occurs, immediate medical treatment must be sought either by rescue ambulance, transportation to an emergency room, or admission to a hospital.

D. Oleoresin Capsicum Spray Policy

47. MPD shall complete development of an Oleoresin Capsicum Spray (OC Spray) policy that complies with applicable law and current professional standards. The policy shall prohibit officers from using OC Spray unless the officer has legal cause to detain, take into legal custody or to maintain in custody a subject who is, at a minimum, actively resisting the officer. The policy shall prohibit officers from using OC spray to disperse crowds or others unless those crowds or others are committing acts of public disobedience endangering public safety and security.

48. The policy shall provide that, absent exceptional circumstances, officers shall not use OC spray on children and elderly persons. The policy shall prohibit officers from using OC spray to prevent property damage except when its use meets the standard defined in paragraph 47 above.

49. The policy shall require officers to issue a verbal warning to the subject unless a warning would endanger the officer or others. The warning shall advise the subject that OC spray shall be used unless resistance ends. The policy shall require that prior to discharging the OC spray, officers permit a reasonable period of time to allow compliance with the warning, when feasible.

50. The policy shall require officers to aim OC spray only at a person's face and upper torso. The policy shall require officers to utilize only two, one second bursts and to do so from at least 3 feet away from the subject, unless exceptional circumstances require otherwise. The policy shall require that, absent exceptional circumstances, officers shall decontaminate every sprayed subject with cool water or a decontamination solution within 20 minutes after the application of the spray. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after having been contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC Spray. The policy shall prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia.

E. Implementation Schedule

51. MPD shall complete development of the policies and procedures referenced in this section within 30 days from the effective date of the agreement. In developing the final policies and procedures, MPD shall build upon the latest working drafts and correspondence exchanged between DOJ and MPD during the course of the investigation.

52. Prior to implementation of the policies and procedures referenced in this section, MPD shall submit them to DOJ for approval. In the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form.

III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

A. Use of Force Reporting Policy and Use of Force Incident Report

53. MPD shall complete development of a Use of Force Reporting policy and Use of Force Incident Report. The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report

immediately following the drawing of and pointing of a firearm at, or in the direction of, another person. The policy shall require supervisors, upon notification of a use of force or allegation of excessive force, to respond to the scene. In every incident involving deadly force, as defined by paragraph 15, a serious use of force, as defined by paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined by paragraph 35, the supervisor shall ensure that the Force Investigation Team (FIT) is immediately notified.

54. MPD shall notify the Office of the United States Attorney for the District of Columbia (USAO) immediately, in no case later than the next business day, following a deadly use of force or a serious use of force by an MPD officer or following any use of force indicating potential criminal conduct by an officer.

55. Data captured on the reports described above in paragraph 53 shall be entered into MPD's Personnel Performance Management System (PPMS). Hard copies of these reports shall be maintained centrally by the Office of Professional Responsibility.

B. Investigating Uses of Force and Misconduct Allegations

1. Use of Force Investigations

56. MPD created the Force Investigation Team (FIT) to conduct fair, impartial and professional reviews of firearm discharges. The provisions in this section build upon the investigative techniques employed by FIT and expand FIT's role within MPD.

57. Within 60 days from the effective date of this Agreement, MPD shall fully implement its plan, subject to approval of DOJ, to reallocate responsibility for MPD criminal investigations of officer use of force from District Violent Crime Unit supervisors or other District supervisors to the Force Investigation Team (FIT). The plan shall include procedures to address the rights and responsibilities of officers and supervisors in carrying out their duties, including the preparation of both preliminary investigative files and complete investigative files.

58. MPD shall consult with the USAO regarding the investigation of an incident involving deadly force, a serious use of force, or any other force indicating potential criminal misconduct by an officer. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 60. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.

59. In every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.

60. MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents subject to the notice and consultation provisions described in paragraphs 58 and 59.

61. FIT shall respond to the scene of every incident involving deadly force, a serious use of force, or

any use of force indicating potential criminal misconduct by an officer. In each of these incidents, FIT shall conduct the investigation of the use of force. That investigation may result in criminal charges, administrative action or both. Investigators from the involved officers' District shall not conduct the investigation. Based upon its review of use of force incidents from throughout MPD, FIT shall forward policy and training recommendations to the Chief of Police or his designee.

62. FIT shall complete its administrative use of force investigations within 90 days from the criminal declination described in paragraph 60, absent special circumstances which must be documented, and shall continue to conduct investigations in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.

63. Within 120 days from the effective date of this Agreement, MPD shall train and assign a sufficient number of personnel to FIT to fulfill the requirements of this Agreement.

64. Chain of command district supervisors may investigate all use of force incidents except for those incidents involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer. At the discretion of the Chief of Police or designee, any incident that may be investigated by chain of command district supervisors may be assigned for investigation to FIT or to chain of command supervisors from a district other than the district in which the incident occurred. No supervisor who was involved in the incident shall be responsible for the investigation of the incident.

65. Chain of command use of force investigations shall be completed within 90 days following the use of force incident, absent special circumstances which must be documented, and shall be conducted in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the proposed findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent and MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.

66. Upon completion of a chain of command use of force investigation, the investigator shall forward the investigation to the Unit Commander, who shall review the investigation to ensure that it is complete and that the findings are supported by the evidence. The Unit Commander shall order additional investigation when necessary. When the Unit Commander determines the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Use of Force Review Board (UFRB). Whenever there is evidence of criminal wrongdoing, the Unit Commander shall suspend the investigation immediately and notify FIT and the USAO.

67. Within 60 days from the effective date of this Agreement, MPD shall complete the development and implementation of a policy to enhance the UFRB, subject to approval by DOJ. The policy shall require the UFRB to conduct timely reviews of all use of force investigations. The policy shall set forth the membership of the UFRB and establish timelines for UFRB review of use of force investigations. The

policy shall authorize the UFRB to recommend discipline for violations of MPD's policies and training. The policy shall authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance . The policy shall require the UFRB to act as a quality control mechanism for all use of force investigations, with the responsibility to assign to FIT, or return to the investigating unit, all incomplete or mishandled use of force investigations. The policy shall provide the UFRB the authority and responsibility to recommend to the Chief of Police, or his designee, investigative protocols and standards for all force investigations. The policy shall require the UFRB to conduct annual reviews of all use of force cases examined to detect patterns/problems and to issue a report to the Chief of Police with findings and recommendations.

2. Investigations of Misconduct Allegations

68. The Office of Professional Responsibility shall be responsible for the investigation of allegations of criminal misconduct set forth in the categories in paragraph 72, (a) through (i) below. Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to allocate sufficient personnel and establish procedures to accomplish this new responsibility.

69. MPD shall notify the USAO immediately, in no case later than the next business day, following the receipt or discovery of any allegations of criminal misconduct referred to in paragraphs 72 and 73. In every incident involving allegations of criminal misconduct referred to in paragraphs 72 and 73, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.

70. MPD shall consult with the USAO regarding the investigation of an incident involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 71. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.

71. MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73.

72. Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to reallocate responsibility for MPD administrative complaint investigations of misconduct complaints from chain-of-command District supervisors to OPR with respect to the following:

- a. all referrals pursuant to paragraphs 76 and 77;**
- b. all civil suits alleging any misconduct by an officer while acting in an official capacity;**
- c. all civil suits against an officer for off-duty conduct (while not acting in an official capacity) that alleges physical violence, threats of physical violence, or racial bias;**
- d. all criminal arrests of or filing of criminal charges against an officer;**

- e. all allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
- f. all allegations of unlawful search and stops;
- g. all allegations of unlawful seizure (including false imprisonment and false arrest);
- h. any act of retaliation or retribution against an officer or person; and
- i. all allegations of strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose; and
- j. OPR shall assign for investigation outside of the District Chain of Command all allegations of misconduct related to the types of misconduct covered by "a" to "i" of this paragraph; and

OPR shall assign to FIT all allegations of excessive force by an officer involving a use of deadly force, as defined in paragraph 15, a serious use of force, as defined in paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined in paragraph 35.

73. OPR, shall also assign for administrative investigation outside of the District chain of command the following:

- a. all incidents in which both (i) a person is charged by an officer with assault on a police officer, resisting arrest, or disorderly conduct, and (ii) the prosecutor's office notifies MPD either that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility;
- b. all incidents in which MPD has received written notification from a prosecuting agency in a criminal case that there has been (i) an order suppressing evidence because of any constitutional violation involving potential misconduct by an MPD officer, or (ii) any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or District of Columbia judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. MPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred.

74. All administrative investigations of misconduct allegations conducted pursuant to paragraphs 72 and 73 shall be completed within 90 days from MPD receiving the complaint, or within 90 days from the criminal declination described in paragraph 71, where applicable, absent special circumstances which must be documented. At the conclusion of each such investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the misconduct incident and any other misconduct identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.

75. The Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD.

76. MPD shall continue to require all officers promptly to notify MPD of the following: the officer is arrested or criminally charged for any conduct; the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or the officer is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges any of the following: physical violence, threats of physical violence, racial bias,

dishonesty, or fraud by the officer. Officers shall report this information either directly to OPR or to a supervisor who shall report the information to OPR.

77. MPD shall require officers to report to MPD without delay: any conduct by other officers that reasonably appears to constitute (a) an excessive use of force or improper threat of force; (b) a false arrest or filing of false charges; (c) an unlawful search or seizure; (d) unlawful discrimination; (e) an intentional failure to complete use of force reports required by MPD policies and in accordance with procedures; (f) an act of retaliation for complying with any MPD policy or procedure; or (g) an intentional provision of false information in an MPD or OCCR investigation or in any official report, log, or electronic transmittal of information. Officers shall report such alleged misconduct by fellow officers either directly to OPR or to a supervisor who shall report the information to OPR. This requirement applies to all officers, including supervisors and managers who learn of evidence of possible misconduct through their review of an officer's work. Failure to voluntarily report as described in this paragraph shall be an offense subject to discipline if sustained.

78. The City shall in fiscal year 2002 provide all necessary funds to fully implement paragraphs 68 and 74. Misconduct investigation responsibilities shall be transitioned as positions are filled. Prior to positions being filled, investigation responsibilities shall be transitioned commensurate with available resources. Positions shall be filled and investigation responsibility transition shall be completed by December 31, 2002.

79. OPR shall continue to review all misconduct complaints as they are received. OPR shall determine whether a misconduct complaint meets the criteria (set forth in paragraphs 72 and 73) for being assigned for investigation outside of the District Chain of Command.

80. MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation.

81. In conducting administrative misconduct investigations (whether conducted by FIT, Chain of Command, or OPR, following a criminal declination, where applicable) MPD shall, subject to and in conformance with applicable law, at a minimum:

a. tape record or videotape interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury (if a complainant or non-officer witness refuses to be tape-recorded or videotaped, then MPD shall prepare a written narrative of the statement to be signed by the complainant or non-officer witness);

b. whenever practicable and appropriate, interview complainants and witnesses at sites and times convenient for them, including at their residences or places of business;

c. prohibit group interviews;

d. notify the supervisors of the involved officers of the investigation, as appropriate;

e. interview all appropriate MPD officers, including supervisors;

f. collect, preserve, and analyze all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and

g. identify and report in writing all inconsistencies in officer and witness interview statements gathered during the investigation.

82. In conducting misconduct investigations, MPD shall continue to assess the propriety of all officer conduct during the incident in which the alleged misconduct occurred. If during the course of an

investigation the investigator has reason to believe that misconduct occurred other than that alleged, the investigator also shall investigate the additional potential misconduct to its logical conclusion.

83. Within 120 days from the effective date of this Agreement, MPD shall develop a manual, subject to approval by DOJ, for conducting all MPD misconduct investigations. The manual shall include timelines and shall provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.

84. Within 90 days from the effective date of this Agreement, MPD shall develop a plan, subject to approval by DOJ, to ensure that all MPD investigators (whether conducting use of force investigations or misconduct investigations) receive adequate training to enable them to carry out their duties. All MPD investigators shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism. MPD shall provide specialized training to investigators who conduct shooting investigations. The training shall occur within 180 days of the approval of the plan.

IV. RECEIPT, INVESTIGATION, AND REVIEW OF MISCONDUCT ALLEGATIONS

A. Coordination and Cooperation Between MPD and OCCR

85. Within 60 days from the effective date of this Agreement, the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB).

86. The City shall provide OCCR sufficient qualified staff, funds, and resources to perform the functions required by this Agreement and by District of Columbia Law 12-208 creating OCCR, including the conduct of timely, thorough, and independent investigations of alleged police misconduct; the conduct of mediation; the conduct of hearings; and the operation of a professional office.

B. Public Information and Outreach

87. MPD shall continue to require all officers to provide their name and identification number to any person who requests it.

88. Within 90 days of the effective date of this agreement, the City and MPD shall develop and implement an effective program to inform persons that they may make complaints regarding the performance of any officer. This program shall, at a minimum, include the development and distribution of complaint forms, fact sheets, informational posters, and public service announcements describing both the Office of Citizen Complaint Review (OCCR) and MPD complaint processes. The City shall make such materials available in English, Spanish, and other appropriate languages.

89. Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD headquarters, all MPD District stations and sub-stations, libraries, the internet, and, upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility.

90. MPD shall require all officers to carry informational brochures and complaint forms in their vehicles at all times while on duty. MPD shall require all officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. MPD shall prohibit officers from discouraging any person from making a complaint.

91. For the term of this agreement, MPD shall conduct a Community Outreach and Public Information program for each MPD District. The program shall require the following:

a. to continue at least one open meeting per quarter in each of the patrol service areas for the first year of the Agreement, and one meeting in each patrol service area semi-annually thereafter, to inform the public about the provisions of this Agreement, and the various methods of filing a complaint against an officer. At least one week before such meetings the City shall publish notice of the meeting (i) in public areas, including libraries, schools, grocery stores, community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD website; and (iv) in the primary languages spoken by the communities located in such area.

b. the open public meetings described above shall continue to include presentations and information on MPD and MPD operations in order to enhance interaction between officers and community members in daily policing activities.

C. Receipt of Complaints

92. Within 90 days from the effective date of this Agreement, MPD shall make it possible for persons to initiate complaints with MPD in writing or verbally, in person, by mail, by telephone (or TDD), facsimile transmission, or by electronic mail. MPD shall accept and investigate anonymous complaints and complaints filed by persons other than the alleged victim of misconduct. MPD shall ask anonymous and third-party complainants for corroborating evidence. MPD shall not require that a complaint be submitted in writing or on an official complaint form to initiate an investigation.

93. Within 120 days from the effective date of this Agreement, the City shall institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. The hotline shall be operated by OCCR. The City and MPD shall publicize the hotline telephone number on informational materials and complaint forms. The City shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The City shall develop an auditing procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include monthly reviews of a random sample of the tape recordings.

94. Within 60 days from the effective date of this Agreement, MPD's Office of Professional Responsibility (OPR) shall be responsible for receiving all complaints filed directly with MPD. MPD shall assign and record a control system number for each complaint immediately. All complaints made at MPD locations other than OPR shall be forwarded to OPR within 24 hours, or the next business day. Within 24 hours, or the next business day OPR shall notify OCCR of any complaint alleging any of the following: harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment..

95. The City shall continue to locate OCCR offices separate from any building occupied by other MPD personnel.

D. OCCR Misconduct Investigations

96. Within 90 days from the effective date of this Agreement, the City shall develop and implement a

plan, in timely consultation with DOJ and the Monitor, to ensure that the investigative staff of OCCR receive adequate training to enable them to carry out their duties. OCCR investigative staff shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism.

97. Within 90 days from the effective date of this Agreement, the City shall develop a manual, in timely consultation with DOJ, for conducting all OCCR complaint investigations. The manual shall include timelines and provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.

E. Evaluating and Resolving MPD Misconduct Allegations

98. MPD shall continue to make findings based on a "preponderance of the evidence" standard. Within 90 days, MPD shall develop a policy and training implementing this standard.

99. In each misconduct investigation, MPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for an officer's statement over a person's statement. MPD shall make efforts to resolve inconsistent statements between witnesses.

100. MPD shall resolve each allegation in a misconduct investigation by making one of the following dispositions:

- a. "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;
- b. "Sustained," where the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
- c. "Insufficient Facts," where there are insufficient facts to decide whether the alleged misconduct occurred;
- d. "Exonerated," where a preponderance of the evidence shows that the alleged conduct did occur but did not violate MPD policies, procedures, or training.

101. MPD shall not close any misconduct investigation without rendering one of the dispositions identified above. Withdrawal of a complaint or unavailability of the complainant or the victim of the alleged misconduct to make a statement shall not be a basis for closing an investigation without further attempt at investigation. MPD shall investigate such matters to the extent reasonably possible to determine whether or not the allegations can be resolved.

102. At the conclusion of each misconduct investigation, the individual responsible for the investigation shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.

103. MPD shall complete all misconduct investigations within 90 days after receiving the allegations unless the complexity of the case dictates otherwise, or within 90 days from a criminal declination, where applicable.

104. MPD shall require its Unit Commanders to evaluate all misconduct investigations to identify underlying problems and training needs. After such evaluations the Unit Commander shall implement appropriate non-disciplinary actions, if any, or make a recommendation to the proper MPD entity to implement such actions. Sustained misconduct allegations will be handled pursuant to the disciplinary policy described in paragraph 105.

V. DISCIPLINE AND NON-DISCIPLINARY ACTION

105. Within 120 days from the effective date of this Agreement, MPD shall revise and update its disciplinary policy, General Order 1202.1 (Disciplinary Procedures and Processes), subject to the approval of DOJ. The policy shall describe the circumstances in which non-disciplinary action is appropriate. The policy shall describe the circumstances in which District-level discipline or corrective action is appropriate. The policy shall establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the District level. It shall also specify the procedure for notifying complainants in writing of the resolution, including significant dates, general allegations and the disposition.

VI. PERSONNEL PERFORMANCE MANAGEMENT SYSTEM

106. MPD has invested a significant amount of time and energy in developing a Request for Proposal to create a Personnel Performance Management System ("PPMS"). In connection therewith, the City has committed to develop and fully implement a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of MPD and its personnel. The computerized data shall be used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts. It shall be used to promote accountability and proactive management and to identify, manage, and control at-risk officers, conduct, and situations. This system shall be a successor to, and not simply a modification of, MPD's existing automated systems.

107. PPMS shall contain information at minimum on the following matters:

- a. all uses of force that are required to be reported in MPD "Use of Force Incident Report" forms or otherwise are the subject of a criminal or administrative investigation by the Department;
- b. all instances in which a police canine is deployed to search for or find a member of the public;
- c. all officer-involved shootings and firearms discharges, both on-duty and off-duty;
- d. all other lethal uses of force;
- e. all studies, reviews, or determinations with respect to the criminal, administrative, tactical, strategic, or training implications of any use of force, including all preliminary and final decisions regarding whether a given use of force was or was not within MPD policy;
- f. all vehicle pursuits and traffic collisions;
- g. all complaints (whether made to MPD or OCCR);
- h. with respect to the foregoing clauses (a) through (g), the results of adjudication of all investigations (whether criminal or administrative) and a chronology or other complete historical record of all tentative and final decisions or recommendations regarding discipline, including actual discipline imposed or non-disciplinary action taken;

- i. all commendations received by MPD about officer performance;**
- j. all criminal arrests and investigations known to MPD of, and all charges against, MPD employees;**
- k. all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from MPD operations or the actions of MPD personnel.**
- l. assignment, and rank history for each officer;**
- m. training history;**
- n. all management and supervisory actions taken pursuant to a review of PPMS information, including non-disciplinary actions;**
- o. educational history;**
- p. military service and discharge status;**
- q. all instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer or that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer; and**
- r. PPMS further shall include, for the incidents included in the database, appropriate additional information about involved officers (e.g., name and badge number), and appropriate information about the involved members of the public (including demographic information such as race, ethnicity, or national origin). Additional information on officers involved in incidents (e.g., work assignment, officer partner, field supervisor, and shift at the time of the incident) shall be determinable from PPMS.**

108. MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan for inputting historical data into PPMS (the "Data Input Plan"). The Data Input Plan shall identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan shall include historical data that are up-to-date and complete in PPMS.

109. PPMS shall include relevant numerical and descriptive information about each incorporated item and incident, and scanned or electronic attachments of copies of relevant documents. PPMS shall have the capability to search and retrieve (through reports and queries) numerical counts, percentages and other statistical analyses derived from numerical information in the database, listings, descriptive information, and electronic document copies for (a) individual employees, MPD units, and groups of officers, and (b) incidents or items, and groups of incidents or items. PPMS shall have the capability to search and retrieve this information for specified time periods, based on combinations of data fields contained in PPMS (as designated by the authorized user).

110. Where information about a single incident is entered in PPMS from more than one document (e.g., from a complaint form and a use of force report), PPMS shall use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses. Similarly, all personally identifiable information relating to MPD officers shall contain the badge or other employee identification number of the officer to allow for linking and cross-referencing information.

111. MPD shall, within 90 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using PPMS, including, but not limited to, supervision and auditing of the performance of

specific officers, supervisors, managers, and MPD units, as well as MPD as a whole. The City shall submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.

112. The protocol for using PPMS shall include the following provisions and elements:

a. The protocol shall require that, on a regular basis, but no less than quarterly, managers, and supervisors review and analyze all relevant information in PPMS about officers under their supervision to detect any pattern or series of incidents that indicate that an officer, group of officers, or an MPD unit under his or her supervision may be engaging in at-risk behavior.

b. The protocol shall provide that when at-risk behavior may be occurring based on a review and analysis described in the preceding subparagraph, appropriate managers, and supervisors shall undertake a more intensive review of the officer's performance.

c. The protocol shall require that MPD and managers on a regular basis, but no less than quarterly, review and analyze relevant information in PPMS about subordinate managers and supervisors in their command regarding the subordinate's ability to manage adherence to policy and to address at-risk behavior.

d. The protocol shall state guidelines for numbers and types of incidents requiring a PPMS review by supervisors and managers (in addition to the regular reviews required by the preceding subparagraphs), and the frequency of these reviews.

e. The protocol shall state guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of the information in PPMS required pursuant to this protocol.

f. The protocol shall require that managers and supervisors use PPMS information, among other relevant information, in determining when to undertake an audit of an MPD unit or group of officers.

g. The protocol shall require that all relevant and appropriate information in PPMS be taken into account for pay grade advancement, promotion, transfer, and special assignment, and in connection with annual personnel performance evaluations. Supervisors and managers shall be required to document in writing their consideration of any sustained criminal or administrative investigation, adverse judicial finding or significant monetary settlement, in determining when such officer is selected for special assignment, or assignment with increased pay, transfer, promotion, and in connection with annual personnel performance evaluations. For purposes of this paragraph, a special assignment shall include, but not be limited to, assignment as a training officer, assignment to any specialized unit or to OPR.

h. The protocol shall specify that actions taken as a result of information from PPMS shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS.

i. The protocol shall provide that managers' and supervisors' performance in implementing the provisions of the PPMS protocol shall be taken into account in their annual personnel performance evaluations.

j. The protocol shall provide specific procedures that provide for each MPD officer to be able to review on a regular basis all personally-identifiable data about him or herself in PPMS in order to ensure the accuracy of that data. The protocol also shall provide for procedures for correcting data errors discovered by officers in their review of the PPMS data.

k. The protocol shall require regular review at no less than quarterly intervals by appropriate managers of all relevant PPMS information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all MPD units in order to identify any patterns or series of incidents that may indicate potential liability or other at-risk behavior. These evaluations shall include evaluating the performance over time of individual units, and comparing the performance of units with similar responsibilities.

l. The protocol shall provide for the routine and timely documentation in PPMS of actions taken as a result of such reviews of PPMS information.

m. The protocol shall require that whenever an officer transfers into a new assignment, the commanding officer shall promptly cause the transferred officer's PPMS record to be reviewed by the transferred officer's watch commander or supervisor.

n. The protocol shall require that all relevant and appropriate information in PPMS shall be considered in connection with the adjudication of misconduct allegations and determinations of appropriate discipline for sustained misconduct allegations.

o. MPD shall train and thereafter hold managers, and supervisors accountable, consistent with their authority, for risk management and for use of PPMS and any other relevant data to address at-risk behavior, to deal with potential or actual police misconduct, and to implement the protocol described above.

113. The City shall maintain all personally identifiable information about an officer included in PPMS during the officer's employment with MPD and for at least five years thereafter (unless otherwise required by law to be maintained for a longer period). Information necessary for aggregate statistical analysis shall be maintained indefinitely in PPMS. On an ongoing basis, MPD shall enter information in PPMS in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

114. PPMS shall be developed and implemented according to the following schedule:

a. Within 60 days of the effective date of this Agreement, subject to approval of DOJ, MPD shall issue the Request for Proposal (RFP).

b. Within 210 days of the issuance of the RFP, MPD shall select the contractor to create the PPMS.

c. Within three months of the effective date of this Agreement, MPD shall submit the protocol for using PPMS required by paragraphs 111 and 112 hereof to DOJ for approval. MPD shall share drafts of this document with the DOJ and the Monitor to allow the DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. MPD and DOJ shall together seek to ensure that the protocol receives final approval within 30 days after it is presented for approval.

d. Within 12 months of selecting the contractor pursuant to paragraph 114(b), the City shall have ready for testing a beta version of PPMS consisting of: (i) server hardware and operating systems installed, configured and integrated with MPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the PPMS system.

e. The PPMS computer program and computer hardware shall be operational and fully implemented within 18 months of the selection of the PPMS contractor.

115. MPD shall, until such time as PPMS is implemented, and to the full extent reasonable and feasible, utilize existing databases, information and documents for all the purposes set forth herein for use of the PPMS.

116. Following the initial implementation of PPMS, and as experience and the availability of new technology may warrant, MPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. MPD shall submit all such proposals for review and approval by DOJ before implementation.

117. OPR shall continue to be responsible for developing, implementing, and coordinating MPD-wide risk assessments. OPR shall be responsible for the operation of PPMS, and for ensuring that information is entered into and maintained in PPMS in accordance with this Agreement. OPR further shall provide assistance to managers and supervisors who are using PPMS to perform the tasks required hereunder and in the protocol adopted pursuant hereto, and shall be responsible for ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks.

A. Performance Evaluation System

118. Within 6 months of the effective date of this Agreement, MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to:

- a. civil rights integrity and the employee's community policing efforts;
- b. adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States;
- c. with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity.

VII. TRAINING

A. Management Oversight

119. Within 30 days of the effective date of this Agreement, MPD shall centrally coordinate and review all use of force training among training components to ensure quality assurance, consistency and compliance with applicable law and MPD policy. MPD shall conduct regular subsequent reviews at least semi-annually and produce a report of such reviews to the Monitor and DOJ. Any substantive changes to use of force training must have prior approval of the Director of Training.

120. MPD shall continue to have all training materials reviewed by General Counsel or other legal advisor.

121. With respect to MPD- sponsored training, MPD Director of Training shall continue, in coordination with the Curriculum Development Specialist (CDS), and MPD Training Task Force to:

- a. oversee and ensure the quality of all use of force training by all trainers, wherever it occurs: academy, in-service, field, roll call and the firearms range;

- b. develop and implement use of force training curricula;
- c. select and train MPD officer trainers;
- d. develop, implement, approve and supervise all in-service training and roll call curricula;
- e. establish procedures for evaluating all training (which shall include an evaluation of instructional content and the quality of instruction);
- f. MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers.
- g. conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

122. The CDS shall prioritize his/her efforts to focus on use of force curriculum and instructor development. The CDS shall within 180 days of the effective date of this Agreement, review, revise, provide written approval, and implement, subject to DOJ's approval, all current force-related training material (including curricula and lesson plans), as well as subsequent changes, to ensure:

- a. internally consistent content and format;
- b. incorporation of current law and policy requirements;
- c. the presence of clear, behaviorally-anchored learning objectives and suggestions for trainers of how to present material effectively; and
- d. the appropriateness of proposed training aids.

123. The CDS shall regularly review, at a minimum every quarter, all force related training for quality assurance and consistency and shall regularly audit training classes.

124. MPD shall continue to enhance its procedures to provide adequate record keeping of lesson plans and other training material such that the most current, supervisory approved training documents are maintained in a central, commonly accessible file, and are clearly dated.

125. MPD shall continue to maintain training records regarding every MPD officer which reliably indicate the training received by each officer. The training records shall, at a minimum include the course, curriculum, instructor, and day and tour delivered for each officer.

B. Curriculum

126. The parties agree that sound critical thinking and decision making skills are critical to reducing use of excessive force and to ensuring officer safety. Accordingly, MPD shall ensure that all force-related training incorporates, in a coherent manner, critical thinking and decision making instruction, applicable law, and MPD policy.

127. MPD shall continue to provide all MPD recruits, officers, supervisors and managers with annual training on use of force, subject to approval by DOJ. Such training shall include and address, inter alia:

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

128. MPD shall continue to provide recruits, officers, supervisors, and managers with training in cultural diversity and community policing, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons of different sexual orientations, and persons with disabilities.

129. MPD shall provide all supervisors, (officers with the rank of sergeant and above) with mandatory supervisory and leadership training which, in addition to the subjects addressed in paragraphs 127 and 128, shall teach command accountability and responsibility, interpersonal relationship skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity, including the prevention and detection of use of excessive force, throughout the supervisor's command responsibility and which include proper supervisor/employee communication skills. MPD shall prioritize the topics covered in the initial training to focus on MPD's new use of force policies and procedures, new Canine policies and procedures, the new Use of Force Review Board, and revised administrative and misconduct investigation policies and procedures; MPD shall provide initial training on these topics within 180 days from execution of this Agreement and thereafter shall provide supervisory training on an annual basis.

130. MPD shall ensure that training instructors engage students in meaningful dialogue regarding "real-life" experiences involving use of force and applicable law and MPD policy when conducting force-related training. Training instructors shall encourage opportunities to explain MPD's use of force policy, reporting requirements and force-related law throughout all use of force training.

131. MPD shall ensure that training time is used in an efficient and productive manner and shall take effort to eliminate "down time" of student officers during recruit and in-service training by providing a variety of use of force training activities for students awaiting required one-to-one student-teacher training.

132. Role Play and Range 2000 Courses

a. Within 60 days of the effective date of this Agreement, MPD shall review the Role Play (formerly known as "Simulations") and the Range 2000 training courses to ensure consistency with the law and MPD policy. MPD shall immediately develop a standardized curriculum, lesson plan and instructional guidelines with a list of each scenario including the title, content, lesson objectives and, for the Range 2000, the possible variations available, and shall include a checklist of items to address when critiquing students to ensure consistent application and efficient training. The curriculum, lesson plan and instructional guidelines shall be reviewed by the CDS and MPD General Counsel to ensure consistency with the law and MPD policy, and submitted to DOJ for approval.

b. MPD shall allow sufficient time to ensure that every student officer participates in one or more Role Plays. Within 180 days of the effective date of this Agreement, MPD shall begin videotaping students in order to replay their decisions and actions during the critique portion of the courses. MPD shall have instructors challenge students to comply with applicable legal standards and MPD policy. Videotapes shall not be subject to the retention policy described in paragraph 176.

c. MPD shall add additional simulations to comport with the training needs assessment and deficiencies identified in use of force investigations, which can either be created by MPD or obtained from other local and federal law enforcement agencies.

133. MPD shall, within 120 days, provide copies and explain the terms of this Agreement to all MPD officers and employees in order to ensure that they understand the requirements of this Agreement and the necessity for strict compliance. After MPD has adopted new policies and procedures in compliance with this Agreement, MPD shall provide timely in-service training to MPD officers regarding the new policies and procedures and the relevant provisions of this Agreement. MPD shall incorporate training on these policies and procedures into recruit training at the Academy.

C. Instructors

134. Within 60 days, MPD shall assess (a) whether there is sufficient staff at the Training Academy; (b) what instructor training is needed in light of the courses currently being taught and those to be taught in the future; and (c) the appropriate standards for the evaluation of instructor performance by supervisors. Based on this assessment, MPD shall develop a plan for addressing training instructor needs. MPD shall submit this assessment and development plan to DOJ for approval.

135. MPD shall, within 90 days, develop and implement subject to DOJ's approval, formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions. These criteria shall apply to all incumbent officers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct; history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity.

136. MPD shall develop an instructor certification program by which the competency of the instructors is certified.

137. Within 180 days of the effective date of this Agreement, MPD shall create and implement a formal instructor training course, subject to the approval of DOJ, to ensure that all instructors receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching and evaluation, as well as training in fostering group discussions regarding use of force in "real-life" applications and the presentation of training material in a cohesive and engaging manner. MPD shall provide regular and periodic re-training on these topics. All training instructors and Field Trainers shall be required to maintain, and demonstrate on a regular bases, a high level of competence. MPD shall document all training instructors' and Field Trainers' proficiency and provide additional training to maintain proficiency.

138. MPD shall ensure adequate management supervision of use of force training instructors to ensure that their training is consistent with MPD policy, the law and proper police practices.

139. MPD shall ensure consistent and thorough instruction of approved lesson plans. All instructors must have and use a copy of current lesson plans during classroom instruction.

D. Firearms Training

140. MPD shall continue to ensure that all officers, supervisors as well as line staff, complete the mandatory semi-annual re-qualification firearms training. Re-qualification shall consist of more than shooting a passing score, but shall consist of satisfactorily completing all re-qualification courses, as

discussed in paragraphs 127 and 128, to include, Range 2000 and Role Play courses. MPD shall continue to revoke the police powers of those officers who fail to satisfactorily complete re-certification. MPD shall centralize administrative consequences of failure to attend re-qualification firearms training to ensure consistent application of such consequences.

141. MPD shall ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and the failure to utilize safe gun handling procedures at all times.

142. Within 60 days, MPD shall create and implement, subject to DOJ's approval, a checklist identifying evaluation criteria to determine satisfactory completion of firearms recruit and in-service training. Such checklists shall be completed for each student officer by a firearms instructor, who shall sign the checklist indicating that these criteria have been satisfactorily reviewed during training. The checklist shall include, but not be limited to, an evaluation of a student officer successful training of the following:

- a. maintains finger off trigger unless justified and ready to fire;
- b. exercises sound judgment and engages in decision making skills in Range 200 and Role Plays;
- c. maintains proper hold of firearm and proper stance.

143. MPD shall immediately review and integrate all firearms training into a training curriculum that ensures material is presented in a logical manner that promotes optimal fire safety and user responsibility.

144. MPD shall regularly, at a minimum every 3 months, consult the manufacturer for accurate, consistent and current information regarding all Glock specific instructions and guidelines, particularly regarding cleaning, maintenance and marksmanship. MPD must establish procedures to ensure that such information is continually updated as necessary and such practices are duly documented.

E. Canine Training

145. MPD shall complete development and implementation of a comprehensive canine training curriculum and lesson plans which specifically identify goals, objectives and the mission of the Canine Unit, consistent with the Canine policy described in paragraphs 44-46 of this Agreement.

146. MPD shall continue to purchase only professionally-bred canines. MPD shall ensure that, within 180 days, all of its canines are certified in handler-controlled alert methodology. MPD shall ensure that the canines receive annual re-certification and periodic refresher training. Deviations from certification or training requirements shall result in the removal of the canine from service until such requirements are fulfilled.

147. MPD shall continue to ensure that canine handlers are physically capable of implementing and maintaining the canine policy described in paragraphs 44-46 of this Agreement. Handlers should be able to maintain control of, and contact with the canine to ensure that the canine is not allowed to bite a suspect without a legal justification.

148. Within 180 days, MPD shall require that all of its in-house canine trainers are certified canine instructors.

VIII. SPECIALIZED MISSION UNITS

149. DOJ recognizes that MPD, in its discretion, utilizes temporary and permanent specialized mission units to achieve various law enforcement missions. The following provisions apply to any current or future specialized mission unit created during the existence of this Agreement in which officers engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches (the Mobile Force Unit (is an example of one such specialized mission unit.).

150. MPD shall continue to institute adequate pre-screening mechanisms of officers working a specialized mission unit to select and screen out officers who may be unprepared to participate in the specialized unit. The pre-screening mechanisms shall continue to include, at a minimum, the following: (a) whether the officer is current on his/her firearms certification and other service weapons training; (b) whether the officer has received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; and (c) whether the officer is generally fit for patrol duty and capable of achieving the relevant objectives of the specialized unit.

151. MPD shall continue to screen officers who are interested in participating in specialized mission units to develop and maintain a pool of seasoned and competent officers with exemplary records and up-to-date training.

152. MPD shall continue to require sufficient advance notice of participating officers to all specialized mission unit leadership to identify the need for enhanced supervision or tailor patrol activities in light of the capacities of the volunteer officers.

153. MPD shall continue to disqualify for service on a specialized mission unit any officer that has frequently used questionable force or generated numerous credible complaints alleging excessive force.

154. MPD shall continue to provide sufficient number of skilled supervisors to ensure adequate supervision of officers assigned to a specialized mission unit. Additionally, MPD shall continue to readily identify in the appropriate organizational chart and all specialized mission unit material, the Command-level official responsible for overseeing specialized mission unit activities.

155. MPD shall continue to give clear instructions to sergeants and other supervisory officers who volunteer, or are assigned to a specialized mission unit that they maintain their supervisory responsibilities while volunteering. MPD shall continue to provide clear instructions to these supervisors regarding appropriate supervision and coordination when more than one sergeant or supervisor is present.

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

157. MPD shall continue to monitor all activities of specialized mission unit participants to include, at a minimum, enforcement actions, uses of force, and complaints.

158. MPD shall continue its system of informing specialized mission unit supervisors within 24 hours of any complaint about the conduct of an officer on specialized mission unit duty. Additionally, MPD shall continue to track specifically all activities relating to officers participating in the specialized mission unit, including enforcement actions, complaints, and all misconduct investigations, to enable supervisors to determine whether particular officers should be allowed to continue to participate in the specialized mission unit duty. Investigations of specialized mission unit uses of force should be consistent with the provisions outlined in Section __ of this Agreement.

159. Within 120 daysMPD shall develop a plan, subject to the approval of DOJ, to limit the total number

of hours an officer may work in any twenty-four hour period and in any seven- day period to prevent officer fatigue. The parties acknowledge that implementation of the plan may take into account limitations of current labor agreements, if any.

IX. PUBLIC INFORMATION

160. MPD shall prepare quarterly public reports that include aggregate statistics of MPD use of force incidents broken down by MPD districts covering each of the geographic areas of the City, indicating the race/ethnicity of the subject of force. These aggregate numbers shall include the number of use of force incidents broken down by weapon used and enforcement actions taken in connection with the use of force. The report shall include statistical information regarding use of force investigations conducted, including the outcome. The report shall also include the total number of complaints of excessive force received, broken down by MPD Districts, and the number of complaints held exonerated, sustained, insufficient facts, and unfounded.

X. MONITORING, REPORTING, AND IMPLEMENTATION

A. Independent Monitoring

161. Within 90 days after entry of this Agreement, the City, MPD and DOJ shall together select a Monitor who shall review and report on MPD's implementation of, and assist with MPD's compliance with, this Agreement. If the parties are unable to agree on a Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a Federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to a third party neutral, selected with the assistance of the Federal Mediation and Conciliation Service, and the third party neutral shall appoint the Monitor from among the names of qualified persons submitted.

162. The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the City, MPD, or its officers. The Monitor shall not issue statements or make findings with regard to any act or omission of the City, MPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement.

163. The Monitor, at any time, may associate such additional persons or entities as are reasonably necessary to perform the monitoring tasks specified by this Agreement. The Monitor shall notify in writing DOJ and the City if and when such additional persons or entities are selected for association by the Monitor. The notice shall identify and describe the qualifications of the person or entity to be associated and the monitoring task to be performed.

164. The City and MPD shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ, the City and MPD recognize the importance of ensuring that the fees and costs borne by the City and MPD are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the payment of the Monitor's fees and costs, the City, MPD and DOJ and the Monitor shall attempt to resolve such dispute cooperatively.

165. The Monitor shall only have the duties, responsibilities and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the Mayor, City Council, or Chief of Police.

166. The Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement. The Monitor may not modify, amend, diminish, or expand this Agreement.

167. The City and MPD shall provide the Monitor with full and unrestricted access to all MPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to MPD by this Agreement. The Monitor's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. The Monitor shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or DOJ, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.

168. In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the City, MPD and DOJ.

169. In order to monitor and report on MPD's implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraphs 171 and 172 and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.

170. In order to monitor and report on MPD's implementation of this Agreement, the Monitor, among other things, shall regularly review and evaluate the quality and timeliness of:

a. MPD employee use of force investigations, including investigations conducted by the Districts, UFRB , OPR, and FIT, pursuant to Section III(B).

b. disciplinary and non-disciplinary actions related to officer use of force.

c. use of force reports.

d. analyses of data concerning use of force, pursuant to paragraphs 61 and 67; and any actions taken pursuant to paragraph 105.

e. complaints and resulting investigations of excessive use of force.

In performing its obligations under this Agreement, the Monitor shall, where appropriate, employ appropriate sampling techniques.

171. The Monitor, inter alia, shall review and evaluate the quality and timeliness of appropriate samples of use of force and misconduct investigations, disciplinary and non-disciplinary actions, ordered as a result of a misconduct investigation; data contained in the PPMS; and appropriate samples of Use of Force Incident reports, canine search and injury reports.

172. Subject to the limitations set forth in this paragraph, MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete. The Monitor shall provide written instructions for completing the investigation. The Monitor shall exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any misconduct investigation which has been adjudicated or otherwise disposed, and the disposition has been officially communicated to the officer who is the subject of the investigation.

B. MPD Compliance Coordinator

173. The parties agree that MPD shall hire and retain, or reassign a current MPD employee, for the duration of this Agreement, as an MPD Compliance Coordinator. The Compliance Coordinator shall serve as a liaison between MPD, the Monitor and DOJ, and shall assist with MPD's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate MPD compliance and implementation activities of this Agreement; (b) facilitate the provision of data, documents and other

access to MPD employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; and (d) assist in assigning compliance tasks to MPD personnel, as directed by MPD Chief of Police or his designee.

174. The MPD Compliance Coordinator shall take primary responsibility for collecting information to provide MPD's status reports specified in paragraph 175.

C. Reports and Records

175. Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement.

176. During the term of this Agreement, the City and MPD shall maintain all records documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The City and MPD shall maintain all use of force investigation files for at least ten years from the date of the incident. The City and MPD shall maintain an officer's training records during the officer's employment with MPD and for three years thereafter (unless required to be maintained for a longer period of applicable law).

177. DOJ shall continue to have full and unrestricted access to any City and MPD documents (including databases), staff, and facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege. Should the City or MPD decline to provide the Monitor with access to a document based on attorney-client privilege, the City shall provide the Monitor and DOJ with a log describing the document. DOJ's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. This Agreement does not authorize, nor shall it be construed to authorize, access to any MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, MPD, and the Monitor. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or the Monitor, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.

178. DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.

179. The Monitor shall issue quarterly public reports detailing the City's and MPD's compliance with and implementation of this Agreement. The Monitor may issue reports more frequently if the Monitor determines it appropriate to do so. These reports shall not include information specifically identifying any individual officer. Before issuing a report, the Monitor shall provide a draft to the parties for review to determine if any factual errors have been made, and shall consider the Parties' responses and then promptly issue the report.

180. The Monitor may testify in any action brought to enforce this Agreement regarding any matter relating to the implementation or enforcement of the Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the City, MPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future

litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

D. Implementation, Termination, and Enforcement

181. This Agreement shall become effective upon signature by all Parties. The City and MPD shall implement immediately all provisions of this Agreement which involve the continuation of current Department policies, procedures, and practices. Within 180 days of the effective date of this Agreement, unless otherwise specified, the City and MPD shall implement the provisions of this Agreement.

182. The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years. For the purposes of this paragraph, "substantial compliance" means there has been performance of the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

183. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement.

184. This Agreement is enforceable through specific performance in Federal Court. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

185. In the event MPD or the City fail to fulfill any obligation under this Agreement, DOJ shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to MPD and the City. MPD and the City shall have 30 days from receipt of such notice to cure the failure. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to MPD or the City, file an action in the United States District Court for the District of Columbia (the "Federal Court Action") against MPD and the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.

186. In any matter requiring its approval under this Agreement, DOJ shall not unreasonably withhold any such approval. DOJ shall respond in a complete and timely manner to any submission submitted by the City or MPD for approval, and shall fully outline any bases for disapproval, together with an indication of the changes required in order for approval to be given. DOJ shall provide its approval or disapproval of all matters in writing. All communications regarding approvals required by this Agreement shall take place in such a manner so as not to interfere with or delay compliance with any obligation contained in the Agreement.

187. In addition to any other notice it may provide, DOJ shall send copies of any correspondence

containing a notice of a failure to approve any submission by the City or the MPD, or a notice of a failure to fulfill obligations under this Agreement to MPD's General Counsel.

188. In connection with the Federal Court Action, MPD and the City agree as follows:

- a. The City and MPD shall stipulate to subject matter and in personam jurisdiction and to venue.
- b. The City and MPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Corporation Counsel of the City shall be deemed good and sufficient service upon the City and MPD.
- c. The City and MPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement.
- d. The City and MPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint as set forth above, or (b) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint.

189. In the event, the Court finds that the City or MPD has engaged in a material breach of the Agreement, the parties hereby stipulate that they shall move jointly for the Court to enter the Agreement and any modifications pursuant to paragraph 194, as an order of the court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

190. Nothing in this Agreement shall preclude DOJ, after complying with paragraph 185 (provision of notice and an opportunity to cure), from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of excessive force in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and MPD hereby waive, agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement shall preclude DOJ from filing an action under any other provision of law.

191. Nothing in this Agreement shall be construed to require an expenditure, obligation, or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 et seq. The District's obligations shall be subject to the availability of appropriated funds (including funds obtained from grants and contracts) as follows:

- a. To the extent made necessary by lack of funds, beginning for fiscal year 2002, the district may obtain deferral of compliance with an obligation of this Agreement until its next annual budget cycle if, as soon as the District knows or should know of the possibility of the event, it provides in writing to DOJ a statement which shows the following:
 - i. that it included in its annual budget act as adopted by the Council of the District of Columbia and submitted to the President for transmission to the Congress pursuant to section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Code §47-304 (1997), sufficient money to carry out such objective;

ii. that it made diligent efforts to obtain Congressional enactment of that part of the budget act;

iii. that it made diligent efforts to identify and utilize grant and contract funds available to the City from federal and private funding sources to meet obligations under this Agreement (DOJ will assist the City to identify potential Department of Justice grants, or other funding sources, for which MPD may be eligible to apply and will provide MPD with appropriate technical assistance regarding any related application process);

iv. that it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Agreement as such) together with the amount of money tied to performing such obligation; and

v. that Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in the appropriation of MPD, OCCR, or any other agency with specific obligations under this Agreement as shown in the Council's budget act without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation left an insufficient amount to carry out that obligation.

b. The Mayor and MPD shall make diligent efforts to safeguard all appropriated funds available to meet obligations under this Agreement from re-programming.

E. Compliance

192. This Agreement is a public document and shall be posted on the websites of the City or MPD and of the Special Litigation Section of the Civil Rights Division of DOJ.

193. The City and MPD agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

F. Modifications

194. The Parties may jointly agree, in writing, to modify this Agreement.

For the United States Department of Justice:

/s/ William R. Yeomans

WILLIAM R. YEOMANS
Acting Assistant Attorney General
Civil Rights Division

/s/ Steven H. Rosenbaum

STEVEN H. ROSENBAUM
Chief
Special Litigation Section
Civil Rights Division

/s/ Shanetta Y. Brown Cutlar

SHANETTA Y. BROWN CUTLAR
Special Counsel
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66400
Washington, D.C. 20035-6400
202-514-0195

DATED: June 13, 2001

For the District of Columbia and the Metropolitan Police Department:

/s/ Anthony Williams

ANTHONY WILLIAMS
Mayor of the District of Columbia

/s/ Charles H. Ramsey

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

/s/ Terrance W. Gainer

TERRANCE W. GAINER
Executive Assistant Chief of Police
District of Columbia Metropolitan Police Department

/s/ Robert Rigsby

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Corporation Counsel
Office of the Corporation Counsel
441 4th Street, NW, Suite 1060N
Washington, D.C. 20001

Approved as to form and legal sufficiency

[Return to the Civil Rights Division Home Page](#)

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Updated August 6, 2015

EXHIBIT B

FINDINGS LETTER RE USE OF FORCE BY THE WASHINGTON METROPOLITAN POLICE DEPARTMENT

The Honorable Anthony Williams
Mayor of the District of Columbia
One Judiciary Square, Suite 1100
Washington, DC 20001

Mr. Charles H. Ramsey
Chief of Police
Metropolitan Police Department
300 Indiana Avenue, N.W.
Washington, DC 20001

Re: Department of Justice Investigation of Use of Force by the Washington Metropolitan Police Department

Dear Mayor Williams and Chief Ramsey:

We are pleased to transmit the enclosed Memorandum of Agreement between the Department of Justice, the District of Columbia, and the Washington Metropolitan Police Department (MPD). As you are aware, the Agreement resulted from the Department of Justice's review of use of force issues in MPD pursuant to our authority under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141). We conducted the investigation at your request to inform you whether MPD officers engage in a pattern or practice of using excessive force. At your request, we also reviewed MPD's use of the Glock firearm.

Due to the unprecedented genesis of the investigation -- at the request of the agency to be investigated -- the Department of Justice agreed that, parallel with its pattern or practice investigation, it would provide MPD with technical assistance to correct identified deficiencies during the course of the investigation.

As discussed below, our investigation did reveal a pattern or practice of use of excessive force by MPD. The Department of Justice, however, would like to applaud the commitment to reducing the risk of excessive use of force demonstrated by your request that we conduct the investigation and assist MPD to identify and begin to correct deficiencies. We acknowledge that because of your efforts, MPD has initiated a number of significant reforms in the manner in which it tracks, investigates, monitors, and manages use of force issues. Additionally, MPD has committed to implementing these reforms fully in order to ensure effective and respectful policing.

We recognize that in the past two years, MPD has achieved a significant reduction in the rate at which it uses deadly force and the rate at which its canines bite subjects. In 1998, eleven fatalities resulted from MPD's use of deadly force. Fatalities decreased to four in 1999 and to two in 2000. Due to important changes in its canine operations, over the same time period, canine bites have decreased from occurring approximately 70 percent of the time that canines are deployed to slightly over 20 percent.

The use of force reforms outlined in the Memorandum of Agreement are a direct outgrowth of the deficiencies we identified in our investigation. Accordingly, below we summarize our investigation and our major findings in the following areas: use of force reporting and investigation; canines; early warning tracking; complaint system; training; and discipline.

A. Description of Investigation

The Department of Justice, aided by nationally recognized experts in police use of force, reviewed reported use of force, including canine bites, by MPD during the period of 1994 through early 1999. During this period, approximately 1400 incidents involving uses of force by MPD officers were reported. This figure does not account for all uses of force occurring during the period under review because MPD does not require that officers report and supervisors review all uses of force.

In addition to analyzing individual use of force incidents, the Department of Justice examined MPD's management practices related to use of force including, its use of force policies, training, supervision, and disciplinary system. During the course of the investigation, when the Department of Justice identified deficient policies, practices, or procedures, it notified MPD and provided technical assistance recommendations aimed at improving the identified problem.

B. Investigative Findings

1. Use of Excessive Force

The Department of Justice conducted an in-depth analysis of a stratified random sample of the use of force incidents, and determined that approximately 15 percent of them involved use of excessive force by MPD officers. According to police use of force experts, in well-managed and supervised police departments, excessive use of force would not be expected to occur in more than 1-2 percent of all incidents. In addition, in a significant number of cases, we found that the force used, while lawful, could have been avoided had the officer utilized different tactics.

In addition to revealing a pattern or practice of use of excessive force and avoidable force, our review revealed several other disturbing patterns.

For example, 14 percent of the incidents in our sample involved uses of force by off-duty officers and roughly a quarter of these incidents may have involved alcohol (the off-duty officers were patronizing a bar, nightclub, etc.). In approximately one-third of the incidents in our sample, the subject was charged with "assault on a police officer." In many of these cases, the United States Attorney's office determined that the charges lacked prosecutorial merit and refused to prosecute the subject. These cases may indicate that some officers have attempted to justify a use of excessive force by alleging "assault on a police officer."

Twenty-two percent of the firearms incidents sampled involved claims by MPD officers that a use of deadly force was justified because the subject "reached into his waistband" or possessed a firearm. In each case, however, post-incident searches failed to reveal any weapon. Approximately 22 percent of the sampled incidents involved officers firing their weapons at moving vehicles. MPD has, however, revised its policies to limit this practice significantly.

2. Use of Force Reporting

We found MPD policies regarding the reporting of force to be under-inclusive and inconsistently followed. The policies in place during the period of our review appeared to require that officers report use of firearms, electronic stun devices, pepper spray (oleoresin capsicum), batons, carotid artery holds, and forcible frisks. Based on statements from MPD employees, including senior supervisory personnel, we had serious concerns regarding whether any use of force, except firearms, was consistently reported. We found widespread variances in how MPD officers understand and define the kinds of force they need to report.

The under-reporting of force appears to be a consequence of under-inclusive reporting policies and reporting forms. MPD policy does not explicitly mandate officers to report the use of all physical force. The policy does not mandate officers to report the use of most hands-on force or some instruments, like flashlights, which may cause injuries. MPD policy does not mandate that officers report when they unholster their firearm to point it at an individual. Further, MPD's reporting forms are not designed to capture this type of information. For example,

MPD's "Nonlethal Control Devices Incident Report" form only provides spaces for reporting the use of tasers or chemical spray.

MPD's failure to collect and analyze detailed data regarding all uses of force makes it extremely difficult for MPD supervisors and executives to measure and manage use of force. With the exception of firearms, MPD cannot measure accurately whether certain officers use force more than others, under what circumstances MPD officers use force, what kinds of force are being used, the frequency of use of force by MPD officers, or officer or civilian injury resulting from uses of force.

We recommended that MPD redefine and expand what it considers a use of force and when officers are obligated to report it. Specifically, we recommended that MPD adopt and implement the following policies: (1) define "use of force" to include all physical (pain compliance, kicks, punches, etc.) and instrumental (flashlight, radio, baton, ASP, firearm, etc.) acts that impose any degree of force on a civilian; (2) require officers to report every use of force; (3) create a use of force reporting form that adequately captures the type of force used, the circumstances of the use, injuries to officers and civilians, and all other relevant information; (4) train officers on these new policies; and (5) monitor compliance with the new policies.

We also recommended, in light of MPD's high level of firearms use at the time our investigation was initiated, that MPD require officers to report when they make a discretionary decision to unholster their firearm and point it at an individual. This reporting requirement would allow MPD to identify the kinds of circumstances in which officers seriously consider using firearms in order to better identify and address tactical considerations in use of firearms and alternatives to firearm use.

In response to our recommendations, MPD has drafted a new use of force policy and reporting form. When finalized and fully implemented and enforced, the new policy and reporting form will go a long way to address the deficiencies identified during our investigation.

3. Use of Force Investigations

When force incidents are accurately reported, the incident should be thoroughly and neutrally investigated and adjudicated. Our investigation uncovered serious shortcomings in the quality of MPD use of force investigations. Our review of a sample of MPD use of force investigations and our interviews with MPD use of force investigators, made us concerned about the competency, thoroughness, and impartiality of use of force investigations. For example, we found instances in which investigators failed to interview victims, suspects, or MPD or civilian witnesses. In other instances, MPD investigators failed: (i) to record the location of shell casings and other physical evidence, (ii) to perform ballistics comparisons, or (iii) to take relevant photographs.

These failures may derive from inadequate training for use of force investigators (usually lieutenants). We recommended that MPD provide all of its use of force investigators with, at a minimum, training in the following: investigation techniques; observation and surveillance skills; basic forensics; interviewing and interrogation skills; report writing; basic criminal law; basic court procedures; basic rules of evidence; and MPD's disciplinary and administrative procedures.

In addition to the above investigative deficiencies, we observed a lack of impartiality in certain use of force investigations. With the exception of investigations conducted by MPD's new Force Investigation Team, discussed below, use of force investigations are conducted by investigators from the district where the use of force occurred. This practice can create conflicts of interest, particularly where the investigator and officer under investigation are personally acquainted or work together. Conflicts also may arise if the investigator was involved in or supervised the use of force incident. For these reasons, for significant categories of cases, we recommended that investigators not be based in the district in which the incident occurred.

We also recommended that every supervisory review of a use of force include an assessment of the following

issues: (1) was the force used in policy, reasonable, and necessary; (2) should the incident be investigated to determine whether misconduct occurred; (3) does the incident indicate a need for additional training, counseling or other remedial measures; and (4) whether the incident suggests that MPD should revise its policies, training, or tactics.

To begin to address the investigative deficiencies, MPD created the Force Investigation Team (FIT) in 1999. FIT is a group of highly trained and centralized investigators. MPD created FIT to investigate uses of deadly force by MPD officers. We have recommended and MPD has agreed to expand FIT's role to include investigation of all serious uses of force. Additionally, in the Memorandum of Agreement, MPD has agreed to remedial efforts aimed at improving all use of force investigations, including additional training for investigators and creation of standardized investigation manuals.

4. Use of Canines

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

We recommended that MPD adopt a "find and bark" policy, requiring the dog to bark, rather than bite, upon locating the subject. We also recommended that MPD limit the circumstances in which canines may be deployed; to require supervisory approval prior to deployment; to require greater handler control of the dogs; to improve its practices related to verbal warnings prior to deployment; to prohibit biting passive resisters; and to require handlers to order the dog to release a bite as soon as possible.

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

In response to our recommendations, MPD has initiated ambitious reforms to its canine program, including adopting a "find and bark" program, purchasing new canines, limiting the circumstances in which it allows deployment, requiring supervisory approval prior to deployment, and providing enhanced training to handlers and canines. As a result of this work, MPD's bite ratio has decreased from nearly 70 percent to slightly over 21 percent. If MPD continues with planned reforms in its canine operations, the ratio should continue to decline.

5. Early Warning Tracking System

Our examination of MPD's current use of force tracking system and associated policies and practices led us to conclude that MPD does not have a comprehensive program to minimize use of excessive force. As a result, MPD cannot adequately identify officers or units who have, or may in the future, engage in excessive force or other misconduct. Without such identification, MPD cannot fully manage the risks such officers or units pose.

MPD's current early warning system suffers from a number of deficiencies. First, it is seriously limited in scope. The database only captures citizen complaints, civil lawsuits, official reprimands, and vehicle accidents. Significantly, the system does not specifically capture officer uses of force. Second, it is too limited in time. The database maintains information for only two years. Third, the system offers insufficient options to deal with potential problem officers. The sole consequence of the early warning that results from the current system is a referral to the police and fire psychology clinic. This narrow option is apparently not accompanied by any corresponding requirement that clinic attendance be confirmed. Fourth, the MPD unit responsible for maintaining the system has a very low staffing level. At times during our investigation, only one sworn officer staffed the office. This staffing level is substantially less than the minimum needed to

perform the currently assigned functions: maintain the early warning system, track citizen complaints, review the quality of citizen complaint investigations, and conduct financial audits. At this staffing level, the unit cannot reasonably perform a meaningful role in developing and implementing a comprehensive risk management strategy to reduce unnecessary force.

To address these deficiencies, we recommended that MPD immediately begin, at a minimum, to collect at one location all available data related to officer use of force, including: officer and supervisor reports on all uses of force; citizen complaints alleging use of excessive force; civil lawsuits alleging use of excessive force; and the results of all investigations of and litigation regarding uses of force, including sustained/not sustained judgments, civil verdicts, and settlement amounts.

We also recommended that MPD form a team to purchase or develop an adequate early warning tracking system. In response to our recommendations, MPD has developed a draft Request for Proposals for the design and program of a comprehensive early warning computer database. As described in the Memorandum of Agreement, in addition to agreeing to the creation of a comprehensive early warning system, MPD has pledged to input relevant data into the forthcoming system, develop the necessary protocols and supports for the execution of an early warning program, and develop an array of programs and options to deal with officers whose conduct is considered problematic or may indicate a likelihood of using excessive force.

6. Complaint System

We found MPD's system for receiving, investigating, and resolving complaints from individuals alleging misconduct to be inadequate. In 1980, the District of Columbia Council created a Civilian Complaint Review Board (CCRB). See Civilian Complaint Review Board Act of 1980, D.C. Code §§ 4-901 to 4-911 (1988 & Supp. 1992). The CCRB was given exclusive jurisdiction to receive and investigate certain categories of civilian complaints, including complaints alleging excessive force by MPD officers. The CCRB was abolished in mid-1995 because it was a "patently inadequate system" which allowed "serious misconduct to go unchecked." *Cox v. District of Columbia*, 40 F.3d 475 (D.C. Cir. 1994).

When the CCRB disbanded, it left a backlog of nearly 800 unresolved complaints which were transferred to MPD. In the years since inheriting these complaints, MPD has not devoted sufficient resources to resolve them. Many have grown stale, making the possibility of adequate investigation remote, if not impossible. Timely investigation of allegations of officer misconduct is necessary because witnesses are transient, memories fade, and physical evidence can irretrievably be lost.

In addition to being responsible for resolution of complaints inherited from the disbanded CCRB, during the period of our review, MPD was responsible for receiving and investigating new complaints of officer misconduct. An adequate complaint system must be open and accessible to the public; conduct thorough, fair, and timely investigations; and promote officer and department accountability. MPD's complaint system falls short in all of these respects.

We found that MPD's complaint intake system discourages individuals from filing complaints. MPD policy 1202.5, Citizen Complaints, authorizes complaints to be registered in person, by correspondence, or by telephone. However, the policy requires MPD employees to ask individuals who attempt to file a written or telephonic complaint to appear in person at MPD in order to file the complaint. This practice has a deterrent effect on would-be-complainants who fear retaliation or who are simply unable or otherwise reluctant to come to a police station. The practice is particularly problematic because MPD does not keep records documenting the individuals who are turned away or the nature of their attempted complaints.

MPD's investigation of complaints suffers from the same investigative deficiencies described above in Section B(3), namely a lack of thoroughness, impartiality, timeliness, and competence in investigating the allegations.

In 1998, the District passed legislation creating a new Office of Citizen Complaint Review (OCCR). The

legislation became effective in March 1999, but the OCCR did not begin accepting complaints until January 8, 2001. Accordingly, we do not discuss the new OCCR here.

We have, however, recommended that, in order to help avoid repeating some of the failures of the old CCRB, it is critical that the new OCCR and MPD clearly delineate their respective roles and establish strong lines of communication between the two entities. MPD has created a special order providing some preliminary guidance to MPD officers regarding how to handle complaints in light of the new OCCR. Pursuant to the Memorandum of Agreement, MPD will implement several reforms to improve its handling of complaints, including conducting expanded community outreach and education regarding complaints; centralized recording and tracking of complaints; and improved investigation of complaints.

7. Use of Force Training

We examined MPD's use of force training in a variety of settings: academy, in-service (including roll-call and the firing range) and field. When we began our investigation, MPD had recently expanded and enhanced its use of force training program. We found, however, that the program continued to suffer from the following deficiencies.

We found that MPD provided use of force training in an uncoordinated manner with insufficient oversight by MPD policymakers or legal staff. As a result, use of force training was disjointed and, at times, in conflict with applicable law and MPD policy.

We offered MPD a series of recommendations to overcome these deficiencies and MPD has recently implemented a number of reforms in its training program aimed at increasing both the quantity and quality of use of force training provided to MPD officers. For example, MPD developed a mandatory 40-hour in-service training program, set up systems to guarantee officers achieve timely firearms re-certification, and developed more interactive training programs using role-play and computer simulations related to use of force training.

Significantly, MPD has undertaken an ambitious and necessary review of all use of force training curricula. MPD's general counsel is now reviewing all of MPD's training materials to ensure compliance with law and MPD policy. Additionally, MPD is creating a training resource library and has updated and computerized its training records. MPD hired a professional curriculum development specialist and is in the process of developing an instructor development course. MPD has also created a training task force made up of individuals from across the Department to conduct a use of force training needs assessment.

At the request of Chief Ramsey, we also reviewed MPD's use and training of the Glock firearm. We were pleased with MPD's efforts to ensure that all officers complete firearms semi-annual re-certification training. We were also impressed with the expertise of MPD's firearms training management staff. Our review of firearm training, however, revealed deficiencies that potentially compromise MPD's safe use of the Glock. We found that MPD fails to reinforce safe gun handling skills, such as repeatedly failing to admonish officers to keep their fingers off the triggers unless appropriate and ready to shoot, an imperative warning since the Glock does not have an external safety mechanism. We also noted MPD's review of officer shootings fails to examine weapons alleged to have malfunctioned, or to review an officer's firearm safety training needs in unintentional shootings.

We recommended that MPD enhance its firearm training, both written documents and as applied, to ensure safe usage of the Glock and that MPD enhance its investigations of shootings to include a firearm safety perspective. As described in the Memorandum of Agreement, MPD has agreed to implement these enhancements.

8. Disciplinary System

We examined MPD's system for disciplining officers who engage in excessive force because the timely and

effective imposition of appropriate discipline is critical for preventing and controlling excessive force. We determined that MPD does not have an adequate disciplinary system in place to respond to use of excessive force.

Although we requested all documents related to MPD's discipline of officers for use of excessive force, we received very few records, indicating that few officers are ever disciplined for excessive force. For example, the documents provided indicate that in approximately 350 use of force incidents referred to the United States Attorney's Office for possible criminal prosecution, MPD recommended discipline for only 16 officers. In many instances in which MPD held a use of force "unjustified", or in which MPD held a citizen complaint of excessive force "sustained," we did not receive any documents evidencing that MPD imposed any form of discipline. From the documents MPD provided, it appears that of 31 uses of force held by MPD to be unjustified, discipline was recommended in less than 50 percent of the cases. Similarly, of 11 sustained citizen complaints of excessive force, discipline was recommended in only 7 cases.

We have recommended that, consistent with its collective bargaining obligations, MPD revise and update its disciplinary policies to ensure the timely imposition of adequate discipline for excessive force cases. We have also recommended that MPD establish a centralized system for documenting and tracking all disciplinary and corrective action. As described in the Memorandum of Agreement, MPD has agreed to implement these improvements.

C. Conclusion

The Memorandum of Agreement provides for the development and implementation of updated use of force policies and procedures addressing the issues raised by our investigation as summarized above. Additionally, the Agreement builds upon work MPD started during the course of our review. In particular, MPD will continue with reforms initiated in its canine operations; will improve its use of force investigations; will address deficiencies in its handling of misconduct complaints; will update and revise its disciplinary policies; and will continue to enhance use of force training. Finally, the Agreement provides that implementation of the Agreement will be monitored by an independent monitor, who is jointly selected by the parties. The monitor will assist the City and MPD with compliance and issue periodic reports.

In conclusion, we would like to commend the City and MPD for their willingness to work together with us to resolve this matter amicably, and we look forward to your continued cooperation as the terms of the Agreement are implemented. We believe that, working together, the City and the Civil Rights Division, have helped to promote exemplary policing by the Washington Metropolitan Police Department.

Sincerely,

/s/ William R. Yeomans

William R. Yeomans
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Robert Rigsby, Corporation Counsel
Mr. Terrence D. Ryan, General Counsel
Kenneth L. Wainstein, U.S. Attorney for the District of Columbia

[Return to the Civil Rights Division Home Page](#)

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EXHIBIT C

GENERAL ORDER



DISTRICT OF COLUMBIA

Title

Use of Force Investigations

Series / Number

GO - RAR - 901.08

Effective Date

October 7, 2002

Distribution

B

Related to

**General Order RAR-901.07
(Use of Force)**

**General Order RAR-901.09
(Use of Force Review Board)**

I. Background.....	Page 1	IV. Regulations.	Page 3
II. Policy	Page 1	V. Procedural Guidelines	Page 4
III. Definitions.....	Page 2	VI. Cross References.....	Page 15

I. BACKGROUND

Accurate and timely reporting of use-of-force incidents is essential for Department monitoring and training. Fair and accurate follow-up investigations, especially in use of force situations involving firearms or serious bodily injury or death, allow the Department and community to learn of the integrity and appropriateness of such decisions. It enables the Department to make decisions regarding the incident and to provide further necessary guidance to members on appropriate levels of use of force.

II. POLICY

The Metropolitan Police Department has established the following statements of policy guidance regarding the use of force:

- A. The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, members of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.
- B. The decision to use force of any level should be based on the danger posed by the subject, rather than the nature or category of the incident. That decision must be based on the circumstances that a reasonable member believes exist. (CALEA 1.3.1)
- C. A decision to use deadly force should be based on a member having probable cause to believe that the suspect poses an imminent threat of serious physical harm, either to the member or to others. (CALEA 1.3.2)

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

- A. **Deadly Force** – any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.
- B. **Non-Deadly Force** – any use of force that is neither likely nor intended to cause death or serious physical injury.
- C. **Serious Use of Force** – lethal and less-than-lethal actions by MPD members including:
 - 1. All firearm discharges by an MPD member with the exception of range and training incidents and discharges at animals;
 - 2. All uses of force by an MPD member resulting in a broken bone or an injury requiring hospitalization;
 - 3. All head strikes with an impact weapon;
 - 4. All uses of force by an MPD member resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ.
 - 5. All other uses of force by an MPD member resulting in a death; and
 - 6. All incidents where a person receives a bite from an MPD canine.
- D. **Use of Force** – any physical contact used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include un-resisted handcuffing or hand control procedures that do not result in injury.
- E. **Use of Force Indicating Potential Criminal Conduct by a Member** – includes, but is not limited to, all strikes, blows, kicks or other similar uses of force against a handcuffed subject and all accusations or complaints of excessive force made against the member.
- F. **Serious Physical Injury** – any injury that results in hospitalization and that creates a substantial risk of death, serious disfigurement, disability or protracted loss or impairment of the functioning of any body part or organ.
- G. **Less-Than-Lethal Weapons** – any object or device deployed with the intent or purpose of eliminating a threat without causing death. These include, but

are not limited to, a 37 mm gas gun containing a cloth bag filled with small lead shot pellets, rubber bullets, batons, OC Spray, A.S.P. (Armament System Procedures) tactical batons.

- H. **Use of Force Continuum** – a training model/philosophy that supports the progressive and reasonable escalation and de-escalation of member-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered at the scene and the actions of the subject in response to the member's commands. Such response may progress from the member's actual physical presence at the scene to the application of deadly force.
- I. **Objective Reasonableness** – reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation.
- J. **Duty Status** – the relief of a member as an immediate interim step to preclude any further action concerning the incident by the involved member(s). *Note:* policing responsibilities as defined here is used only in the context of serious use of force incidents. (CALEA 1.3.8)
- K. **Probable Cause** -- where known facts and circumstances, of a reasonably trustworthy nature, are sufficient to justify a man of reasonable caution or prudence in the belief that a certain person has committed, is committing, or is about to commit a criminal act. (CALEA 1.3.2)

IV. REGULATIONS

- A. The Force Investigation Team (FIT) shall be responsible for investigating all incidents involving Deadly Force, Serious Use of Force or the Use of Force Indicating Potential Criminal Conduct (see definitions).
- B. The Office of the Superintendent of Detectives shall be responsible for investigating the offense leading up to the use of force, where applicable.
- C. The member's Element Commander or Director shall be responsible for the investigation of all use of force incidents not involving Deadly Force, a Serious Use of Force or a Use of Force Indicating Potential Criminal Conduct. The Element Commander or Director may delegate responsibility for conducting the investigation to another official who must be of a higher rank than the involved member.
- D. The Use of Force Incident Report (PD Form 901-e) shall be completed by the involved officer in all of the following situations:
 - 1. all Use of Force incidents (except Cooperative or Contact Controls, e.g., mere presence, verbal commands or submissive handcuffing,

- unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);
2. any time when an officer is in receipt of an allegation of excessive use of force; or
 3. whenever a member draws and points a firearm at or in the direction of another person.
- E. Members shall notify their supervisor and complete a PD Form 901-e (Use of Force Incident Report) immediately following any use of force, receipt of an allegation of excessive force, or immediately following the drawing of and pointing a firearm at or in the direction of another person.
- F. When a member has declined to complete the Use of Force Incident Report immediately following an incident, the supervisor shall compel the member to complete the report following a declination by the U. S. Attorney's Office and/or issuance of an authorized Reverse-Garrity warning.
- G. The Department's Use of Force Review Board shall be responsible for reviewing all use-of-force incidents as required by GO RAR – 901.09 (Use of Force Review Board). (CALEA 1.3.7)
- H. When a subject has sustained visible injuries or expresses complaints of pain as a result of a member's use of force, the injured subject shall be provided immediate medical assistance for the treatment of those injuries.
- I. FIT shall prepare a transmittal document to the Mayor describing the circumstances of any accidental or performance-of-duty firearm discharge.

V. PROCEDURAL GUIDELINES

A. Initial Response Duties at the Scene of a Use of Force

1. When a Metropolitan Police member becomes involved in a use-of-force incident that requires a Use of Force Incident Report, the initial responsibilities of the officer(s) shall be to ensure that the scene is safe, render first aid if applicable, secure the scene's integrity, and notify a supervisor.
2. When a subject is suffering from or complains of injuries, he or she shall be immediately taken to the Hospital for examination and treatment pursuant to GO PCA-502.07 (Medical Treatment and Hospitalization of Prisoners).
3. District Watch Commanders and/or appropriate element supervisors shall respond immediately to the scene of the use of force, and ensure that the Communications Division and the Synchronized Operations Command Center (SOCC) are notified.

4. If the use of force occurs outside the District of Columbia, members shall make notifications in accordance with Section V.-F. of this order and GO RAR-901.01 (Handling of Service Weapons). An official from the involved member's organizational element shall also respond to the scene. In such cases, the appropriate law enforcement authority of the jurisdiction of occurrence will handle all criminal investigations. The Force Investigation Team shall only conduct a policy review in this circumstance.

B. Notification and Reporting of a Use of Force Incident

1. **Member Responsibilities**

- a. In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any allegation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.
- b. Members who observe the use of force by another member or are aware of a complaint regarding the use of force by another member shall notify their supervisor of any knowledge they have concerning the incident and shall cooperate with their supervisor and the Force Investigation Team as may be appropriate.

2. **Supervisor Responsibilities**

When a member has declined to complete the Use of Force Incident Report immediately following an incident, the supervisor shall compel the member to complete the report following a declination by the U. S. Attorney's Office and/or issuance of an authorized Reverse-Garrity warning.

C. Investigation of Offense Leading Up to the Use of Force

1. The Office of the Superintendent of Detectives (OSD) shall immediately respond to begin their investigation and secure evidence, witnesses, and other information related to the crime that led up to the use of force. An OSD official shall designate a lead investigator for the crime that led up to the use of force.
2. The OSD is responsible for handling the arrest and processing of any individual charged as a result of the offense leading up to the use of force.
3. Members from the Forensic Science Services Division (Mobile Crime Lab) shall respond and be responsible for evidentiary crime scene processing.

4. The Forensic Science Services Division Technician handling the scene shall be required to coordinate all evidentiary information with the Force Investigation Team throughout the duration of the investigation.

**D. Investigation of Use of Force Incidents
Within the District of Columbia**

1. Rights of Officers Before USAO Declination Has Been Made

In all cases involving serious use of force, or any other force indicating potential criminal misconduct by an officer, the subject officer(s) will not be compelled or ordered to make a statement (which includes interview by video or tape-recording) until the USAO has issued a written declination.

2. Interviewing Subjects, Members and Witnesses (General)

In conducting administrative misconduct investigations involving a serious use of force or serious physical injury (following a criminal declination where applicable), the appropriate investigators shall include, subject to and in conformance with applicable MPD directives, the following measures:

- a. Whenever practicable and appropriate, complainants and witnesses shall be interviewed at sites and times convenient for them, including at their residences or places of business.
- b. Officers involved in a use of force incident shall be sequestered until they are interviewed by a member of FIT or by appropriate supervisory personnel.
- c. Group interviews are prohibited.
- d. Supervisors of the involved members subject to the investigation shall be notified, as appropriate.
- e. All appropriate MPD members, including supervisors, shall be interviewed.
- f. Investigators shall ensure that all appropriate evidence is collected, preserved, and analyzed, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate.
- g. Investigators shall tape record or videotape interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury (subject to and in conformance with applicable

law). If a complainant or non-officer witness refuses to be tape-recorded or videotaped, then a written narrative of the statement shall be prepared to be signed by the complainant or non-officer witness.

- h. Any inconsistencies in officer and witness interview statements gathered during the investigation shall be identified and reported in writing.

3. Response to Deadly Force, Serious Use of Force Incident or a Use of Force Indicating Potential Criminal Conduct

The Force Investigation Team (FIT) shall be responsible for investigating all incidents involving Deadly Force, Serious Use of Force or the Use of Force Indicating Potential Criminal Conduct. In such instances, the following procedures shall apply:

- a. When a member reports any use of force or accusation of force, a supervisor from the district of occurrence (of higher rank than the reporting member) is required to respond to the scene.
- b. The supervisor shall notify the Force Investigation Team and the Office of the Superintendent of Detectives through the Communications Division and the Synchronized Operations Command Center (SOCC).
- c. The supervisor shall maintain and preserve the scene and canvass and gather witnesses.
- d. The supervisor shall provide the assistance of District personnel to the Force Investigation Team in conducting the investigation of the incident, as necessary.
- e. In cases of use-of-force incidents within the investigative jurisdiction of the Force Investigation Team, FIT members shall be responsible for the following:
 - (1) Submitting a preliminary report of investigation to the Assistant Chief, Office of Professional Responsibility, prior to being relieved from duty.
 - (2) Notifying and consulting with the United States Attorney's Office (USAO), within 24 hours or the next business day, of any use of force incident involving deadly force, a serious use of force, or any force indicating potential criminal misconduct by a MPD member.

- (3) Forwarding all completed investigations, through the Assistant Chief of the Office of Professional Responsibility, to the Use of Force Review Board.
 - (4) Completing every aspect of the investigation of use of force incidents within 90 days of the date FIT receives a Letter of Declination from the USAO or the termination of the criminal prosecution of the member.
 - f. The Force Investigation Team shall reserve the right and have the authority to assume control of any force-related incidents. Their primary responsibility, however, shall be the investigation of uses of deadly force, serious use of force incidents and uses of force indicating potential criminal conduct.
- 4. **Response to Incidents Not Involving Deadly Force, a Serious Use of Force nor Indicating Potential Criminal Conduct**

Chain of command district or division supervisors shall investigate all use-of-force incidents not investigated by the Force Investigation Team. In such instances, the following procedures shall apply:

 - a. When a member reports any use of force or accusation of force, a supervisor (of higher rank than the reporting member) is required to respond to the scene.
 - b. No supervisor who was involved in the incident shall be responsible for the investigation of the incident.
 - c. The supervisor shall notify the Office of the Superintendent of Detectives through the Communications Division and the Synchronized Operations Command Center (SOCC).
 - d. The supervisor shall respond to the scene of the incident and locate and interview witnesses and document their statements on a PD Form 119 (Complainant/Witness Statement).
 - e. When a member has used force, which is not considered a serious use of force or any other force indicating potential criminal misconduct and an administrative investigation/policy review has commenced, the member shall complete forms and reports consistent with MPD policies.
 - f. The supervisor shall ensure that the following steps are taken:
 - (1) Document and photograph any injuries to involved members.
 - (2) Interview and photograph any person on whom force was used.

- g. The supervisor shall complete and submit a preliminary report to the Element Commander or Director within 24 hours.
- h. The supervisor shall ensure that the Force Investigation Team is notified for tracking purposes.
- i. The Final Investigative Report will be completed by the supervisor/manager as designated by the Element Director or Commander.
- j. At the discretion of the Chief of Police or his designee, any incident that may be investigated by chain of command supervisors may be assigned to the Force Investigation Team.

E. Handling Use of Force Incidents Indicating Potential Criminal Conduct

- 1. The United States Attorney's Office shall make the determination as to whether criminal wrongdoing is present in any use of force incident.
- 2. The Force Investigation Team shall consult with the United States Attorney's Office for the District of Columbia about incidents of Deadly Force, Serious Use-of-Force, Use of Force Indicating Potential Criminal Conduct, and in-custody deaths involving Metropolitan Police Department officers.
- 3. When evidence of criminal wrongdoing is determined as a result of a member being involved in a use-of-force incident, members from the Force Investigation Team shall coordinate prosecutorial needs between the U.S. Attorney's Office or other appropriate prosecuting entity and the affected organizational element and/or investigative unit, and shall serve as a liaison with other applicable local and federal law enforcement agencies.
- 4. In cases where the United States Attorney's Office has not issued a written declination, the subject officer shall not be compelled or ordered to make a statement.
- 5. The Force Investigation Team is responsible for handling all arrests of police officers in regards to a use of force.

F. Processing Use of Force Incidents by MPD Members Outside of the District of Columbia

When a member is involved in a use of deadly force *outside* of the District of Columbia, whether on or off duty:

1. The member shall immediately notify the Watch Commander of his/her element through the Communications Division and SOCC who shall notify the Force Investigation Team.
2. The Force Investigation Team shall respond immediately.
3. The appropriate law enforcement authority of the jurisdiction of occurrence will maintain primary responsibility for conducting a criminal investigation of the underlying matter.
4. The Force Investigation Team shall initiate a concurrent investigation, and shall work closely with the investigator/official from the originating police jurisdiction that is investigating the primary criminal offense. In cases where the United States Attorney's Office or the competent prosecutorial authority has not yet issued a written declination, FIT shall not compel or order a subject officer to make a statement.

G. Processing In-Custody Deaths

1. When a Metropolitan Police Department officer becomes aware of a possible in-custody death, the initial responsibilities of member(s) shall be to ensure that the scene is safe, render first aid if applicable, secure the scene's integrity, and notify a supervisor.
2. Deaths occurring while a subject is in custody shall be reported to both the Force Investigation Team and the Office of the Superintendent of Detectives.
3. In cases involving in-custody deaths, the Office of the Superintendent of Detectives shall respond to the scene and be responsible for completing the PD 120 (Death Report).
4. The Force Investigation Team shall consult with the United States Attorney's Office for the District of Columbia about in-custody deaths involving subjects that were in Metropolitan Police Department custody.

H. Determination of Duty Status of Involved Officer

1. Immediately following a Serious Use of Force incident in which a serious injury occurs or any in-custody death, the Element Commander or Director (or the highest ranking official on the scene from the involved

officer's element) shall relieve the involved member of his or her normal policing responsibilities. (CALEA 1.3.8).

2. Determination as to the permanent duty status of the involved member shall be made pursuant to GO RAR-901.11 (Force-Related Duty Status Determination).
3. The Force Investigation Team shall be responsible for handling all arrests of police officers with regard to a use of force.

I. Command Support Responsibilities

1. The Office of Professional Responsibility (OPR) shall, in use of force incidents, be responsible for the dissemination of Complaint System Numbers for all reported incidents.
2. OPR shall enter and maintain the database for information relative to all uses of force.
3. District or Division Commanders shall ensure that:
 - a. Force Investigation Team members are immediately notified of any incident involving use of force through the Communications Division.
 - b. All uses of force are reported in writing to the Office of Professional Responsibility and that Complaint System Numbers are obtained within one hour of the incident. (CALEA 1.3.6 a – d)
 - c. All use of force incidents are investigated.
 - d. A designated management official from the police district where the incident occurred (or, if in another jurisdiction, a management official from the involved member's assigned element) responds to the scene.
 - e. A copy of the Use of Force Incident Report is forwarded to OPR and the affected element's detectives' office for the purpose of entering relevant information into WACIIS.
 - f. The Office of Professional Responsibility is notified if there is evidence of any wrongdoing as a result of a member being involved in any use of force investigated at the command level.
 - g. The final investigative report of the use of force incident, with recommendations and conclusions, is forwarded, through the chain of command, to the Use of Force Review Board within 60 days of the use-of-force incident, absent special circumstances.

- h. All completed investigations are forwarded to the Use of Force Review Board.
4. The Office of the Superintendent of Detectives (OSD) shall respond and assume primary responsibility for conducting a criminal investigation of the underlying matter (e.g., robbery, burglary, theft, etc.)
5. When requested, the Synchronized Operations Command Center (SOCC) shall be available to assist members of the Force Investigation Team in facilitating requests to other Department elements or outside agencies.

J. Routine Reports and Follow-up Duties

It is the responsibility of the involved officer's organizational element to handle routine administrative follow-up duties. They include but are not limited to:

- PD Forms 251, 252 (Incident Report Forms)
- PD Form 77 (Temporary Change of Duty Status Report)
- Adherence to Medical Services Division and Employee Assistance program follow-up
- PD Form 42 (Medical/Injury Reports) & Certification
- PD Form 43 (Property Damage Report) & Certification
- Service weapon replacement
- Processing of the injured/arrested person (where applicable)
- Guard details

K. Investigative Report Contents and Completion Schedules

1. In instances of deadly force, serious use of force, or any use of force indicating potential criminal misconduct by an officer, the Force Investigation Team preliminary report of investigation shall be forwarded, to the Chief of Police, through the chain of command, within twenty-four hours. A transmittal document to the Mayor of the District of Columbia from the Chief of Police shall also be completed.

2. In instances of deadly force, serious use of force, or any use of force indicating potential criminal misconduct by an officer, the Force Investigation Team shall complete a final investigative report with conclusions and recommendations within ninety (90) days of receiving a Letter of Declination from the USAO or the conclusion of a criminal prosecution (absent special circumstances that must be documented).
3. The final investigative report shall include a description of the force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation, and proposed findings and analysis supporting those findings.
4. The proposed findings shall include: a determination of whether the force was consistent with MPD policy and training, a determination of whether proper tactics were employed, and a determination whether lesser force alternatives were reasonably available.
5. To ensure comprehensive and timely completion of investigations by the Force Investigation Team, the Office of the Superintendent of Detectives shall liaison and provide full cooperation with members of the Force Investigation Team.
6. The Office of the Superintendent of Detectives shall forward immediately a duplicate copy of all reports, communications, and information related to an enumerated use-of-force incident to the Force Investigation Team.
7. The Forensic Science Services Division (to include the Mobile Crime Lab and Firearms Examination Unit) shall forward immediately a duplicate copy of all reports, communications, diagrams, lab results, and other related information to the Force Investigation Team.
8. The Director, Communications Division, shall ensure that duplicates of all related radio communication tapes of a use-of-force incident are immediately provided to the Force Investigation Team.
9. The Director, Information Technology, shall ensure that computer related communications (MDC Terminals) concerning a use-of-force incident are immediately provided to the Force Investigation Team.
10. The Force Review Operations Liaison of the Force Investigation Team shall maintain a repository of electronic and paper copies of Preliminary and Final Investigative Reports completed by the Force Investigation Team. In addition, the liaison will ensure coordination with the department's Use of Force Review Board.

11. Force Investigation Team final investigative report findings shall reflect both the criminal and policy findings. They shall be classified as follows:
 - **Justified, Within Departmental Policy** – this classification reflects a finding in which a police use of force is determined to be justified, and during the course of the incident the subject officer did not violate department policy.
 - **Justified, Policy Violation** - this classification reflects a finding in which a police use of force is determined to be justified, but during the course of the incident the subject officer violated a department policy.
 - **Justified, Tactical Improvement Opportunity** - this classification reflects a finding in which a police use of force is determined to be justified, and during the course of the incident no departmental violations occurred. However, the investigation revealed tactical errors that could be addressed through non-disciplinary and tactical improvement endeavors.
 - **Not Justified, Not Within Departmental Policy** - this classification reflects a finding in which a police use of force is determined to be not justified, and during the course of the incident the subject officer violated a department policy.
12. The standard of review in a criminal investigation is *probable cause*. The standard of review in a policy review (administrative) investigation is a *preponderance of the evidence*.
13. When allegations of excessive force or misconduct are made, the Force Investigation Team or the Office of Internal Affairs (whichever is applicable), shall make one of the following dispositions:
 - a. **Unfounded:** Where the investigation determined that there are no facts to support the incident complained of actually occurred.
 - b. **Sustained:** Where the person's allegation is supported by a preponderance of the evidence to determine that the incident occurred and the actions of the officer were improper.
 - c. **Insufficient Facts:** Where there are insufficient facts to decide whether the alleged misconduct occurred.
 - d. **Exonerated:** Where a preponderance of the evidence shows that the alleged conduct did occur, but did not violate MPD policies, procedures, or training.

L. Use of Force Review Board (UFRB)

The UFRB shall conduct reviews of use of force investigations pursuant to GO-RAR-901.09 (Use of Force Review Board).

VI. CROSS REFERENCES**A. Related Directives**

1. GO OPS-304.10 (Police-Citizen Contacts, Stops and Frisks)
2. GO RAR-306.01 (Canine Teams)
3. GO PCA-502.07 (Medical Treatment and Hospitalization of Prisoners)
3. GO RAR-901.01 (Handling of Service Weapons)
4. GO RAR-901.04 (Oleoresin Capsicum Spray Dispensers)
5. GO RAR-901.07 (Use of Force)
1. GO RAR-901.09 (Use of Force Review Board)
2. GO RAR-901.11 (Force-Related Duty Status Determination)

B. Court Opinions

1. Tennessee v. Garner, 471 U.S. 1, 11-12 (1985)
2. Graham v. Connor, 490 U.S. 386 (1989), 104 L. Ed 2d 443, 447
3. Saucier v. Katz, 533 U.S. 194 (June 18, 2001)

C. Laws and Regulations

1. D.C. Code §4-176 (Use of Wanton or Unnecessary Force)
2. D.C. Municipal Regulations, Title 6A, Section 207 (Use of Firearms and Other Weapons)

D. Other

1. CALEA Standards Section 1.3 (Use of Force)
2. IACP Model Policy (Use of Force)

E. Related Forms

1. PD Form 901-e (Use of Force Incident Report)
2. PD Form 42 (Medical/Injury Reports)
3. PD Form 43 (Property Damage Report)
4. PD Form 77 (Temporary Change of Duty Status Report)
5. PD Forms 251, 252 (Incident Report Forms)
6. PD Form 118 (Complainant Statement)
7. PD Form 119 (Witness Statement)

// SIGNED //
Charles H. Ramsey
Chief of Police

Attachment: PD Form 901-hc (Use of Force Incident Report) [interim hard-copy version]

CHR:NMJ:JAE:MAR:AFA:afa

EXHIBIT D

GENERAL ORDER



Title	Use of Force		
Series / Number	GO – RAR – 901.07		
Effective Date	October 7, 2002	Distribution	B
Replaces / Rescinds	General Order 901.7 (Use of Force)		
Related to	General Order RAR-901.08 (Use of Force Investigations) General Order RAR-901.09 (Use of Force Review Board)		

DISTRICT OF COLUMBIA

I. Background.....Page 1	V. RegulationsPage 5
II. Policy.....Page 2	VI. Procedural Guidelines.....Page 9
III. Definitions.....Page 2	VII. Cross References.....Page 10
IV. RulesPage 4	

I. BACKGROUND

The legal limitations on the use of force by District of Columbia law enforcement officers are expressed in D.C. Code § 4-176 (Use of Wanton or Unnecessary Force) and in District of Columbia Municipal Regulations (DCMR), Title 6A, Section 207 (Use of Firearms and Other Weapons).

6A DCMR Section 207.1 provides, among other things, that a member is allowed to “use only the minimum amount of force, which is consistent with the accomplishment of his or her mission, and shall exhaust every other reasonable means of apprehension or defense before resorting to the use of firearms.”

6A DCMR Section 207.2, provides, among other things, that no member shall discharge a firearm in the performance of police duties except to “defend himself or herself or herself or another from an attack which the officer has reasonable cause to believe could result in death or serious bodily injury”; or to “effect the arrest or to prevent the escape, when every other means of effecting the arrest or preventing the escape has been exhausted, of a person who has committed a felony or has attempted to commit a felony Provided, that the felony for which the arrest is sought involved an actual or threatened attack which the officer has reasonable cause to believe could result in death or serious bodily injury; and provided further, that the lives of innocent persons will not be endangered if the officer uses his or her firearm;”

The Fourth Amendment of the U.S. Constitution guarantees citizens the right “to be secure in their persons . . . against unreasonable . . . seizures” of the person. The Supreme Court has stated that the Fourth Amendment “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or

motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (*Graham v. Connor*, 490 U.S. 386, 396-397 [1989]).

With respect to the use of deadly force, the Supreme Court in *Tennessee v. Garner*, 471 U.S. 1, 11-12, held that “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens an officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

II. POLICY

The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

- A. **Deadly Force** – any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.
- B. **Less-Than-Lethal Weapons** – any object or device deployed with the intent or purpose of eliminating a threat without causing death. These include, but are not limited to, a 37 mm gas gun containing a cloth bag filled with small lead shot pellets, rubber bullets, batons, OC Spray, A.S.P. (Armament System Procedures) tactical batons.
- C. **Member – Sworn MPD Employee or MPD Reserve Corps member.**
- D. **Non-Deadly Force** – any use of force that is neither likely nor intended to cause death or serious physical injury.
- E. **Objective Reasonableness** – Reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting the officer without regard to the officer’s underlying intent or motivation.

- F. **Serious Physical Injury** – any injury that results in hospitalization and that creates a substantial risk of death, serious disfigurement, disability or protracted loss or impairment of the functioning of any body part or organ.
- G. **Serious Use of Force** – lethal and less-than-lethal actions by MPD officers including:
 - 1. all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals;
 - 2. all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization;
 - 3. all head strikes with an impact weapon;
 - 4. all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;
 - 5. all other uses of force by an MPD officer resulting in a death; and
 - 6. all incidents where a person receives a bite from an MPD canine.
- H. **Use of Force** – any physical contact used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing or hand control procedures that do not result in injury.
- I. **Use of Force Continuum** – a training model/philosophy that supports the progressive and reasonable escalation and de-escalation of member-applied force in proportional response to the actions and level of resistance offered by a subject. The level of response is based upon the situation encountered at the scene and the actions of the subject in response to the member's commands. Such response may progress from the member's actual physical presence at the scene to the application of deadly force.
- J. **Use of Force Indicating Potential Criminal Conduct by a Member** – includes, but is not limited to, all strikes, blows, kicks or other similar uses of force against a handcuffed subject and all accusations or complaints of excessive force made against the member.

IV. RULES

- A. No member of the Metropolitan Police Department shall discharge his/her firearm under the following circumstances:
 - 1. As a warning.

2. Into a crowd.
 3. At or from a moving vehicle unless deadly force is being used against the officer or another person. For purposes of this order, a moving vehicle is not considered deadly force. Members shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them.
 4. In a felony case which does not involve an actual attack, but involves a threatened attack, unless the member has reasonable cause to believe the threatened attack is imminent and could result in death or serious bodily injury.
 5. In any misdemeanor offense, unless under exceptional circumstances.
 6. Solely to protect property interests.
 7. To stop an individual on mere suspicion of a crime simply because the individual runs away.
- B. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.
- C. When feasible, members shall identify themselves as a police officer and issue a warning before discharging a firearm.
- D. No member of the Metropolitan Police Department, in the normal exercise of his or her responsibilities, shall carry, use or discharge any firearm or other weapon, except those issued or approved for use by the Metropolitan Police Department under direction of the Chief of Police.
- E. No member of the Metropolitan Police Department shall carry, use, or discharge any unauthorized ammunition in their issued service weapons. Members are prohibited from obtaining service ammunition from any source except through official departmental channels. Members are further required to carry only the requisite amount of service ammunition as applicable to the authorized service weapon they are utilizing.
- F. Any excessive force by a member will subject him or her to disciplinary action and possible criminal prosecution or civil liability.
- G. Any violation of these rules will subject members to disciplinary action.
- H. Civilian members shall not be issued and shall not carry weapons of any kind.**

NOTE: Civilian members may handle weapons when required as part of their assigned duties (e.g., civilian firearm instructors, civilian firearm examination technicians, civilian evidence technicians.)

- I. **Civilian members shall only use force in defense of themselves or others.**

V. **REGULATIONS**

When force is necessary, District of Columbia regulations require members to use the minimum level of force that is necessary to accomplish a police mission. Members are not required to start at the lowest level of the options listed in the Use of Force Continuum. Members should select the appropriate level of force based on what a reasonable member and the circumstances require (See attached Use of Force Continuum Chart).

A. **Prompt Medical Attention**

When any level of force is used, there shall be a visual and verbal check of the subject to ascertain whether the subject is in need of medical care. Medical assistance shall be summoned immediately if a person is physically injured in any way, complains of pain, or demonstrates life-threatening symptoms.

B. **Use of Force Continuum**

In determining what level of force to use, it is important to consider the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, and the suspect's mental capacity. Only the minimum level of force needed to obtain control that the objectively reasonable officer would use in light of the circumstances shall be used.

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present should, if possible, defuse the situation through advice, warning and verbal persuasion.

In the event that a situation escalates beyond the effective use of verbal diffusion techniques, members are authorized to employ Department-approved compliance techniques and Department-issued defensive weapons.

1. The Department recognizes and employs the Use of Force Continuum. Members in response to resistant or dangerous individuals may apply escalating options of force (see Use of Force Continuum Chart attached). The options include:
 - a. Cooperative Controls, such as verbal persuasion;
 - b. Contact Controls, such as hand control procedures, firm grip, escort and control holds;

- c. Compliance Techniques, such as Oleoresin Capsicum (OC) Spray (non-deadly);
 - d. Defensive Tactics, such as less-than-lethal weapons, including impact weapons, such as a baton, or ASP, and including less-than lethal projectiles used by the Emergency Response Team and during times of civil disobedience (e.g., 12 gauge shotgun, 37mm gas guns, and rubber bullets), and canines.
 - e. Deadly Force (including deadly applications of less-than-lethal weapons).
2. The patrol supervisor, if present where there is a violent or resisting subject, shall direct and control all activity.
 3. Members shall modify their level of force in relation to the amount of resistance offered by a subject. As the subject offers less resistance, the member shall lower the amount or type of force used. Conversely, if resistance escalates, members are authorized to respond in an objectively reasonable manner. (CALEA 1.3.1)
 4. Issued defensive weapons may be employed in response to the threat level recognized by an objectively reasonable police member in the circumstances as necessary to protect himself/herself or another from physical harm, to restrain or subdue a resistant individual, and to bring an unlawful situation safely and effectively under control.

C. Authorized Use of Non-Deadly Force (CALEA 1.3.4)

1. When using force, members must be able to articulate the facts and circumstances surrounding the force used in any given situation.
2. Only objectively reasonable force may be used to respond to threats or resistance in every situation.
3. A member's decision to use non-deadly force must involve one or more of the following:
 - a. To protect life or property.
 - b. To make a lawful arrest.
 - c. To prevent the escape of a person in custody.
 - d. To control a situation and/or subdue and restrain a resisting individual.

4. A member shall use only that option of force on the Department's Use of Force Continuum that is reasonably necessary to bring the situation under control. If de-escalation does not work, the member may use an increasing level of force to overcome the level of resistance. As soon as the incident is under control, the member's use of force should diminish proportionally. (CALEA 1.3.1)

D. Authorized Use of Deadly Force (CALEA 1.3.2)

1. Defense of Life

- a. Members of the Metropolitan Police Department may use deadly force in the performance of police duties:

- (1) When it is necessary and objectively reasonable **AND**,
- (2) To defend himself/herself or another from an actual or threatened attack that is imminent and could result in death or serious bodily injury.

- b. Members shall not draw and point a firearm at or in the direction of a person unless the officer has an objectively reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or re-holstered.

2. Fleeing Felon

Members may use deadly force to apprehend a fleeing felon **ONLY** when every other reasonable means of affecting the arrest or preventing the escape has been exhausted **AND**,

- a. The suspect fleeing poses an immediate threat of death or serious bodily harm to the member or others; **OR** (CALEA 1.3.2)
- b. There is probable cause to believe the crime committed or attempted was a felony, which involved an actual or threatened attack which could result in death or serious bodily harm; **AND**
 - (1) There is probable cause to believe the person fleeing committed or attempted to commit the crime, **AND**
 - (2) Failure to immediately apprehend the person places a member or the public in immediate danger of death or serious bodily injury; **AND**
 - (3) The lives of innocent persons will not be endangered if deadly force is used.

3. Warning to Subject

When feasible, members shall identify themselves as police officers and issue a warning before discharging a firearm.

E. Less-Than-Lethal Projectiles (CALEA 1.3.4)

1. The objective of less-than-lethal projectiles is to save human life.
2. Consistent with the Department's philosophy of using only the minimum amount of force necessary to control or subdue potentially violent subjects, less-than-lethal projectiles may be used only by authorized members with appropriate specialized training.
3. During instances of civil disobedience, less-than-lethal weapons may only be used to subdue or incapacitate a subject to prevent imminent physical harm to the officer or another person and shall be used only at the direction of the official in charge of the scene. All other use, by any other member, is strictly prohibited.

F. Prohibitions

1. No member shall carry any Department-issued weapon prior to successfully completing Department-approved training courses directed by the Chief of Police. (CALEA 1.3.10)
2. Under no circumstances shall a member carry or use blackjacks, saps, nunchakus, kempo sticks, brass knuckles, or weighted gloves or other unauthorized weapons.
3. Members shall not employ any form of neck restraint except when an imminent threat of death or serious physical injury exists, and no other option is available.
4. Whenever it becomes necessary to take a violent or resisting subject into custody, the responding member shall utilize appropriate tactics in a coordinated effort to overcome resistance.
5. Members shall avoid the use of flashlights, radios or any items not issued specifically as a defensive weapon as a means of force, except when an imminent threat of death or serious physical injury exists, and no other option is available.

G. Positional Asphyxia Precautions

When necessary to restrain subjects, members shall:

1. Make every effort (whenever possible) to avoid tactics, which may impede a subject's ability to breathe, which may result in chest or throat compressions, or airway blockage.

2. Position the individual in a manner to allow free breathing, once he or she has been controlled and placed under custodial restraint using handcuffs and other authorized methods. The subject shall not be maintained or transported in a face down position.
3. Seek medical assistance immediately if a person appears to be having difficulty breathing or is otherwise demonstrating life-threatening symptoms (such as positional asphyxia). The patrol supervisor shall direct that alternative means to maintain custody be utilized, if appropriate.
4. The unauthorized use of restraints and the transportation of subjects in a face down position within any vehicle are prohibited.

VI. PROCEDURAL GUIDELINES

Notification and Reporting of a Use of Force Incident

1. Incidents To Be Reported

The Use of Force Incident Report (PD Form 901-e) shall be completed in all of the following situations: (CALEA 1.3.6)

- a. all Use of Force incidents (except Cooperative or Contact Controls, e.g., mere presence, verbal commands or submissive handcuffing, unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);
- b. any time when an officer is in receipt of an allegation of excessive use of force; or
- c. whenever a member draws and points a firearm at or in the direction of another person.

2. Member Responsibilities

Members shall notify their supervisor and complete a PD Form 901-e (Use of Force Incident Report) immediately following any use of force, receipt of an allegation of excessive force, or immediately following the drawing of and pointing a firearm at or in the direction of another person.

3. Supervisor Responsibilities

When a member has declined to complete the Use of Force Incident Report immediately following an incident, the supervisor shall compel the member to complete the report following a declination by the U. S. Attorney's Office and/or issuance of an authorized Reverse-Garrity warning.

VII. CROSS REFERENCES**A. Related Directives**

1. GO OPS-301.03 (Operation of Emergency Vehicles, Fresh Pursuit and Vehicular Pursuit)
2. GO OPS-304.10 (Police-Citizen Contacts, Stops and Frisks)
3. GO RAR-306.01 (Canine Teams)
4. GO RAR-901.01 (Handling of Service Weapons)
5. GO RAR-901.04 (Oleoresin Capsicum Spray Dispensers)
6. GO-RAR-901.08 (Use of Force Investigations)
7. GO RAR-901.09 (Use of Force Review Board)

B. Court Opinions

1. Tennessee v. Garner, 471 U.S. 1, 11-12 (1985)
2. Graham v. Connor, 490 U.S. 386 (1989), 104 L. Ed 2d 443, 447
3. Saucier v. Katz, 533 U.S. 194 (June 18, 2001)

C. Laws and Regulations

1. D.C. Code §4-176 (Use of Wanton or Unnecessary Force)
2. D.C. Municipal Regulations, Title 6A, Section 207 (Use of Firearms and Other Weapons)

D. Other

1. CALEA Standards Section 1.3 (Use of Force)
2. IACP Model Policy (Use of Force)

E. Related Form

1. PD Form 901-e (Use of Force Incident Report) [electronic version]
2. PD Form 901-hc (Use of Force Incident Report) [interim hard-copy version]

// SIGNED //
Charles H. Ramsey
Chief of Police

Attachment: Use of Force Continuum Chart
PD Form 901-hc (Use of Force Incident Report) [interim hard-copy version]

CHR:NMJ:JAE:MAR:AFA:afa

EXHIBIT E

GENERAL ORDER



Title	
Canine Teams	
Series / Number	
GO – RAR – 306.01	
Effective Date	Distribution
February 18, 2005	B
Rescinds	
General Order RAR-306.01 (Canine Teams) [Effective Date: October 7, 2002]	

DISTRICT OF COLUMBIA

I. Background.....	Page 1	V. Regulations.....	Page 4
II. Policy.....	Page 1	VI. Procedural Guidelines	Page 6
III. Definitions	Page 1	VII. Cross References	Page 16
IV. Rules.....	Page 3		

I. BACKGROUND

The Metropolitan Police Department utilizes trained law enforcement canines because their superior sense of smell and hearing make a valuable supplement to police manpower. Because of their potential aggressiveness, the use of canines by this Department requires adherence to procedures that properly control their use of force potential and that channel their specialized capabilities into legally acceptable crime detection, prevention, and control activities.

II. POLICY

The policy of the Metropolitan Police Department is to ensure that all Department canines and canine handlers are trained in and utilize the handler-controlled alert methodology as defined in this order. The policy of the Metropolitan Police Department is to ensure that members assigned to the canine unit adhere to the proper rules and procedures for the management of the Department's canine unit and to use police canines in patrol or field operations in accordance with General Order RAR-901.07 (Use of Force). (CALEA 41.1.4)

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

- A. **Alert** – Any movement by a canine that would indicate the presence of the subject to include the following: raising its head, sniffing, pawing, scratching, and barking.
- B. **Apprehension** – The lawful arrest, capture, or taking into physical custody of a subject. When a canine is involved or on the scene, apprehension may be described as follows:

1. With contact – where the canine physically made contact with a subject.
 2. Without contact – where articulated facts demonstrate that the presence of the canine was instrumental in the surrender of the subject.
 3. Independent of canine involvement – where the arrest, capture or custody is effected by police action without direct involvement of the canine on the scene. If the canine was used for tracking or searching for a suspect, that fact should be noted.
- C. **Bite** – Physical contact with a subject that results in a skin wound or puncture produced by a canine’s teeth.
- D. **Contact** – Any touching of a person by a canine, including nudging, pawing, seizing of subject’s clothing, or biting, which may or may not require medical treatment (but not including playful or non-aggressive behavior).
- E. **Canine Handlers** – Sworn members who have been certified by the Canine Training Official as qualified to perform all responsibilities of a canine handler. (CALEA 41.1.4-d,g)
- F. **Canine Official** – A member of the Canine Unit, the rank of sergeant or above.
- G. **Canine Team** – A canine handler and his or her assigned police canine.
- H. **Handler-Controlled Alert Methodology** – The training methodology employed by MPD that results in both the canine and handler being trained to the point that the handler has demonstrated total control over the canine’s actions. Whereby, the handler, when authorized to conduct a tactical search, shall ensure that the canine is in constant view and under the handler’s total control at all times. The only time a canine will be out of the visual range of a handler is when the canine clears a threshold (e.g. rounding a corner, entering a room, ascending/descending a stairwell.) Clearing a threshold shall take no more than five (5) seconds. The handler shall also ensure that he/she is at the canine’s position within five (5) seconds of a canine “alert.”
- The canine will only bite upon handler command. The only circumstance under which a canine may contact/bite without handler command is if the canine, the canine handler, or another is threatened with possible attack.
- I. **Serious Use of Force** – Lethal and less-than-lethal actions by MPD officers including:
1. all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals;

2. all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization;
 3. all head strikes with an impact weapon;
 4. all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;
 5. all other uses of force by an MPD officer resulting in a death; and
 6. all incidents where a person receives a bite from an MPD canine.
- J. **Tactical Use of Canine** – An on-leash track for a suspect or an off-leash search conducted by a canine team in an effort to apprehend a suspect. Off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect shall be limited to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed.
- K. **Non-Tactical Use of Canine** – The non-aggressive work of a canine when used to search for evidence or missing persons, to guard buildings or equipment, or to detect human remains.

IV. RULES

- A. The Metropolitan Police Department shall ensure that all MPD canine teams are trained in and adhere to the Department's "Handler Controlled Alert Methodology." This methodology shall include the following directives:
1. Prior to **any** canine deployment (tactical or non-tactical), the handler shall give a warning announcement as outlined in Section VI, D below.
 2. The canine handler shall keep his or her canine within visual and auditory range during deployments at all times. The only exception to the canine being within the handler's visual range will be when a canine clears a threshold (e.g. rounding a corner, entering a room, ascending/descending a stairwell.) Clearing a threshold shall take no more than five (5) seconds.
 3. The handler shall ensure that he/she is at the dog's position within (5) five seconds of a canine "alert."
 4. The canine handler shall command his or her canine to make contact/bite a subject only when the handler is in visual and auditory range of the subject and the canine.

5. The canine handler shall not permit his or her canine to make contact/bite unless commanded to do so by the handler. The only circumstance under which a canine may contact/bite without handler command is if the canine, the canine handler, or another is threatened with possible attack.

V. REGULATIONS

A. Authorized Uses of Canine Teams

Canine deployments can be authorized for the following assignments provided they meet the guidelines as set forth in this order: (CALEA 41.1.4-a)

1. Tactical Use of Canine
 - a. The tactical use of canines shall be limited to the following situations: (CALEA 41.1.4)
 - (1) Instances in which the suspect is wanted for a serious felony, e.g., a burglary where the suspect is concealed, an armed car jacking, assault on a police officer, assault with a dangerous weapon, sexual offenses, or homicide, etc.

OR

 - (2) Instances where the suspect is wanted and is reasonably suspected of being armed.
 - b. Canines may be used to locate, apprehend, or control suspects:
 - (1) Where failure to apprehend a suspect who is fleeing and has committed a felony meets the criteria for the use of canine force, and
 - (2) Where the failure to quickly apprehend the suspect poses a risk of immediate danger to the officer or others.
 - c. Canines may also be used to locate and apprehend a concealed suspect who is wanted for a misdemeanor and is reasonably suspected to be armed or is wanted for a serious felony, **except** that a canine shall not be used to apprehend known juvenile suspects who pose no immediate threat of serious injury to members on the scene.

2. Non-Tactical Use of Canines

Canines may be employed in non-aggressive work such as the following:

- a. To search for evidence, narcotics, explosives, or other contraband and critical missing persons;
- b. To guard building(s), equipment, vehicles(s), and to secure the perimeter of a search area; or
- c. To detect human remains.

B. Deployment Authorization

1. Before a canine can be deployed, canine handlers shall first seek authorization from a canine unit official (civil service sergeant or higher), but may obtain authorization from a field supervisor if unable to contact a canine official. The purpose of this requirement is to ensure that intelligence is gathered on the scene and that various and obtainable factors are weighed, such as: (CALEA 41.1.4-c)
 - a. severity of the crime;
 - b. age of the suspect;
 - c. whether the suspect is armed or unarmed; and
 - d. whether the suspect has displayed violent behavior, before deployment of the canine is authorized.
2. The only exception to the requirement that an official authorize the use of a canine is under exigent circumstances when the handler is unable to contact either a canine official (first) or a field supervisor and, using sound judgment, deems it necessary to deploy the canine to protect himself or herself, other police officers, or citizens, from an immediate threat of serious bodily injury. However, a supervisor shall be notified at the first practicable moment.

C. Warning Announcements

Prior to all canine deployments (both tactical and non-tactical), the handler shall give a warning announcement as outlined in Section VFD.

D. Two Handlers to Respond

A Canine Official shall ensure that, whenever possible, two canine handlers should respond to any request for service. When two handlers respond to a request for a service, the primary handler shall search with his/her canine and the secondary handler shall act as back-up without his/her canine. If a question arises as to which handler shall be primary, the canine official shall designate the primary handler.

E. Use at Demonstrations Restricted

Canine teams shall not be used at the scene of demonstrations without prior approval of the Chief of Police or his/her designee. (CALEA 41.1.4-c)

F. Violations

Violations of this order may result in criminal and/or disciplinary action.

VI. PROCEDURAL GUIDELINES (CALEA 41.1.4-b)**A. Request for Canine Services**

When the need for a canine team is anticipated, members shall:

1. Request their services through the dispatcher;
2. Advise the dispatcher of their exact location;
3. Secure the perimeter to avoid contaminating the search area with their scent; and
4. Once the request for a canine has been made, members shall not enter the area to be searched.

B. Response by Canine Officials

1. Canine officials shall respond to the scene when a request for the use of canine has been made. Once on the scene, the canine official shall make a determination whether the tactical use of a canine is warranted. The official shall consider all the guidelines set forth in this order.
2. If the canine official is unable to respond to the scene at the time the request is made, he/she must authorize the use of the canine via the radio. Authorization can only be given after the canine handler has provided all of the necessary information needed to make such a determination.
3. Under exigent circumstances, authorization by a canine official is not required; however, a supervisor (civil service sergeant or above) shall be notified at the first possible moment.
4. Canine officials shall not authorize the use of their own assigned canine. Such authorization must come from the commander of the Canine Branch, Special Operations Division, or, in his or her absence, an official the rank of lieutenant or above.

C. Response by Other Officials

When a canine team has been dispatched to the scene, an official from the requesting officer's element shall also respond to the scene.

D. Warning Announcements

1. Prior to **all** canine deployments (both tactical and non-tactical), the handler shall execute the following procedures:
 - a. Advise the dispatcher that an announcement of intent to search is about to be given. The dispatcher shall announce the time over the radio.
 - b. Issue a loud and clear announcement prior to deploying the assigned canine: **“Warning, a police canine will be used to search this (area to be searched), if you don’t come out, I will release my dog. If approached by the dog, surrender and remain still.”**
 - c. Provide a reasonable amount of time for innocent civilians, other members, and the suspect to come out before commencing with the search.
 - d. After a reasonable time has been given, the handler shall advise the dispatcher that he/she is going to begin the search. The dispatcher shall again announce the time over the radio.
2. Where there is reason to believe that a suspect may speak a foreign language, the handlers shall announce the warning in English and, when practicable, any other language that may be spoken by the suspect or other persons in the area to be searched.
3. Warnings should be repeated on each level of multi-level structures/ dwellings when practicable. However, subsequent or repeated announcements shall be given during the course of a search when, in the discretion of the handler, such a warning will not jeopardize his or her safety.
4. The warning announcement may be omitted from a search in those exigent circumstances where specific articulated facts demonstrate the need for complete surprise or where the announcement may place the handler in imminent danger. In such a case, the on-scene supervisor must approve the omission.

E. Considerations Before Canines May Be Tactically Deployed

1. In those circumstances where the tactical deployment of a canine is considered, a canine official (or a field supervisor if a canine official is not available) shall:
 - a. Determine the nature and severity of the offense for which a suspect is sought.
 - b. Determine the age of the subject and whether the subject may be armed, if possible.
 - c. Ensure that the immediate area to be searched has been vacated by all innocent civilian and police personnel, and that a perimeter is established.
 - d. Interview the property owner or manager (if available), to determine whether there are any innocent persons or children inside the location to be searched. Additionally, the canine official shall make attempts to determine if any individual inside the location may be hearing impaired, deaf, speaks a foreign language or has a physical, emotional, or other disability.
 - e. If the property owner or manager is not available, the canine official shall attempt to interview surrounding neighbors to ascertain the above listed information.
 - f. Attempt to determine if there are any animals inside the premises to be searched.
 - g. Make all information known to the responding canine handler.
 - h. Advise officers on the perimeter that if they encounter a police canine unit, to stand still and not to run. Running or attempting to flee may cause the canine to key in on the officer.
 - i. Ensure that the perimeter is maintained until the canine officer has completed the search, secured his/her canine and has advised the supervisor of the results of the search.

F. Tactical Use of Canines

1. Canine handlers shall be responsible for the following when the use of a canine is necessary: (CALEA 41.1.4-b)
 - a. Ensuring that prior approval from a canine or patrol official is given for the tactical use of their canine.
 - b. Providing a warning announcement in accordance with subsection D (Warning Announcements).

- c. Ensuring that when moving from an on-lead tactical track to an off-leash tactical search for a suspect, handlers provide another warning announcement at the point of transition, consistent with subsection D (Warning Announcements).
 - d. Allowing sufficient time for other members, citizens and the suspect to come out before deploying their canine.
 - e. Using a canine to locate a juvenile suspect ONLY where the juvenile poses a threat of serious bodily injury to the officer or others. (CALEA 41.1.4-b)
 - f. A handler shall conduct all tactical searches for a suspect with his/her own assigned canine.
 - g. If a handler believes that the deployment is unwarranted, the handler shall voice those concerns to the official authorizing the deployment and record those concerns in his or her notebook.
2. For all tactical uses of a canine to locate a suspect, the canine shall be called off at the instant that a suspect no longer poses a threat, e.g.: (CALEA 1.3.1)
 - a. In situations where a canine finds and bites a suspect, the concerned canine handler shall determine if the suspect is armed. If the suspect is not armed, the handler shall order the canine to release the bite.
 - b. The handler shall call off the canine at the first possible moment that the canine can be safely released. When deciding to call off the canine, particular attention must be given to the perceived threat or actual resistance presented by the suspect. Handlers will continue to factor into their call-off decision that the average person will struggle if being seized or confronted by a canine. This struggling, alone, will not be cause for not calling off the canine. A reference to the duration of the canine's contact with a suspect shall be included in the handler's report of the incident.
3. An on-duty canine official and the Force Investigation Team shall be immediately notified when a canine bites or causes serious injury (as described in Section III-I). In instances where a canine official cannot be contacted, an on-duty patrol official shall be notified. Members shall record the name of the official notified in the PD Form 901-e (Use of Force Incident Report). Notification shall be made whether the member is on or off duty and regardless of the location of the incident.
4. The canine handler shall notify a canine official of higher rank (or a field supervisor if a canine official is not available) when the canine

actually or allegedly bites or causes injury to a person and shall make all notifications and reports as required in Section G below.

5. Whenever a canine-related injury occurs, the canine handler shall seek immediate medical treatment for the suspect, either by ambulance, transportation to an emergency room, or admission to a hospital.
6. When the apprehension of a subject occurs without a bite, canine handlers shall:
 - a. Voice dispositions of “apprehension with (or without) contact” to the Communications Division.
 - b. Notify the Special Operations Division watch commander of the apprehension.
 - c. Complete the PD Form 906 (Tactical Use of Canine Report) prior to the end of their tour of duty, which shall include the disposition each time a suspect is apprehended.

G. Reporting the Tactical Use of a Canine

1. Initial Response

- a. When a Metropolitan Police officer becomes involved in the tactical use of a canine requiring a Use of Force Incident Report (PD Form 901-e), the first responsibilities of the officer shall be to ensure that the scene is safe, render first aid if applicable, secure the scene’s integrity, and notify a canine supervisor (or a field supervisor if a canine official is not available). (CALEA 1.3.5)
- b. District Watch Commanders and/or appropriate element supervisors shall respond immediately to the scene of the tactical use of a canine, and ensure that the Communications Division and the Synchronized Operations Command Center (SOCC) are notified. The SOCC shall notify the Force Investigation Team, if appropriate.

2. Handler Responsibilities

Handlers shall notify their supervisor and complete a PD Form 901-e (Use of Force Incident Report) immediately following any use of a canine resulting in a bite.

3. Supervisor Responsibilities

When a member has declined to complete the Use of Force Incident Report immediately following an incident, the supervisor shall compel the member to complete the report following a declination by the U. S. Attorney's Office and/or issuance of an authorized Reverse-Garrity warning.

H. Investigating the Tactical Use of a Canine

1. Members shall be guided by GO RAR-901.08 (Use of Force Investigations) as to investigative responsibilities when a tactical use of canine occurs.
 - a. The Force Investigation Team (FIT) shall be responsible for investigating all incidents involving the deployment of a canine that results in a canine bite or causes serious injury (as described in Section III-I).
 - b. The Office of the Superintendent of Detectives shall be responsible for investigating the underlying offense leading up to the use of the canine, where applicable.
 - c. An official from the Special Operations Division (of higher rank than the involved member) shall be responsible for the reporting and documentation of all use of canine incidents not involving a serious use of force.
 - d. The affected Watch Commander shall notify OPR and obtain a tracking number within one hour of the incident and shall fax a copy of the preliminary report and any supporting documentation to OPR prior to being relieved from duty.
 - e. At the discretion of the Chief of Police or his designee, any incident that may be investigated by chain of command supervisors may be assigned to the Force Investigation Team.
2. In the event that authorization for the use of canine has been given and the use of the canine has resulted in the apprehension of a person without a canine bite, the following steps shall be taken:
 - a. The handler shall immediately notify the on-duty canine supervisor who authorized the deployment through the dispatcher or on the scene.
 - b. The Special Operations Division official (of higher rank than the involved handler) shall ensure that all applicable information is recorded on the PD Form 906 (Tactical Use of Canine Report).

3. In the event that authorization for the use of a canine has been given and the use of the canine has resulted in a canine bite, the following documentation shall be completed immediately after a bite has occurred and provided to the Force Investigation Team representative who is present on the scene:
 - a. PD Form 251 (Event Report)
 - b. PD Form 163 (Prosecution Report)
 - c. PD Form 313 (Arrestee's Injury or Illness Report)
 - d. PD Form 901-e (Use of Force Incident Report)
 - e. PD Form 906 (Tactical Use of Canine Report)
 - f. Photograph of injury.
 - g. Any other documentation associated with the incident.
4. Each canine shall be evaluated after every contact with a subject and shall be provided appropriate retraining as may be determined by the Canine Training Sergeant.

I. Use of Canines in Another Jurisdiction

Canine teams may be dispatched to another jurisdiction, provided the following has occurred:

1. An official from the law enforcement agency within that jurisdiction must request the use of the Metropolitan Police Department Canine.
2. The Chief of Police or his designee has given approval.

J. Handlers

Handlers shall be responsible for the following: (CALEA 41.1.4-e)

1. Ensuring that their assigned canine is wearing a choke chain and that a District of Columbia dog tag is attached to it. (CALEA 41.1.4-f)
2. Ensuring that their assigned canine is presented for recertification in accordance Section VI-K-12, of this General Order. In the event that a handler's assigned canine fails to recertify within the prescribed time, the handler shall immediately place his/her canine in the Department kennel, and he/she shall be revoked from the vehicle take home program until such time that the canine is recertified.

3. Ensuring that their assigned canine is presented to the Department veterinarian within twenty-four (24) hours of a police canine bite. Exceptions to this policy will include weekends and holidays. In those cases the canine will be presented on the next business day.
4. Maintaining at his/her place of residence, at his/her own expense, a kennel made of chain link fence material with at least one hundred square feet of open space. The kennel shall have hard surface flooring (e.g. concrete, patio block, or wood), chicken-wire fencing across the top of the kennel, and shall be suitable for a 100-pound canine. The handler shall ensure that the kennel can be secured with a padlock. The handler shall obtain prior written approval from the canine training sergeant for any deviation from these kennel requirements. Failure to comply with this provision shall result in the immediate revocation of the handler's privilege to participate in the canine take home program and home care compensation. This action shall remain in effect until such time as the handler comes into compliance. If the handler is unable to abide by this provision, he/she shall be removed from his/her position as a canine handler. (CALEA 41.1.4-f)
5. Making the kennel at their place of residence available for inspection.
6. Ensuring that while not under the handler's immediate control, the canine is placed within its approved kennel, and that the kennel is secured with a padlock. The handler shall also make reasonable periodic checks to ensure the safety of the canine.
7. Ensuring that under no circumstance will a Department canine be kenneled with another animal.
8. Ensuring that when he/she is unable to secure his/her assigned canine in the canine's approved home kennel with a padlock, the canine is immediately placed in the Department's kennel for safekeeping.
9. Maintaining control of his/her assigned canine on and off duty.
10. Making immediate notification to the Special Operations Division Watch Commander if his/her assigned canine becomes lost or missing.
11. Reporting immediately the death, serious injury and/or illness of his/her assigned canine to the canine training sergeant. If unable to contact the canine training sergeant, handlers shall contact a member of the canine training staff or the Kennel Master. In extreme situations, notification may be made to an on-duty canine patrol sergeant. Upon being notified, the responsible official will provide the handler with specific instructions as to what steps to take. Under no circumstances shall a canine be presented to any veterinary hospital without prior approval. Violations of this provision may result in the handler's personal responsibility for payment.

12. Obtaining approval from the Commander, Canine Branch, Special Operations Division, prior to traveling outside the metropolitan area with his/her assigned canine.
13. Obtaining approval from the canine training sergeant, Special Operations Division, prior to entering his/her assigned canine into any show, trial, or exhibition.
14. Meeting physical agility standards annually, as defined by the Canine Standard Operating Procedures.
15. Returning his/her assigned canine to the canine training section whenever he/she becomes ill or injured to the extent that he/she is unable to perform as a handler.
 - a. When it is suspected that a handler cannot perform his or her duties as a canine handler for reasons of health or injury, the handler shall be referred to the Medical Services Division for a determination.
 - b. When it has been determined that a handler cannot perform his or her duties because of health or injury, a canine official shall prepare a written request to the Commander, SOD, for that handler's removal.
 - c. Upon notification that a handler is unable to participate in all aspects of training because of health or injury, the canine official shall prepare a written request for that handler's removal to the Commander, SOD, who shall act upon the request within 10 days of receiving the request.
 - d. If a handler is placed on sick leave for more than sixty (60) days, his/her canine may be reassigned.

K. Certification and Training

The canine training section shall be responsible for the following:
(CALEA 41.1.4-d)

1. Ensuring that each member of the canine training staff is a certified canine instructor.
2. Ensuring that all MPD canines are certified in handler-controlled alert methodology as defined in this order.
3. Ensuring that all canine handlers are physically capable of adhering to the canine policy and procedures described in this order and are able to maintain adequate control of their canine to prevent unlawful contact with suspects or others.

4. Ensuring that canine handlers complete all necessary training to become certified
5. Establishing and furnishing each canine handler with the required specifications that must be met for the kennel to be maintained at the handler's place of residence.
6. Inspecting each kennel twice a year to ensure that it meets all security and sanitary requirements.
7. Providing timely retraining to each canine team.
8. Ensuring that only professionally-bred canines are used.
9. Ensuring that each canine is certified annually.
10. Ensuring that any aggressive exercise such as apprehension work is done in the presence of a certified trainer.
11. Ensuring that all training and certification records are kept up to date and secure.
12. Ensuring that all assigned canines are re-certified every six weeks and canines not in compliance are immediately de-certified.

L. Support Responsibilities

1. The Commanding Officer, Special Operations Division, shall be responsible for the following:
 - a. Establishing Standard Operating Procedures to cover:
 - (1) selection and purchase of canines.
 - (2) qualification and training of canine handlers and canines.
 - (3) handling and care of canines.
 - b. Ensuring that appropriate statistical information concerning the canine unit, including use of force data, is kept on a monthly, quarterly and annual basis.
 - c. Ensuring that only professionally bred canines are used.
 - d. Establishing and publishing physical agility standards for canine handlers.
 - e. Ensuring that all canine handlers annually meet the physical agility standards.

2. The Office of Unified Communications shall ensure that dispatchers are fully informed of the requirements of this directive.

VII. CROSS REFERENCES

A. Related Directives

1. GO RAR-901.07 (Use of Force)
2. GO RAR-901.08 (Use of Force Investigations)
3. GO RAR-901.09 (Use of Force Review Board)

B. Related Forms

1. PD Form 313 (Arrestee's Injury or Illness Report)
2. PD Form 901-e (Use of Force Incident Report)
3. PD Form 906 (Tactical Use of Canine Report)

// SIGNED //
Charles H. Ramsey
Chief of Police

CHR:NMJ:DB:AFA:afa

EXHIBIT F

Exhibit F

Chronology of Changes in MPD Use of Force Reporting and Investigations Requirements, 2008-2014

Directive	Date Issued	Effect
General Order GO-RAR-901.08—Use of Force Investigations	10/7/2002	Established use of force reporting and investigations requirements required by the MOA.
Teletype 06-049-08	6/13/2008	Removed the requirement that officers document all uses of force involving hand controls or resisted cuffing unless the incident results in an injury or complaint of pain by the suspect. Where there is no such injury or complaint of pain, the officer was required to notify the Watch Commander, who determined if a UFIR was required. If the Watch Commander determined that a UFIR was not required, FIT was not notified.
Teletype # 08-006-10	8/4/2010	<p>Outlined the organizational structure of the Force Investigation Teams – FIT 1 and FIT 2 – and set out the force investigation responsibilities for each.</p> <p>Modified the operating definition of “serious use of force” by removing as a reportable use of force head strikes that do not result in injury or where no corroborative evidence exists that the alleged head strike occurred.</p>
General Order Change GOC-10-03 (GO-RAR-07 (Use of Force))	8/16/2010	<p>Added a definition of “member” to the Use of Force policy, and prohibited civilian members from being issued or authorized to carry a weapon of any kind. Defined “member” as a sworn employee or MPD Reserve Corps member.</p> <p>Defined serious use of force to include “all head strikes with an impact weapon” without the additional requirement that the subject of the head strike is injured or complains of injury.</p>
Special Order SO-10-14 Instructions for Completing the Use of Force Incident Report (UFIR)	10/1/2010	Codified the changes implemented in Teletype 06-049-08, issued on 6/13/2008 that removed the requirement that officers prepare a UFIR for hand controls or resisted cuffing unless these actions cause an injury or complaint of pain.

Directive	Date Issued	Effect
Teletype # 04-001-11	4/1/2011	<p>Revised the list of use of force incidents that require immediate notification to IAD or Force Investigations Branch (FIB).[*] Supervisors were required to notify IAD/FIB, within one hour, of the following incidents: 1) all fatal shootings by on-duty or active law enforcement personnel acting under color of law;</p> <p>2) any discharge of a service pistol, authorized off-duty pistol, duty shotgun, or duty rifle by any sworn member regardless of location of incident;</p> <p>3) any application of force resulting in death or serious injury; or</p> <p>4) any MPD vehicle pursuit resulting in death.</p> <p>IAD/FIB was required to respond to the scene in those incidents and handle the investigations.</p> <p>Removed from the immediate notification requirement: incidents involving head strikes and canine bites. During non-business hours, that is, between 1600 – 0700 hours, Monday through Friday, and on weekends and holidays the Watch Commander of the district of occurrence was required to make the notification and request the IS control number through the on-line system, and conduct the investigation.</p> <p>The Watch Commander was responsible for conducting the investigation and promptly submitting a preliminary report to IAD. IAB/FIB was to review the preliminary report and determine if the incident should be investigated by FIB or by the chain of command.</p>
Teletype # 07-022-14	7/3/2014	Reinstated the requirement that IAB investigate any canine bite or allegation of a police canine bite. Required FIB to investigate any “confirmed” head strike with an impact weapon or any such object but excluded head strikes with no corroborative evidence or resulting injury. The original General Order and the MOA did contain the qualifiers of ‘confirmed’, ‘corroborative evidence’ or ‘resulting injury’.
Teletype # 07-144-14	7/29/14	Removed the requirement that officers notify the watch commander or prepare a UFIR for resisted handcuffing and solo or team takedowns unless there has been a resulting injury or complaint of pain.

^{*} Before its August 2012 merger into IAD, FIT was renamed the Force Investigations Branch (FIB). Within MPD, it continued to be referred to as FIT.

EXHIBIT G

GENERAL ORDER



DISTRICT OF COLUMBIA

Title Use of Force Review Board		
Topic	Series	Number
RAR	901	09
Effective Date October 2, 2015		
Replaces: GO-RAR-901.09 (Use of Force Review Board), Effective Date May 15, 2009		
Related to: GO-PER-120.21 (Disciplinary Procedures and Process) GO-PER-120.23 (Serious Misconduct Investigations) GO-RAR-901.01 (Handling of Service Weapons) GO-RAR-901.07 (Use of Force) GO-RAR-901-08 (Use of Force Investigations)		

I.	Background	Page	1
II.	Policy	Page	1
III.	Definitions	Page	2
IV.	Regulations	Page	2
V.	Procedures	Page	3
V.A	Organization	Page	3
V.B	Operation	Page	4
V.C	Review Process	Page	4
V.D	Finding and Recommendations	Page	5
V.E	Referral of Findings and Recommendations	Page	6
V.F	Internal Affairs Bureau	Page	7
VII.	Cross References	Page	9

I. BACKGROUND

The purpose of this general order is to establish the Use of Force Review Board. The Use of Force Review Board focuses primarily on serious use of force investigations. All other use of force investigations are reviewed by chain of command officials and conclude at the Assistant Chief or equivalent level. The Internal Affairs Division, Internal Affairs Bureau, conducts a quality control review of all chain of command investigations involving the use of force and may recommend to the Assistant Chief, Internal Affairs Bureau, that a chain of command case be reviewed by the Use of Force Review Board.

II. POLICY

It is the policy of the Metropolitan Police Department to conduct fair and accurate investigations of use of force incidents in a timely manner. The Use of Force Review Board shall review all use of force investigations completed by the Internal Affairs Division, all chain of command use of force investigations forwarded to the Board by the Assistant Chief, Internal Affairs Bureau, and all vehicle pursuits resulting in a fatality.

III. DEFINITIONS

When used in this directive, the following terms shall have the meaning designated:

1. Board – Use of Force Review Board.
2. Member – sworn or civilian employee of the Metropolitan Police Department or Reserve Corps member.
3. Serious Use of Force – lethal and less-lethal actions by Metropolitan Police Department (MPD) members, including:
 - a. All firearm discharges by an MPD member with the exception of range and training incidents and discharges at animals;
 - b. All uses of force by an MPD member resulting in a broken bone or an injury requiring hospitalization;
 - c. All head strikes with an impact weapon;
 - d. All uses of force by an MPD member resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, or disability or impairment of the functioning of any body part or organ;
 - e. All other uses of force by an MPD member resulting in a death; and
 - f. All incidents where a person receives a bite from an MPD canine.
4. Use of Force – physical contact used to effect, influence, or persuade an individual to comply with an order from an MPD member. The term shall not include un-resisted handcuffing or hand control procedures that do not result in injury or complaint of pain.

IV. REGULATIONS

- A. The Use of Force Review Board shall review all use of force investigations completed by the Internal Affairs Division; all firearm discharges at animals; all chain of command investigations forwarded to the Board by the Assistant Chief, Internal Affairs Bureau; and all vehicle pursuits resulting in a fatality.
- B. The Use of Force Review Board is authorized to compel the appearance of members for questioning and to obtain MPD documents necessary for the discharge of the duties of the Board.
- C. The Use of Force Review Board is authorized to recommend commendations

for members who have acted with distinction in use of force incidents.

- D. The Use of Force Review Board is authorized to recommend corrective or adverse action and may also recommend non-disciplinary action for any case reviewed by the Board.
- E. The Internal Affairs Division shall conduct a quality control review of all use of force incidents investigated by the chain of command, and may recommend to the Assistant Chief, Internal Affairs Bureau, that a chain of command case be reviewed by the Use of Force Review Board.
- F. The Internal Affairs Bureau shall be responsible for the administration of the Use of Force Review Board.
- G. The Assistant Chief, Internal Affairs Bureau, shall:
 - 1. Ensure all use of force investigations are assigned deadlines and completed in accordance with GO-PER-201.22 (Fire and Police Disciplinary Action Procedure Act of 2004).
 - 2. Forward cases to the Use of Force Review Board at his/her discretion.

V. PROCEDURES

- A. Organization
 - 1. The Use of Force Review Board shall consist of the following voting members:
 - a. One Assistant Chief selected by the Chief of Police, who shall serve as the Chairperson of the Board;
 - b. Commanding Official, Special Operations Division, Homeland Security Bureau.
 - c. Commanding Official, Criminal Investigations Division, Investigative Services Bureau;
 - d. Commanding Official/Director, Metropolitan Police Academy; and
 - e. Two members, the rank of Commander or Inspector, who are assigned to the Patrol Services Bureau (PSB);
 - (a) The Assistant Chief, PSB, shall determine the rotation schedule for Commanders and Inspectors to serve on the Board;

(b) Each Commander/Inspector shall serve on the Board for at least one (1) year;

2. The Use of Force Review Board shall also include the following non-voting members:

a. The Executive Director, Office of Police Complaints; and

b. One member selected by the Fraternal Order of Police consistent with the current Labor Agreement between the Government of the District of Columbia, Metropolitan Police Department and the Fraternal Order of Police, MPD Labor Committee; and

B. Operation

1. Absent special circumstances, the Use of Force Review Board shall meet twice monthly to review use of force incidents.

2. The Chairperson shall determine the date, time, and location of meetings.

3. A member of the Internal Affairs Bureau shall serve as the Use of Force Review Board Administrator.

4. The quorum for each Use of Force Review Board proceeding shall be four (4) members.

5. Use of Force Review Board members shall not be permitted to send a representative in their place to a Use of Force Review Board proceeding.

6. Use of Force Review Board members shall be excused from a Board proceeding only by the Chief of Police.

7. The Use of Force Review Board Administrator shall document Board member attendance as part of the record. Absences, both excused and unexcused, shall be formally noted in the meeting summary.

8. The Use of Force Review Board shall complete, to the extent practicable, its review of each incident within the timeline established in the Fire and Police Disciplinary Procedure Act of 2004 [GO-PER-201.22 (Fire and Police Disciplinary Action Procedure Act of 2004)].

C. Review Process

1. The Use of Force Review Board shall review the actions of all members involved in the use of force incident, not just the actions of

the member(s) who used force. The actions of the member(s) leading up to and following the use of force shall be reviewed to identify commendable action(s) and/or conduct warranting corrective intervention by the MPD and, as appropriate, recommend training.

2. The Use of Force Review Board shall review use of force incidents with respect to the following:
 - a. Compliance with MPD policies, procedures, directives, and training;
 - b. Whether proper tactics were used by the involved member(s);
 - c. Risk management issue(s);
 - d. Adequacy of related MPD training; and
 - e. Whether the level of force used was appropriate for the incident.
3. The Use of Force Review Board may recommend to the Chief of Police use of force investigative protocols, standards for use of force investigations, training enhancements, and policy and procedure amendments.

D. Findings and Recommendations

1. After evaluating each case, the Use of Force Review Board shall provide its findings and recommendations. The Board's determination shall either affirm or reject the investigative recommendation.
2. The Use of Force Review Board shall determine the findings for use of force incidents in accordance with GO-RAR-901.08 (Use of Force Investigations) and as:
 - a. Justified, Within Departmental Policy – disposition reflects a finding in which a use of force is determined to be justified, and during the course of the incident the subject member did not violate an MPD policy;
 - b. Justified, Policy Violation – disposition reflects a finding in which a use of force is determined to be justified, but during the course of the incident the subject member violated an MPD policy;
 - c. Justified, Tactical Improvement Opportunity – disposition reflects a finding in which a use of force is determined to be justified; during the course of the incident no MPD policy violations occurred; and the investigation revealed tactical

- error(s) that could be addressed through non-disciplinary and tactical improvement endeavor(s); or
- d. Not Justified, Not Within Departmental Policy – disposition reflects a finding in which a use of force is determined to be not justified, and during the course of the incident the subject member violated an MPD policy;
3. The Use of Force Review Board shall determine the findings of excessive force allegations and other misconduct in accordance with GO-RAR-901.08 (Use of Force Investigations) and as:
 - a. Unfounded – investigation determined there are no facts to support the incident complained of actually occurred;
 - b. Sustained – investigation determined the person’s allegation is supported by a preponderance of the evidence to determine that the incident occurred and the actions of the member were improper;
 - c. Insufficient Facts – investigation determined there are insufficient facts to decide whether the alleged misconduct occurred; or
 - d. Exonerated – investigation determined a preponderance of the evidence showed that the alleged conduct did occur, but did not violate MPD policies, procedures, or training.
 4. The UFRB shall determine the findings for vehicle pursuits as defined below.
 - a. Justified – classification reflects a finding in which a vehicle pursuit is determined to be within Department policy.
 - b. Not Justified – classification reflects a finding in which a vehicle pursuit is determined to be not within Department policy.
 5. When the Use of Force Review Board has additional questions or determines that an investigation is incomplete, the Board may compel the appearance before the Board of member(s) of the Internal Affairs Division, reassign the case to the Internal Affairs Division for investigation, return the case to the Internal Affairs Division for follow up, or return the case to the investigating unit for appropriate action.
 6. Any case returned to the Internal Affairs Division or an investigative unit for completion or correction of an investigation shall be returned to the Chairperson of the Use of Force Review Board within five business days of receipt for a re-evaluation by the Board.

7. Dissenting or non-concurring members of a Use of Force Review Board finding or recommendation may submit a minority report.

E. Referral of Findings and Recommendations

1. When the Use of Force Review Board determines there has been an act that merits recognition, the Board shall forward appropriate commendation recommendations to the appropriate element's Commanding Official/Director or to the Chairperson, MPD Awards Committee.
2. When appropriate, the Chairperson, Use of Force Review Board, shall submit training recommendations for specific members, as well as the entire MPD, to the Commanding Official/Director, Metropolitan Police Academy.
3. When the Use of Force Review Board determines that a violation of MPD policy has occurred, the Board shall forward the case to the Director, Disciplinary Review Branch (DRB), Human Resources Management Division, Corporate Support Bureau to determine the appropriate level of discipline.
4. When the DRB receives notice of recommended discipline from the Use of Force Review Board, the Director, DRB, shall report back to the UFRB, in a written memorandum, within fifteen (15) business days of receipt of the notice from the Board, of the action(s) taken. Copies of any forms executed in conjunction with the action(s) taken shall be attached to the memorandum.
5. The Use of Force Review Board, assisted by the Internal Affairs Bureau, shall conduct an annual analysis of all use of force incidents to detect any pattern, problem and/or issue and submit no later than February 15 of each calendar year a report to the Chief of Police of findings and recommendations.
6. The Internal Affairs Bureau shall follow up on all recommendations implemented by the MPD and report outcomes to the Chief of Police.

F. Internal Affairs Bureau

1. The Assistant Chief, Internal Affairs Bureau, shall designate a member to serve as the Use of Force Review Board Administrator.
2. The Use of Force Review Board Administrator shall:
 - a. Coordinate with the Internal Affairs Bureau staff to identify completed investigations that are ready for review by the Board.

- b. Track the progress of investigations conducted by the Internal Affairs Division and notify the Assistant Chief, Internal Affairs Bureau, regarding any cases that are at risk of missing the 90-day deadline [GO-PER-201.22 (Fire and Police Disciplinary Action Procedure Act of 2004)].
- c. Prepare proposed agendas for review and approval by the Chairperson of the Board.
- d. Notify members of the Board as to the date, time, and location of Board meetings.
- e. Review all investigations prior to submission to the Board and prepare and distribute "Decision Point Matrix Analysis" summaries for each investigation.
- f. Provide all pertinent reports, records, and evidence to be considered.
- g. Ensure that relevant and appropriate historical information about subject members and supervisors are available for consideration by the Board in connection with recommendations of appropriate discipline.
- h. Ensure that relevant and appropriate MPD directives and/or lesson plans are available for review by Board members at the Board hearings.
- i. Prepare a summary of the Board proceedings including documenting conclusions that outline findings and recommendations.
- j. Prepare memoranda for MPD units as appropriate to transmit Board findings and recommendations.
- k. Notify the subject members and their supervisors and Commanding Officials/Directors of Board decisions.
- l. Maintain records reflecting the adverse and corrective actions taken by the Board in response to Board decisions and recommendations.
- m. Assist with the preparation of the annual reports of the Board.
- n. Maintain complete historical records of Board actions including agendas, meeting summaries, correspondence, and annual reports.

- o. Complete other Board administrative duties as assigned by the Assistant Chief, Internal Affairs Bureau.
 - 3. The Internal Affairs Bureau shall ensure that statistical information concerning all use of force cases is available to the Board.

V. CROSS REFERENCES

- A. GO-PER-201.22 (Fire and Police Disciplinary Procedure Act of 2004)
- B. GO RAR-901.08 (Use of Force Investigations)



Cathy L. Lanier
Chief of Police

CLL:PAB:MOC:PHC

EXHIBIT H

GENERAL ORDER



Title		
Professional Conduct and Intervention Board		
Topic	Series	Number
PER	120	29
Effective Date		
September 29, 2015		
Related to:		
General Order 120.23 (Serious Misconduct Investigations)		
General Order 210.19 (Employee Personnel Records)		

DISTRICT OF COLUMBIA

I.	Background	Page	1
II.	Policy	Page	1
III.	Regulations	Page	2
IV.	Roles and Responsibilities	Page	5
V.	Cross Reference	Page	6

I. BACKGROUND

The purpose of this general order is to establish the Professional Conduct and Intervention Board. The purpose of the Board is to identify and examine past events and circumstances surrounding documented and repeated misconduct incidents involving a small number of Metropolitan Police Department (MPD) members in order to identify management improvement areas and to ensure management accountability. The Board's goal is to intervene, provide support, prevent future misconduct, promote improvements in work performance, and identify trends that negatively impact the Department and the citizens of the District of Columbia. The Board will assist the Department in gaining empirical insight into employees who are exhibiting problem behavior and/or performance issues and will use this information to recommend policy improvements and training enhancements to assist employees who are at risk and their managers.

II. POLICY

It is the policy of the Metropolitan Police Department to conduct accurate and fair assessments of all members who are reviewed by the Professional Conduct and Intervention Board.

III. REGULATIONS

- A. Board members shall be aware that all meetings and discussions of the Board are confidential.
- B. Each Board member shall sign a confidentiality agreement.
- C. Board members shall be aware that the discussions in the Board meetings are not subject to Freedom of Information Act and are covered under confidentiality of personnel regulations.
- D. Board members shall be aware that the only person outside the Board who may have access to information of the Board is the Chief of Police.
- E. The Board shall be comprised of:
 - 1. The Assistant Chief of the Internal Affairs Bureau (IAB), who shall serve as the Board Chairperson;
 - 2. The Assistant Chief of the Corporate Support Bureau (CSB);
 - 3. The Director of the Human Resources Management Division (HRMD);
 - 4. The Director of the Office of Risk Management (ORM);
 - 5. The Director of the Labor Relations Branch (LRB);
 - 6. The Director of the Internal Affairs Division (IAD);
 - 7. The Director of the Disciplinary Review Branch (DRB);
 - 8. The Commander of the Metropolitan Police Academy (MPA);
 - 9. The Director of the Policy Development Branch (PDB);
 - 10. The Director of the Medical Services Branch (MSB);
 - 11. The Commander of the Recruiting Division;
 - 12. The Director of the Equal Employment Opportunity (EEO) Division;
 - 13. The Director of the Court Liaison Division (CLD); and
 - 14. The MPD Privacy Officer.

- F. Cases involving both sworn and civilian members may be reviewed by the Board.
- G. The Board shall meet monthly to review cases. The selection of cases for review shall be made at the discretion of the Board and shall be based on one or more of the following criteria:
 - 1. Members who have been arrested;
 - 2. Members who have been involved in alcohol-related misconduct;
 - 3. Members who have had a financial action taken against them (e.g., wage garnishment);
 - 4. Sworn members who have been revoked from the Optional Sick Leave Program;
 - 5. Civilian members who are on sick leave restriction;
 - 6. Members who have received 2 consecutive PD Forms 62-D (Performance Rating Warning Notices);
 - 7. Members who have received a performance rating below “3 - Meets Expectations”;
 - 8. Members who have 3 or more corrective actions in the past 2 years;
 - 9. Members who have 3 or more similar citizen complaints within the past 2 years;
 - 10. Members who have 3 or more uses of force within the past 12 months;
 - 11. Members who have reached the Supervisory Support Program (SSP) threshold of 100 points, who have been the subject of more than one SSP intervention, or whose supervisor has requested an early SSP intervention in accordance with GO-PER-120.28 [Personnel Performance Management System (PPMS) and the Supervisory Support Program (SSP)]; or
 - 12. Members who have been recommended to the Board by the Director of the DRB, the Director of the Internal Affairs Division (IAD) or other command officials.

- H. As part of each case review, Board members shall review the relevant actions taken by the member's supervisors and managers to identify potential areas for management remediation and improvement.
- I. The quorum for each Board meeting shall be eight members.
- J. Board members shall not send a representative in their place to a Board proceeding.
- K. Board members shall be excused from a Board proceeding only by the Board Chairperson.
- L. The review of files by Board members shall be consistent with any applicable laws governing privacy and confidentiality and may include review of medical files, IAD files, recruiting files, personnel files, unit level files, time and attendance files, ORM files, Office of Police Complaints files, and performance management files. All documents and records reviewed by Board members shall be returned to the Board Chairperson at the end of the meeting.
- M. The Board Chairperson shall have the authority to invite subject matter experts [e.g., the Director of the Metropolitan Police Employee Assistance Program (MPEAP) to the meetings].
- N. Board members shall make recommendations to the Board Chairperson, but he or she shall make the final determination regarding Board findings and actions.
- O. The Board shall have the authority to compel the appearance of identified members' supervisors and managers.
- P. The Board Chairperson shall designate a subset of Board members to meet with members who are compelled to appear before the Board.
- Q. Members who are compelled to appear before the Board shall be provided with a written notice of the outcome of the meeting to include the date of the meeting, the members who were present, and any recommended actions. If there are no recommended actions at the time of the meeting, that shall be documented in the notice.
- R. The Board shall have the authority to recommend additional training, and order members to MPEAP if necessary. The Board will set all follow-up dates and hold members accountable for meeting the due dates.

- S. The Board shall have the authority to refer matters to ORM for audits, MSB for evaluation, IAD for integrity checks, and MPA for training. If the Board discovers alleged misconduct during their reviews, the Board shall refer the matter to IAD for further investigation.

IV. ROLES AND RESPONSIBILITIES

- A. The Assistant Chief of IAB shall designate a member to serve as the Professional Conduct Board Administrator.
- B. The Professional Conduct Board Administrator shall:
 - 1. Document Board member attendance as part of the record. Absences, both excused and unexcused, shall be formally noted in the meeting summary.
 - 2. Coordinate with all the units and prepare files to be shared with the Board for their meetings.
 - 3. Track all cases heard by the Board and the follow-ups assigned by the Board for completion.
 - 4. Notify the Board as to the date, times, and locations of the monthly meetings.
 - 5. Prepare a summary of all Board proceedings outlining all findings and recommendations made by the Board and forward to all Board members.
 - 6. Prepare memoranda for Department units as appropriate to transmit Board findings and recommendations.
 - 7. Notify subject members, their supervisors, and managers to appear before the Board when appropriate.
 - 8. Notify subject members, their supervisors, and their commanding officials as to plans of action and decisions by the Board when appropriate.
 - 9. Maintain records of the Board and their actions and decisions consistent with Department record retention requirements.
 - 10. By January 31 of each year, prepare and send to the Chief of Police an annual report with Board findings and statistical information.

11. Complete other Board administrative duties as assigned by the Board.

V. CROSS REFERENCE

- A. GO-PER-120.28 [Personnel Performance Management System (PPMS) and the Supervisory Support Program (SSP)]



Cathy L. Lanier
Chief of Police

CLL:PAB:MOC:AWS:JC

EXHIBIT I



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

December 22, 2015

Mr. Michael Bromwich
The Bromwich Group
1776 K Street, NW, Suite 700
Washington, DC 20006

Dear Mr. Bromwich:

I am writing to provide the Metropolitan Police Department's suggested edits and corrections to your December 7, 2015, draft report, "*The Durability of Reform: MPD and Use of Force, 2008-2015.*"

I would like to thank you for the opportunity to provide feedback on this document. This review comes at a critical time for law enforcement. With recent high-profile, use of force cases garnering media attention across the country, agencies are examining their policies around use of force. I am very proud of the men and women of the Metropolitan Police Department (MPD) and the way that we police our city. We have forged strong bonds with our community members, and we continually work together to maintain the trust that we have earned. Based on many of the reforms that we implemented as part of the 2001 Memorandum of Agreement (MOA) with the Department of Justice (DOJ), as well as continual improvements that we have put in place since the successful conclusion of the MOA, we have a police department where our officers use force appropriately and allegations of excessive force are rare.

As you know, more than 15 years ago, former Chief Ramsey invited the DOJ to examine MPD's policies and practices around use of force. The resulting 2001 MOA was drafted to address very specific, serious problems faced by the Department at that time. In their 1998 series on the use of deadly force, the *Washington Post* found that MPD officers, "shot and killed more people per resident in the 1990s than any other large American city police force." The Department lacked a reliable means to track and investigate allegations of excessive force and other citizen complaints, and DOJ found "a pattern or practice of use of excessive force by MPD."

Those problems were corrected as part of the MOA, and the Department is light years ahead of where we were 15 years ago. Our use of force statistics, as well as some of the findings in this draft report, confirm that view. Our intentional firearm discharges have dropped by 50% compared to 2001. All citizen complaints are investigated, no matter what the source, and members are held accountable if they violate rules. MPD has regularly provided detailed information around use of force and citizen complaints to the public in a consistent manner since 2009, providing the public with increased levels of insight into these topics when compared with almost every other major city across the country.

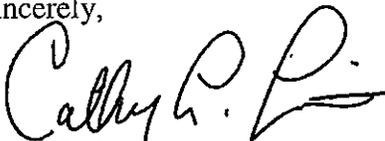
Since the conclusion of the MOA, I have also put in place numerous programs that enhance our services and accountability to the community, including, to name just a few:

- Creation of our Crisis Intervention Officer Program which provides trained officers with the skills to de-escalate interactions with mental health consumers in crisis;
- Creation of our Criminal Interdiction Unit that replaced our vice units and is focused on using positive community engagement and intelligence-led policing to identify patterns of violent crime;
- Creation of the Professional Conduct and Intervention Board, a Board designed to intervene and provide support to members and managers, to prevent future misconduct, to promote improvements in work performance, and to identify trends that negatively impact the Department and the citizens of the District of Columbia;
- Working with the Washington Humane Society and deploying dog-poles to our patrol districts, providing our members with an additional tool when confronted with dangerous dogs that can help prevent dog shootings; and
- Implementation of a body-worn camera program which will benefit the District by improving police services, increasing accountability for individual interactions, and strengthening police-community relations.

The MPD welcomes constructive feedback, and again thanks the DC Auditor's Office for providing this tune up to our successful use of force policies. MPD agrees with a majority of the recommendations contained in this report. It is also important to note that MPD also highlighted those areas where we have serious concerns regarding some of the conclusions that have been reached. MPD found, likely because of the Reviewers' time constraints, that some of the conclusions were made without providing sufficient facts and data to support those conclusions.

In closing, I would like to again thank you for the opportunity to comment on this draft report. I believe with the addition of some of the more accurate, supplemental information described herein, this report will present a balanced and fair assessment of how MPD's current policies and practices continue to support the spirit and goals of the MOA. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,



Cathy L. Lanier
Chief of Police
Metropolitan Police Department

Metropolitan Police Department's Response to the Draft Report "The Durability of Reform: MPD and Use of Force, 2008-2015," dated December 7, 2015

INTRODUCTION

Provided below are the suggested edits and corrections of the Metropolitan Police Department (MPD) to the December 7, 2015, draft report, "The Durability of Reform: MPD and Use of Force, 2008-2015" drafted by Michael Bromwich of the Bromwich Group LLC. Section I of MPD's response provides our requested edits and corrections to the body of the report. Section II provides MPD's responses to the 37 recommendations that were provided as part of the report. MPD's response is structured such that the relevant portions of Mr. Bromwich's draft report are included in text boxes followed by MPD's responses including requested clarifications or changes.

SECTION I: RECOMMENDED CORRECTIONS AND EDITS

I. Introduction, Page 1

*"This report evaluates whether the District of Columbia's Metropolitan Police Department (MPD) **continues to be in compliance** with the terms of a June 2001 Memorandum of Agreement (MOA) between MPD, the District of Columbia, and the United States Department of Justice (DOJ)."* (Emphasis added.)

I. Introduction, Page 2

*"Because of limitations of time and resources, we could not (and did not) review all aspects of **MPD's continued adherence to the MOA.**"* (Emphasis added.)

MPD requests that the report add clarifying language that there is no obligation for the District of Columbia or MPD to remain "in compliance" with the 2001 Memorandum of Agreement (MOA). While MPD's policies and practices continue to support the goals and principles of the 2001 MOA, we think it is important to clarify to the readers that MPD is no longer required to remain in compliance with the specific provisions of the MOA.

IV. Scope of Review and Recommendations, Page 10

“At the outset, Chief Lanier expressed concern about the scope of the review, given the breadth of the MOA and the potential drain of the review on MPD’s scarce resources...”

MPD requests that the Reviewers consider deleting the quoted portion of the sentence. As discussed in our meeting on December 16, 2015, the Chief approaches **all** new initiatives and projects with concern for how those projects will affect the limited resources of the Department. However, if highlighted in the report, we are concerned that it could be incorrectly interpreted by readers as resistance to this review in particular. We believe the resources that the Chief provided over the course of the review, as well as her personal involvement, demonstrated her commitment to, and cooperation with, the review process.

V. MOA-Related Developments..., A. Use of Force Overview, Page 12

“As the above chart shows, over the period since 2001, the number of intentional firearms discharges has ranged from a high of 31 in 2007 to a low of seven in 2010. The average of intentional firearms discharges during the five-year period 2001 to 2005 was 26; by comparison, the average number of intentional firearms discharges during the period 2010-2014 was 10.6, a number far lower than during the preceding five-year period.”

MPD requests that the report highlights this reduction in intentional firearms discharges. The number of intentional firearm discharges was the primary reason that Chief Ramsey requested the Department of Justice (DOJ) conduct their review. We believe this reduction is a key indicator of how far we have come as a Department, and is relevant for inclusion in the executive summary and conclusion.

V. MOA-Related Developments..., A. Use of Force Overview, Page 13

“The data show that MPD’s use of these various levels of force have remained relatively constant over time, with the exception of a rise in the use of OC Spray, which increased 25% between 2013 and 2014.”

MPD believes it is important to provide context around the rise in the use of OC Spray between 2013 and 2014, and point out emerging trends occurring during that time. Starting in 2013, states across the nation experienced an increase in overdoses associated with synthetic drugs. Users of these drugs, some of which are known as “K-2” or “Spice,” can experience anxiety, agitation, hallucinations, paranoia, and may act violently. During

that time, interactions between MPD and individuals exhibiting these symptoms increased, requiring members to take appropriate action to control the scene or situation.

Additionally, the increase in synthetic drug use coincided with increasing calls for service for assaults on police officers. Between 2012 and 2014, calls for service for an assault on a police officer increased by 10%. Between 2012 and 2014, the number of unique arrests (in which at least one charge was for Assault on Police Officer) increased by 11%.

V. MOA-Related Developments..., A. Use of Force Overview, Page 13

“This means that the numbers above for hand controls and tactical takedowns in 2014 and 2015 may significantly understate the number of times these types of force are used by MPD officers.”

MPD requests that the word “significantly” be deleted from the sentence above. We agree that our policy change results in cases where justified hand controls and tactical takedowns that are used without complaint of pain or injury may not be reported. However, the “significance” of that number is unknown. We believe the sentence should read, *“This means that the numbers above for hand controls and tactical takedowns in 2014 and 2015 may not include these types of force when there is no injury or complaint of pain. However, officers are still sometimes documenting these incidents even if they are not required, so it is difficult to estimate the impact of this policy change.”*

V. MOA-Related Developments..., A. Use of Force Overview, Page 15

“MPD acknowledged that its historical practice has been to have FIT/IAD perform an initial review of those allegations, but to have the vast majority of the excessive force allegations investigated by chain of command officials.”

MPD requests that language be added to the report reflecting that all completed excessive force investigations, whether conducted by the chain of command or the Internal Affairs Division (IAD), are also sent to the Internal Affairs Bureau (IAB) for final review.

V. MOA-Related Developments..., A. Use of Force Overview, Page 16

“MPD said it would revise the definition of potential criminal misconduct in the near future to make it consistent with the practice of chain of command officials conducting the vast majority of investigations into allegations of excessive force.”

MPD requests that clarifying language be added to this section. The objective of both our current practice and upcoming policy change is not to have chain of command officials conduct “the vast majority of investigations into allegations of excessive force.” Rather, the goal is to ensure the correct entity investigates allegations of excessive force bearing in mind that we want our IAD investigators to focus on our most serious cases. MPD will continue to ensure all allegations of excessive force are reviewed by Internal Affairs. However, IAD will only investigate those excessive force claims where there is corroborating information indicating potential criminal conduct or other serious misconduct. This will allow them to focus their resources more appropriately, instead of spending a great deal of time on allegations that cannot be corroborated.

V. MOA-Related Developments..., B. Merger of FIT into IAD, Page 18

“At the May 19 briefing and in subsequent discussions, MPD provided the Review Team with several reasons for its August 2012 merger of FIT into IAD. According to MPD, the main reason was a sharp decline in FIT’s workload. Data provided by MPD showed that the average annual FIT caseload was 66.3 cases between 2004 and 2009; the average case declined to 37.6 cases between 2010 and 2012.”

MPD requests that the following additional information be considered for inclusion in the report to provide greater context on the reasons for the merger of the Force Investigation Team (FIT) with IAD. At the time of the merger, both units fell under the same chain of command. In an effort to streamline operations for the efficiency of the Department, combining both units under the IAD was proposed. As discussed in the report, all members of IAD were cross-trained to handle both misconduct and use of force investigations. This enabled the unit to function as one entity and enhanced the unit’s management of personnel resources with an emphasis on reducing overtime costs for call back and continuation of shift. Furthermore, this merger streamlined the internal investigations process. Additionally, the re-alignment reduced the needed manpower for FIT from sixteen to nine positions. **Also, as discussed in the report, the merger ensured that members were not part of the collective bargaining unit, thereby eliminating any appearance of a potential conflict of interest.**

V. MOA-Related Developments..., B. Merger of FIT into IAD, Page 19

“IAD personnel no longer routinely respond to incidents involving canine bites and head strikes during off hours.”

MPD requests that the draft be modified to reflect that on November 10, 2015, MPD reinstated the requirement that IAD investigators respond to the scene of all head strikes and canine bites.¹ The 2011 teletype that modified this requirement will be rescinded.

V. MOA-Related Developments..., B. Merger of FIT into IAD, Page 19

“As we discuss in more detail below, our interviews of IAD investigators and review of their work product raise questions about the adequacy of that training and whether the FIT-IAD merger has degraded the ability of MPD to perform comprehensive and competent use of force investigations. ”

MPD requests the report clarify how many investigations in total were reviewed and how many of those investigations were conducted by IAD. While we understand that the review was limited due to time and resources, we feel it is exceptionally misleading to draw broad conclusions regarding the quality of IAD investigations based on a review of handful of cases investigated by IAD. Also, we take exception to the notion that the training provided for the IAD and FIT merger was less than adequate. The investigators and officials received 80 hours of training to include training by the Office of the Chief Medical Examiner for police shootings, the MPD’s Homicide Branch and Canine Unit, and the United States Attorney’s Office (USAO). The training covered topics including in-custody deaths, forensics and use of force investigations. It should be noted that the USAO requested the video of the 2012 training so that they could use it to train their Department of Justice attorneys on use of force investigations. While we acknowledge, and have remedied, the fact that the maintenance of IAD training records during 2012 was not adequate, we dispute any claims that the training was inadequate.

VI. Review Team Monitoring..., A. Use of Force Policies, Page 22

“...we believe the overall use of force policy continues to be consistent with best practices in policing.

VI. Review Team Monitoring..., A. Use of Force Policies, Page 23

“The Review Team found that MPD’s Handling of Service Weapons General Order, as written,

¹ See email from Maureen O’Connell to Michael Bromwich dated December 20, 2015.

*modified, and implemented, is comprehensive and appropriate. The policy continues to be **consistent with best practices in policing**" (Emphasis added.)*

VI. Review Team Monitoring..., A. Use of Force Policies, Page 25

*"In the last several years, significant developments in the use of canines by law enforcement agencies have established two areas of best practice that we believe MPD should adopt... **With the exception of these two issues, the Review Team has found that MPD's Canine Teams General Order as written, modified, and implemented remains comprehensive and appropriate.** The policy, if modified to incorporate the two changes recommended above, would be consistent with current best practices in policing." (Emphasis added.)*

VI. Review Team Monitoring..., A. Use of Force Policies, Page 26

*"We have found that MPD's OC Spray Policy as written and as implemented remains **comprehensive and appropriate...**" (Emphasis added.)*

The revision of use of force policies was a critical component of the MOA and set the foundation for MPD achieving compliance and successfully terminating the Agreement. We believe that the findings contained in the report, and highlighted above, demonstrate that MPD's policies in the area of use force are comprehensive and appropriate. We believe these findings should be highlighted in the executive summary and conclusion. And while we appreciate the two recommendations regarding our canine policy and discuss our reply to those recommendations later in this response, we strongly believe that our current policy, as approved by the Department of Justice as part of the MOA, is consistent with constitutional policing as written. While MPD is always open to considering ways to improve our policies and practices, we are concerned that readers may misinterpret the current language describing our canine policy as deficient.

VI. Review Team Monitoring..., A. Use of Force Policies, Page 26

"To ensure that MPD officers did not use excessive amounts of OC Spray, an issue independently identified by both the monitoring team as well as the Use of Force Review Board (UFRB), MPD had advised the Independent Monitor that it would follow up on issues relating to the potential use of excess amounts of OC Spray. However, our current review suggested that MPD did not specifically follow up in any meaningful way."

MPD's Office of Risk Management (ORM) will conduct an audit during 2016 of OC Spray investigations to determine if there are any issues regarding the deployment of OC Spray that need to be addressed. Note – the use of OC Spray is a non-lethal and largely effective

use of force that allows officers to control a combative suspect without causing any injury.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 32

“The cumulative effect of this series of directives between 2008 and 2014 has been to remove various categories types of use of force from the reporting and investigation requirements originally established by the MOA. Because the duty to report these uses of force has been eliminated, so has any comprehensive system for review by a supervisor and the involved officer’s chain of command.”

MPD requests that this section be revised to reflect that the duty to report these types of force has been eliminated **only when there is no injury or complaint of pain**. Anytime a member of the public is injured or complains of pain as the result of a use of force by a member of MPD, regardless of the level of force, the force is both reported and investigated. Additionally, MPD members frequently capture this information in other reports used in prosecutions.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 33

“After the revisions summarized above, those requirements had been changed so that significant additional categories of force no longer trigger the reporting or investigation of the use of force – these categories are resisted handcuffing and solo or team takedowns of a suspect. The result is that even though the definitions of use of force have never been changed, the reporting, investigation, management and oversight of uses of force by MPD officers have been substantially diminished. The scope of FIT/IAD’s investigative jurisdiction has been narrowed, the scope of use of force reporting has been curtailed through the exclusion of quite common categories of force used by officers, and the collection of data on uses of force has been limited because of the significant categories of force now exempted from use of force reporting.”

MPD strongly disagrees with the reviewer’s statement that, *“The result is that even though the definitions of use of force have never been changed, the reporting, investigation, management and oversight of uses of force by MPD officers have been substantially diminished.”* As we have discussed, the only types of force where reporting and investigations have been eliminated are the lowest levels of force when there is no injury or complaint of pain. While MPD is willing to reinstate the reporting requirement for all tactical takedowns, regardless of injury, our experience has been that requiring paperwork and a full administrative investigation anytime an arrestee resists being put in handcuffs is a waste of scarce and valuable resources, keeping both patrol members and supervisors off

the street. We believe that one of the best ways to keep uses of force and citizen complaints to a minimum is to have supervisors out on the street, supervising their officers, and not stuck at a desk completing administrative investigations of justified uses of force that provide little value to the Department. Additionally, the last sentence in this section regarding the scope of IAD investigations is incorrect. IAD was not responsible for investigating hand controls and takedowns without injury or complaint of pain. Finally, consistent with our comment above, MPD requests that this section be revised to reflect that the duty to report these types of force has been eliminated **only when there is no injury or complaint of pain, and that frequently this information is captured in other reports completed by officers.** Anytime a member of the public is injured or complains of pain as the result of a use of force by a member of MPD, regardless of the level of force, the force is both reported and investigated.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 33

"In addition, MPD has not implemented a system for monitoring the decisions of watch commanders who have been granted substantial discretion for deciding whether a particular use of force requires the officer to submit a UFIR and initiate an investigation."

MPD requests that the Reviewers remove this section. With the 2014 policy change regarding reportable force, watch commanders no longer have this role; they no longer decide if a UFIR is necessary for hand controls and resisted handcuffing without injury or complaint of pain. By policy, UFIRs are not necessary in these cases.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 34

"Takedowns are by definition significant uses of force. We know of no reason why they should not be reported and investigated."

As discussed below, we plan to reinstate the requirement that tactical takedowns be reported. However, we note that when used appropriately, takedowns are a necessary use of force technique in certain circumstances and can be done in a controlled manner without causing injury and without being excessive.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 34

"These conclusions about the importance of use of force reporting and investigations are fully supported by recent DOJ pattern or practice investigations that have resulted in settlements and

consent decrees – and reflected in policies developed by law enforcement agencies pursuant to those settlement agreements and consent decrees. The requirements for reporting and investigating uses of force that have been established in cities throughout the country over the past several years have generally included, at a minimum, reporting any use of force beyond unresisted handcuffing. We believe those requirements reflect current law enforcement best practice.”

MPD disagrees with this analysis. First we note that DOJ consent decrees and MOAs are developed to address specific issues found with specific law enforcement agencies at a specific time in their history. Implementing these types of requirements may be beneficial in a situation where DOJ has determined that there is a pattern and practice of excessive use of force. The benefit would be to get the agency to be especially sensitive to all uses of force in order to identify and ferret out excessive uses of force. However, after an agency has improved its policies and practice for reporting on excessive uses of force, the reporting and investigating of “resisted handcuffing” and other hand controls resulting in no injury or complaint of pain becomes an unnecessary and inefficient use of limited police resources. It is important to note that this review found there was a *“lack of evidence that excessive use of force has been a problem within MPD in recent years.”*² MPD believes it is sensitive to all uses of force, and our Department does an excellent job of investigating allegations of excessive force.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 35

“...the lack of evidence that excessive use of force has been a problem within MPD in recent years.”

DOJ’s finding of a pattern of excessive force with MPD in the late 1990s was a core reason for the MOA. We believe the report’s finding that there is no evidence to indicate excessive force should be highlighted in both the executive summary and conclusion.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 35

“Experience demonstrates that officers who unjustifiably use lower levels of force are more likely

² See December 7, 2015 draft *“The Durability of Reform: MPD and Use of Force, 2008-2015”*, page 35.

to use excessive force. Limiting data collection of lower level uses of force thus limits MPD's ability to intervene promptly and effectively in ways that might prevent the unnecessary and unjustifiable higher-level uses of force."

MPD requests that the Reviewers provide data to support the statement that officers who unjustifiably use lower levels of force are more likely to use excessive force. MPD's policy has been, and will continue to be, that we investigate all citizen complaints, and that any time a member of the public is injured as a result of an MPD member's use of force, we conduct an investigation. However, our experience with requiring the reporting and investigation of all cases of resisted handcuffing, hand controls, and takedowns **without injury or complaint** is that nearly all cases are justified, and, as described earlier, result in keeping officers and supervisors off the street. As pointed out during the Rampart investigation in the Los Angeles Police Department, a lack of adequate supervision on the street is critical to preventing corruption scandals.³

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 35

"Accordingly, the Review Team recommends that MPD reinstate use of force reporting for hand controls and resisted handcuffing. The Review Team further recommends that MPD reinstate use of force reporting and investigations for individual and team takedowns."

MPD requests this section be revised to read, *"Accordingly, the Review Team recommends that MPD reinstate use of force reporting for hand controls and resisted handcuffing when there is no injury or complaint of pain. The Review Team further recommends that MPD reinstate use of force reporting and investigations for individual and team takedowns when there is no injury or complaint of pain."* As discussed above, MPD's existing policies already require that hand controls, resisted handcuffing, and tactical takedowns be reported and investigated whenever there is a resulting injury or complaint of pain.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 35

"Further, we have been troubled by the large number of substantive changes in use of force reporting and investigations policy and practice that have been implemented through internal

³ See "Rampart Area Corruption Incident, Public Report," March 1, 2000, p. 341

communications such as teletypes. That has made it difficult for us to piece together the changes in MPD policy and practice over the past several years, but more importantly it means that MPD officers are acting pursuant to policies and procedures that are inconsistent with the policies and procedures that are available to the public through MPD's published system of general orders. This defeats the principle of transparency in an area that is extremely important in promoting community understanding of the operations of its police department."

MPD requests that the Reviewers add clarifying language that using teletypes as a means of changing policy is a long-standing, decades-old MPD practice. While we agree that amending policy by teletype is not an ideal process to use going forward, and we have already started creating a new process and modifying our systems to issue "executive orders" which will be available both internally and on the public website, we are concerned with this section as it is currently written. References to "transparency" without providing context could lead readers to incorrectly assume that MPD used the teletypes as a way to keep use of force policy changes from the public, and that is simply not the case. They are used simply because sometimes information or policy changes must be communicated to officers more quickly than can be done through the traditional policy change process.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 35

"According to the IAD investigators we interviewed, the lack of a written, uniform policy for assigning use of force investigations to IAD staff has created confusion and imbalance in caseloads. IAD investigators advised us that each squad lieutenant has implemented his or her own assignment procedure, and our interviews with the lieutenants confirmed this."

As discussed at our December 16th meeting, IAD does have a policy that is documented in our Internal Affairs Manual for assigning investigations. Page 41 of the IAD Manual provides the following:

"Assigning Cases for Investigation

The Supervisory Lieutenant is responsible for assigning cases for investigation to members of his/her unit, as directed by the Assistant Chief, OPR, or his/her designee, based on the following:

- a. Investigating Agent's experience and skills.*
- b. Individual investigative Agent's case/work load.*
- c. Demands placed on the investigator by the particular case."*

IAB is in the process of updating and combining the existing FIT and IAD manuals. We will include a similar policy in the revised manual. We believe the case assignment policy specified above provides a balanced approach where guidance is given to lieutenants on how to assign cases, but it still allows them the flexibility to adjust assignments based on the investigator skills, current work load, and the specific circumstances of a given case.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 38

"We found that four out of the 32 cases we examined (12.5%) were investigated by the involved officer's chain of command when they should have been investigated by IAD. These cases are described below.

- ◆ The complainant alleged that the arresting officers broke his arm. His arm was in fact broken, but the subsequent investigation determined it was not broken by the officers. Nevertheless, a claim of a serious injury such as a broken arm should have been assigned to IAD for investigation.*
- ◆ The complainant alleged he was struck in the head with a 2 x 4 by the arresting officer. A head strike with a hard object is a serious use of force and should have been investigated by IAD. Instead, it was investigated by the officer's supervisor.*
- ◆ A suspect suffered a canine bite. The file contained an investigative report from a District sergeant that reflects that IAD was notified, but the file contained no evidence that IAD had conducted an investigation.*
- ◆ The complainant alleged that the arresting officer placed her in a chokehold. The case was assigned to a District supervisor for investigation."*

MPD located the final investigation where the suspect suffered a canine bite, and the final investigation was conducted by IAD.⁴ Accordingly, MPD requests that the Reviewers revise this section to reflect that in the opinion of the Reviewers, only three of the 32 cases should have been investigated by IAD. MPD also requests that it be noted in the report whether the Reviewers thought the investigations into the other three cases were complete, accurate and had reasonable conclusions. Additionally, MPD requests that the outcomes of these investigations be included in each of the case descriptions. MPD is concerned that

⁴ See email from Maureen O'Connell to Michael Bromwich dated December 22, 2015

including a description of the allegations without the outcomes will lead some readers to believe that all of the events occurred as described.

MPD disagrees with the Reviewers' assessment that each of these cases should have been investigated by IAD. We believe that based on available evidence at the time of the allegation, the first two cases were appropriately referred by IAD to the chain of command. In the first case, there were corroborating witness statements that supported that the officers did not use excessive force. The investigation by chain of command officials ultimately resulted in a finding of insufficient facts. The second case involved a mental health consumer where there was no corroborating evidence to believe the head strike occurred, and the investigation was appropriately unfounded. MPD agrees that the last two cases should have been investigated by IAD, and the canine bite was, in fact, investigated by IAD. Lastly, the report notes that 12.5% of the cases were handled outside of policy. MPD's position is that only one of the 32 cases was handled outside of policy and 97% of the cases were investigated by the correct entity, a compliance percentage that exceeds the compliance threshold established by the MOA.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 38

"Though the definition of a "reportable use of force" has been changed several times since 2008, the requirement that a supervisor who becomes aware of a reportable use of force is to notify the Joint Operations Command Center (SOCC), and ensure that the officer prepares a UFIR has remained constant."

MPD requests that the reference to "Joint Operations Command Center (SOCC)" be replaced with "Command Information Center (CIC)" to reflect the renaming of the SOCC.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 40

"In only 8 of the 32 case files was there evidence that any interviews were recorded."

MPD requests that the report reflect that both the MOA and MPD policy require that recorded interviews only be conducted "in investigations involving a serious use of force or

serious physical injury”⁵ We believe the Reviewers should clarify how many of the 32 investigations referenced involved a serious use of force or serious physical injury. Also, as the report discusses, audio tapes are stored separately from investigations. It is not clear if the auditor asked for audio recordings at IAD and they could not be located, or if they simply were not in the file and stored elsewhere.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 41

“Even when the report stated that a canvass was completed, there was seldom any description of the canvass, the specific locations checked, or the persons interviewed.”

MPD past practice has always been to note the extent of a canvass in an investigator’s notebook. This information was not always included in the investigative report. MPD agrees that this practice can be changed. MPD is currently exploring having IAD conduct their investigations using MPD’s new records management system (i.e., Cobalt). Cobalt provides extensive tracking capabilities to document all of the steps that an investigator takes during an investigation and is currently being used by all of our Department detectives. We believe that moving to Cobalt will greatly enhance our abilities to document investigator activities including witness canvasses.

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 44

“We also encountered problems in determining who attended this training. The emails we were provided contained a list of 36 IAD staff members designated to attend the training, but in the absence of any attendance lists or sign-in sheets, we have no way of knowing how many of the 36 IAD staff members actually attended. Anecdotal evidence suggests that attendance was less than perfect: one IAD member told us that he recalled missing up to 80% of the 2012 training sessions because of court appearance requirements. We do not know how many IAD staff scheduled for the 2012 training had similar scheduling conflicts. Moreover, because of the turnover within IAD, very few current members would have received the 2012 training: of the 40 current members of IAD, only nine were designated to attend the 2012 training.”

MPD disagrees with the characterization of the 2012 training provided in this section. The email provided to the Reviewers on September 27, 2015, describing the training included a

⁵ See MOA at paragraph 81a and MPD GO-RAR-901.08 (Use of Force Investigations) Part V.D.2.g.

memo requesting “certificates of completion” for those members. The certificates were requested because the members attended the training. Additionally we understand that representatives from the USAO related that the training was conducted and they discussed what was covered with the Reviewers. MPD acknowledges that the record keeping by the Metropolitan Police Academy and IAD was not what it should have been, but the training occurred and covered the use of force topics outlined by the Reviewer. Additionally, it should be noted that 22 members who are currently assigned to IAD also attended the 2012 training.⁶

VI. Review Team Monitoring..., B. Use of Force Reporting, Page 45

“Even though we find that use of force investigation training was provided to IAD staff in 2012 and 2014, and that relevant training was provided as part of the 2015 in-service training program, the cumulative training has been insufficient to equip IAD investigators with the adequate skills and confidence to conduct complex use of force investigations, and to produce first-rate use of force investigative reports.”

As described above, MPD disagrees that the training provided for the IAD and FIT merger and subsequent in-service training was less than adequate. The investigators and officials received 80 hours of training when the merger occurred including training by the Office of the Chief Medical Examiner, the MPD’s Homicide Branch and Canine Unit, and the United States Attorney’s Office (USAO). As previously noted, the USAO requested the video of the 2012 training so that they could use it to train their DOJ attorneys on use of force investigations. While we acknowledge, and have remedied, the fact that the maintenance of IAD training records during 2012 was not adequate, we dispute any claims that the training was insufficient. Subsequent training provided as part of in-service training was similarly focused on conducting quality investigations and included use of force scene management, next of kin notifications, interview techniques, and training provided by the USAO.

VI. Review Team Monitoring..., C. Use of Force Review Board, Page 53

“When we subsequently asked whether these two cases were anomalies, MPD officials, up to and including Chief Lanier, told us that it was a pattern of delays that had been continuing for several years.”

⁶ See December 20, 2015, email from Maureen O’Connell to Michael Bromwich

MPD requests that this section be reworded to read, *“When we subsequently asked whether these two cases were anomalies, MPD officials said that they did not find this to be uncommon.”* MPD has established a good working relationship with USAO Phillips and we would not want prior experiences to negatively impact our current, positive, working relationship.

VI. Review Team Monitoring..., C. Use of Force Review Board, Page 53

“This pattern of delay was at odds with how use of force cases were handled from 2002 through 2008. During that time period, the USAO generally completed its reviews within a few weeks if not days.”

MPD disagrees with this description of USAO reviews conducted from 2002 to 2008. While the process slowed in 2010, our experience prior to that was that case reviews of fatal shootings took months, and even years in some cases.

VI. Review Team Monitoring..., C. Use of Force Review Board, Page 54

“Chief Lanier and members of her command staff advised the Review Team that these delays had been a source of major concern to MPD for the past several years, but despite having raised the issue repeatedly with senior executives at the USAO, the problem had persisted.”

MPD requests that this section be rewritten as follows: *“Members of MPD’s command staff advised the Review Team that these delays had been a source of concern to MPD for the past several years, but despite having raised the issue with senior executives at the USAO, the problem had persisted.”*

VI. Review Team Monitoring..., C. Use of Force Review Board, Page 56

“Because, as we have just described, MPD serious use of force cases, especially fatal shooting cases, are frequently pending in the USAO for extended periods of time, the administrative investigation is frequently resumed long after the preliminary investigation was completed.”

MPD disagrees with this characterization. Most of the work including witness canvasses and most witness interviews are completed at the preliminary report stage in serious use of force cases except for processing evidence reports. However, MPD agrees that we need to ensure all investigators do a better job in writing the draft of the final report while the case

is pending and putting the final case file together. As described earlier in this report, MPD is currently exploring having IAD conduct their investigations using MPD's new records management system (i.e., Cobalt). Cobalt provides extensive tracking capabilities to document all of the steps that an investigator takes during an investigation. We believe that moving to Cobalt will greatly enhance our abilities to document investigator activities throughout the investigation.

VI. Review Team Monitoring..., C. Use of Force Review Board, Page 60

"Although the UFRB has the authority to review cases forwarded to the Board by the Assistant Chief in charge of Internal Affairs, we have been advised by MPD that no cases have been referred through this channel in quite some time. This is less the fault of the UFRB – which cannot consider cases or issues not submitted to it – and more the responsibility of IAD."

MPD believes the last sentence in this excerpt is needlessly prejudicial. Absent the identification of specific cases that the Reviewers felt should have been referred to the UFRB, it is not reasonable to conclude that IAD is somehow "at fault." While the UFRB policy allows for the referral of non-IAD cases to the Board by IAB, there is no expectation that a certain number of cases must be forwarded, and the absence of any identified cases is not in and of itself indicative of a problem. MPD believes having this referral option available through policy is important in the event that a specific case arises that IAB feels needs the Board's review. However, even during the MOA, referrals rarely occurred. Perhaps more importantly, IAD has the authority to assume the investigative responsibility over any use of force or excessive force case it deems necessary, so it seems likely that most serious cases and cases with specific concerns would be investigated by IAD in the first place.

VI. Review Team Monitoring..., D. PPMS, Page 63, Footnote 112

"The efficacy of the points system has, unfortunately, been adversely affected by the changes in use of force reporting and investigation thresholds. Officers who would have been previously identified for the SSP – for example, when individual takedowns were in all circumstances reportable and investigated uses of force – are no longer identified. Therefore, officers who use such force are not eligible to be counseled and their behavior remediated under the SSP."

MPD believes this description of the Supervisory Support Program (SSP) and use of force is incorrect. First, it should be noted that justified uses of force do not result in the assignment of SSP points. Second, in the example provided, takedowns that result in injury

or complaint of pain have been and will continue to be reported and investigated. Finally, it is incorrect to state that officers who use such force are not eligible to be counseled. Supervisors can and do counsel members at any time regarding behavior that they find concerning.

VI. Review Team Monitoring..., E. Professional Conduct..., Page 67,

“The reviews that have become the core of the PCIB were designed to go well beyond the SSP, and to be proactive in identifying at-risk officers; Chief Lanier described various techniques used by MPD, including undercover stings and investigations not tied to specific incidents, in order to prevent and detect officer misconduct.”

MPD requests that this sentence be revised as follows, *“The reviews that have become the core of the PCIB were designed to go well beyond the SSP, and to be proactive in identifying at-risk officers and to ensure management accountability; Chief Lanier described various techniques used by MPD, including the use of integrity checks (tests that are designed to observe and evaluate an officer’s conduct in situations in which a specific set of circumstances has been created that requires police intervention) in order to prevent and detect officer misconduct.”* We do not believe the current language accurately reflects the operations of the Board.

VI. Review Team Monitoring..., E. Professional Conduct..., Page 69

“More broadly, because the Board had concerns about all three of the officers relating to use of force-related issues, the Board discussed the importance of expediting the development of MPD’s de-escalation training, the goal of which is to train officers to work toward avoiding the use of force through discussion and persuasion.”

As reported in our December 7, 2015, email, MPD is developing a “stand-alone” module of de-escalation training. De-escalation training is planned for all sworn members for 2016. However, it should also be noted that during this year’s professional development training at our Tactical Village, one of the performance objectives for our high-risk traffic stop scenario was to “Demonstrate the ability to conduct a High Risk Traffic Stop utilizing safe and proper techniques, de-escalation and resources”; and de-escalation was emphasized during group discussions and debriefings during the training. We believe that the Reviewers had an opportunity to review this training and were impressed by the content and execution, and we would welcome inclusion of their feedback in the report. In addition, it should be noted that several members who have been identified by the

Professional Conduct and Intervention Board received focused de-escalation training earlier this month in response to the Board's recommendations.

VI. Review Team Monitoring..., G. Review of Officer-Involved Fatal Shootings..., Page 75

"As described above, the Review Team was asked to review cases of three officer-involved fatal shootings to assess the adequacy of the use of force investigations conducted by MPD."

MPD requests that the Reviewers provide additional context in the report as to why these three officer-involved fatal shootings were specifically identified for review.

VI. Review Team Monitoring..., G. Review of Officer-Involved Fatal Shootings..., Page 88

"For example, in his taped interview, Officer Brown stated that he was part of an email distribution list of MPD members who receive emails about law enforcement official business, including requests to assist the USMS... Officer Brown responded to the message and then proceeded, together with Officer Wince, to assemble a group of MPD officers to assist the USMS with the fugitive apprehension.... This account is in conflict with the statement by Detective Hunsucker who stated that Officer Richard Wince advised her that he was flagged down by U.S. Marshals and advised that they were executing a warrant at the aforementioned address. This is at odds with Officer Brown's assertion concerning how MPD came to be involved in the events that led to the death of Mr. Abney. Both of these accounts, in turn, conflict with the interview summary of Deputy U.S. Marshall Gause, who stated that Gause placed a telephone request to the Capitol Area Regional Task Force requesting assistance from members to execute the high risk warrant on Mr. Abney. We saw no evidence in the investigative file of any effort to reconcile these three seemingly conflicting accounts of how MPD came to be involved in the matter. We are concerned that any effort to reconcile these accounts a year after the event took place would be extremely difficult."

MPD does not agree with the Reviewers' assessment that the accounts of how different members were notified regarding the warrant constitute a conflict. The members could have all been notified by different means.

VI. Review Team Monitoring..., G. Review of Officer-Involved Fatal Shootings..., Page 88

“Delays in conducting the administrative investigation impair the quality of the investigations and create cascading problems that adversely affect the ability of MPD to properly investigate and adjudicate the most serious uses of force that occur. Our ability to conduct a full review of the Abney case was limited by the state of the investigation at the time we reviewed the investigative file.”

MPD does not agree with this statement. It should be noted that sometimes interviews are delayed for follow-up because the investigator is waiting for forensic reports such as firearms evidence or DNA work so that they are armed with this information prior to conducting the interview. MPD agrees that interviews conducted close in time to the incident are ideal, but this must be evaluated on a case by case basis as the facts dictate.

VI. Review Team Monitoring..., H. APO Review..., Page 93

“We were asked to explore issues surrounding arrests and prosecutions in recent years for assault on police officers (APO) in the District of Columbia, and specifically whether the charge is used excessively and for conduct that is less serious than the phrase “assault on a police officer” would suggest.”

As noted in the body of the draft report, the review of arrests for assault on police officers (APO) highlights issues that Chief Lanier raised in asking the Council to amend the existing APO legislation. As an initial matter, the report references legislation that Councilmember Cheh has introduced that includes proposed changes to the APO statute. The report does not mention that the Mayor, at the request of the Chief of Police, has also introduced legislation (the *Public Safety and Criminal Code Revisions Amendment Act of 2015*) that would amend the APO statute. We would also recommend that the discussion of the APO issue be listed chronologically, first listing Chief Lanier’s raising the issue in testimony in 2014, followed by the 2015 WAMU story (if the discussion of the article remains in the report).

VI. Review Team Monitoring..., H. APO Review..., Page 94

“In May 2015, an extensive investigation of this issue, conducted jointly by WAMU (88.5) News, the Investigative Reporting Workshop at American University, and Reveal (from the Center for Investigative Reporting), reported its results.”

- ◆ *90% of those charged with assaulting a police officer were black, far in excess of black representation in DC's population;*
- ◆ *Almost two-thirds of those arrested for APO were not charged with any other crime, raising questions about the legal justification for the original stop;*
- ◆ *More of the individuals arrested for APO required medical attention than the officers they were alleged to have assaulted;*
- ◆ *DC has made approximately three times as many arrests for APO as cities of comparable size, according to FBI and MPD data; and*
- ◆ *40% of those arrested for APO were not ultimately prosecuted, suggesting that the cases were either legally unsustainable or factually unappealing because of the lack of meaningful assaultive behavior."*

As discussed at our December 16, 2015, meeting, we believe that it was MPD's discussion of the APO issue in 2014 that lead to WAMU's 2015 story. We also have concerns that some of the findings reported in their article are misleading and references to the article should be removed all together. As an initial matter, it is important to note that arrests from other police agencies operating in the District are, in fact, over-represented in APO arrests. While about 13% of all arrests in the District are made by agencies other than MPD, 22% of APO arrests are made by other agencies.

The draft report also includes several points from the WAMU report that bear rebutting. For example, regarding the finding that 90% of those charged with APO were black, "*far in excess of black representation in DC's population,*" strong researchers know that simplistic benchmarking against racial demographics represent insubstantial analytics, at best. As the Consortium for Police Leadership in Equity has noted:

"Researchers have yet to reach a consensus on the best way to assess racial profiling, typically relying on one of several imperfect measures. The most common approaches include: 1) benchmarking; 2) hit rates; and 3) surveying community opinion regarding law enforcement. These represent the most promising methods currently available for measuring racial profiling and its impact, but each has its own limitations.

Benchmarking. Perhaps the most common approach to assessing whether bias accounts for racial and ethnic disparities in law enforcement behavior is the method of benchmarking. This method compares the racial distribution of stop rates, citations, use of force, searches, arrests, etc. to the racial demographics of a relevant comparison population. In its most crude form, benchmarking would use population

*statistics (i.e., from the U.S. Census) for the geographical area under consideration. Using this method, one might conclude that racial profiling was occurring if 50% of vehicle stops involved African Americans but only 24% of the area population was composed of African Americans. Studies relying on population benchmarking should account for demographics of neighboring areas from which individuals may come to a targeted area; racial differences in the amount of time spent in an area, offending rates, or types of crimes perpetrated; the amount of police attention directed at an area; or whether encounters are initiated by officers or citizens. Ideally, benchmarking is accomplished using actual surveys, with representative samples, of behavior of individuals in the targeted area so that the benchmark captures the offending rates for behavior that triggers stops (e.g., speeding). However, this approach can be expensive and labor-intensive. Thus, **population benchmarking in its crudest form provides only a weak index of racial bias and in its robust form may be impractical** [emphasis added].⁷*

The racial breakdown of APO arrests is consistent with violent crime statistics in the District. In 2013, the most recent year for which the analysis was conducted, 85% of the look outs in violent crimes were for black males, 84% of arrestees for robbery and 92% of the homicide arrestees were black males. And unfortunately, even more troubling: eight out of 10 homicide victims are black males. All of this is of great concern for police, community leaders, and residents across the city, but in this context, the APO arrest figures appear to be consistent.

- *Almost two-thirds of those arrested for APO were not charged with any other crime, raising questions about the legal justification for the original stop;*
- *More of the individuals arrested for APO required medical attention than the officers they were alleged to have assaulted;*
- *DC has made approximately three times as many arrests for APO as cities of comparable size, according to FBI and MPD data; and*

This is not necessarily surprising given that the District's APO statute includes the resisting arrest charge that most jurisdictions have as a stand-alone charge. Thus it is impossible to determine whether these figures are comparable without examining the statutes in the various jurisdictions.

⁷ Consortium for Police Leadership in Equity. *The Contract for Policing Justice*. pp 4-5.

- *40% of those arrested for APO were not ultimately prosecuted, suggesting that the cases were either legally unsustainable or factually unappealing because of the lack of meaningful assaultive behavior.*

As those who follow discussions about the District criminal justice system know, these statistics are unfortunately not at all surprising, and not necessarily indicative of cases being legally unsustainable or factually unappealing. The low prosecution rate of cases by the U.S. Attorney's Office is of significant concern to the community and the Mayor.

VI. Review Team Monitoring..., H. APO Review..., Page 96

"The likelihood of an officer using force is high in incidents where the officer claims that he has been the victim of an assault especially in felony APO cases where the statute requires the officer to suffer 'significant bodily injury'."

MPD requests that the Reviewers include data or references to support the assertion that the likelihood of an officer using force is high in incidents where the officer claims having been the victim of an assault. MPD also notes that the District's APO statute also includes resisting and interfering with an arrest which is not assaultive behavior.

VI. Review Team Monitoring..., H. APO Review..., Page 96

"For 29 out of these 39 arrests, we found a completed a UFIR, but for 10 we could not – nor originally could MPD personnel when we identified the cases in which UFIRs appeared to be missing."

We understand and appreciate that the Reviewers plan to update this section based on the additional information provided by MPD⁸ regarding the ten cases where it appeared to the reviewers that a UFIR should have been completed. Based on our findings, in four of the ten cases, a UFIR was not required at all. Accordingly, we believe there were 35 cases that required UFIRs not 39. Of those 35 cases, we were looking for six UFIRs, not 10. Of those six, MPD located and provided three UFIRs, leaving three UFIRs unaccounted for. As stated earlier in the draft report, *"One of the cornerstones of the MOA was the requirement that MPD officers must report all uses of force."* Based on this review, our members reported

⁸ See email from Maureen O'Connell to Michael Bromwich dated December 3, 2015.

force in accordance with MPD policy at a 91% compliance rate. We believe this finding should be highlighted in the executive summary and conclusion.

VI. Review Team Monitoring..., H. APO Review..., Page 97

“This review of the 150 APO cases allows us to draw only limited conclusions about MPD’s use of force during arrests for APO. First, our ability to draw meaningful conclusions is limited by the high threshold that exists for reporting use of force. Because individual and team takedowns were, as of July 2014, no longer reportable uses of force, we were unable to tell how many of the felony or misdemeanor arrests involved these forms of force, or other actions by MPD officers that would have been reportable under MPD’s original use of force reporting policies but that are no longer reportable.”

MPD disagrees with this section as written and recommends the following edits. As described above, based on this review, we have a compliance rate of 91% with our use of force reporting policy, and we believe that a significant conclusion that can and should be drawn is that MPD members report force appropriately based on our policy. Also, we request that the sentence, *“Because individual and team takedowns were, as of July 2014, no longer reportable uses of force...”* be amended to reflect that individual and team takedowns without injury or complaint of pain were no longer reportable as of July, 2014. While we have suggested this edit at various points throughout the report, we strongly believe that it must be included with every reference to our use of force reporting requirements. It is unknown if readers will take excerpts of the report, focus on certain sections, etc., and for the sake of accuracy, MPD believes that all references to our change in force reporting must reflect that the change only affected resisted handcuffing, hand controls, and team takedowns without injury or complaint of pain, and that all uses of force by MPD members that result in an injury or complaint of pain, regardless of the level of force used, are reported and investigated. Lastly, MPD has concerns with the unfair characterization that there is a “high threshold” that exists for reporting use of force especially since the auditor noted that MPD policy is consistent with Police Best Practices.

VI. Review Team Monitoring..., H. APO Review..., Page 97

“Second, and as a result of this change in use of force reporting standards, MPD has deprived itself of information relevant to evaluating the conduct of officers in significant – and potentially controversial – interactions with members of the community.”

MPD disagrees that the cases described are “significant” and “potentially controversial.” The cases that we are discussing involve no accusation of excessive force and no injury or complaint of pain. This is a ridiculous and inflammatory comment.

VI. Review Team Monitoring..., H. APO Review..., Page 97

“Although the low percentage of reported uses of force in misdemeanor APO cases supports the conclusion that it is used in a large number of cases in which there is no violent behavior towards the officer – nothing like the common-sense meaning of an “assault” – we would have expected a higher percentage of felony APO cases to involve reported uses of force. Our review was sufficiently limited that we were unable to determine whether the low percentage of reported uses of force in felony APO cases reflects the under-reporting of uses of force, the over-charging of felony APO, or some measure of both.”

MPD objects to the Reviewer’s statement that, *“Our review was sufficiently limited that we were unable to determine whether the low percentage of reported uses of force in felony APO cases reflects the under-reporting of uses of force, the over-charging of felony APO, or some measure of both.”* It is an opinionated and unsupported guess that there should be a large number of reportable uses of force in felony APO cases, and the draft report provides no data to support this assumption. Furthermore, as written, the report insinuates that there were unreported uses of force by MPD. The Reviewer’s findings that 91% of uses of force were reported by MPD members in accordance with MPD policy and the finding that there is a *“lack of evidence that excessive use of force has been a problem within MPD in recent years”*⁹ directly contradict that conclusion.

The report also implies that officers are at fault for making arrests under the law as it is currently written. For example, the statement that *“the low percentage of reported uses of force in misdemeanor APO cases supports the conclusion that it is used in a large number of cases in which there is no violent behavior towards the officer—nothing like the common-sense meaning of an ‘assault’ ”* is misleading without clearly stating that the law covers behavior that is not violent or assaultive. We agree that this is a problem with the way the law is written, but object to the report giving the impression that the officers are necessarily at fault because of arrests that are based on non-assaultive but nevertheless currently

⁹ See December 7, 2015 draft *“The Durability of Reform: MPD and Use of Force, 2008-2015”*, page 35.

criminal behavior.

VI. Conclusion, Page 103

“However, we have found unfortunate slippage and backsliding in some key areas covered by the MOA. We have found some deficiencies in certain use of force policies that reflect the fact that they have not been updated for well over a decade. More significantly, we have found a substantial relaxation in the requirements for reporting and investigating use of force by MPD officers that we think has gone too far. Specifically, MPD no longer requires the reporting and investigation of certain relatively less serious uses of force, up to and including individual and team takedowns. We think those changed reporting and investigations thresholds, especially with respect to takedowns, are inconsistent with law enforcement best practices. The changes result in a large number of uses of force going unreported and uninvestigated, and thus deprive MPD of valuable data that can help it to manage at-risk officers.”

We are very concerned that as written, the conclusion to this report paints an inaccurate, inflammatory picture of the MPD. None of the findings or recommendations outlined in the draft report indicate “slippage” or “backsliding” to the state of affairs over fifteen years ago when Chief Ramsey requested review by DOJ. The statement that *“We have found some deficiencies in certain use of force policies that reflect the fact that they have not been updated for well over a decade” is inaccurate.* Our use of force order has been updated four times since its publication in 2002: by General Order Change in 2005, by teletype in 2008, by General Order Change in 2010, and by teletype in 2014, approximately every three years. As described in our response to Recommendations 3 and 4 below, the only changes recommended in the report are slight modifications to our canine policy to procedures that already exist. Those recommended changes are above and beyond any requirements contained in the MOA. Other than those minor recommended enhancements, the Reviewers found our policies appropriate.

We also disagree with the characterization that there has been “substantial relaxation” of our force reporting and investigation policies. As described in detail in our response, it is simply not a prudent use of scarce resources to take officers off the street to complete paperwork every time an arrestee resists being handcuffed when no injury occurs and when there is no complaint of pain. Furthermore, in these cases, pulling a supervisor off the street to complete a full administrative investigation is counterproductive to our goals of limiting force and citizen complaints. We must facilitate having supervisors on the street where they can provide guidance and supervision to their members to eliminate some of these situations from occurring in the first place.

VI. Conclusion, Page 103

“The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce inadequate use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view.”

VI. Conclusion, Page 103

“As we have described in this report, the deficiencies in Internal Affairs investigations and investigative reports have had an adverse impact on the ability of the UFRB to make informed and appropriate judgments on whether the use of force by MPD officers is consistent with MPD policies and law enforcement best practices.”

MPD requests that the report include the specific number of IAD investigations that were reviewed. In 2014 and 2015 thus far, IAD has been responsible for conducting 676 investigations, 101 of which were use of force investigations. We have concerns that these generalized allegations cannot be supported based on the limited number of IAD investigations reviewed, to include the three cases that were hand-picked by the Reviewers. We are not aware of any case identified by the Reviewers where they feel the investigator reached an incorrect finding. However, describing MPD use of force investigations as “inadequate” will lead some readers to believe this is the case.

VI. Conclusion, Page 104

“Finally, we found that the Office of Risk Management, the internal unit within MPD that audits programs and operations – and that was a vital part of ensuring the durability of MOA-related reforms – was AWOL during a five-year period (2010-2014); it virtually stopped conducting MOA-related audits and reviews during that period.”

MPD requests that the Reviewers consider alternate language. Describing ORM as “AWOL during a five year period” is unnecessarily prejudicial language. The role of the ORM is broader than the MOA, and the ORM conducted a number of valuable audits for the COP during that time frame.

VI. Conclusion, Page 104

“With its senior leaders committed to making the necessary changes identified in this report, the road back to a leadership position on these issues will be far shorter and easier to accomplish than the road MPD previously traveled.”

MPD objects to this characterization. The Department remains a leader in the field of use of force investigations. The investigations conducted by IAD from 2008 to the present have investigative substance and are based on sound investigative principles. We agree with the Reviewer’s assessment that the tactical analysis in some investigations needs to be improved. However, we believe the improvements MPD has made since the termination of the MOA have led to more impartial investigations, and the quality of the interviews and our improved partnership with the USAO have provided more critical scrutiny of serious uses of force.

SECTION II: MPD RESPONSES TO REPORT RECOMMENDATIONS

Recommendation 1: Use of Force Policy

“MPD’s use of force policy should be modified to include more detailed treatment of neck restraints, and that any use of neck restraints by MPD officers be treated as a serious use of force and be investigated by IAD.”

MPD agrees with this recommendation. MPD is in the process of revising our use of force policy to include a more detailed discussion of the prohibition against neck restraints, and MPD agrees that the use of neck restraints by any MPD member will be investigated by the Internal Affairs Division.

Recommendation 2: Use of Force Policy

“MPD should comprehensively review and revise its use of force policies no less frequently than every two years.”

MPD disagrees with this recommendation. MPD has over 400 policy documents and a comprehensive review every two years absent an identified issue or problem seems

excessive. The evaluation of our use of force policy is ongoing – MPD considers the policy and its ramifications throughout our use of force investigations, and the UFRB is mandated to continually consider policy and recommend updates if needed. As discussed in our responses, MPD agrees that our long-standing practice of issuing policy updates by teletype needs to be improved, and we are committed to doing so, but we object to language that may lead readers to believe that we have not updated our use of force policies in thirteen years. That is simply not true.

Recommendation 3: Use of Force Policy

“MPD’s canine policy should restrict off-leash deployments to searches for suspects wanted for violent felonies; or who are wanted for a misdemeanor and whom the officers reasonable believe to be armed.”

MPD disagrees with this recommendation. MPD’s policy as written is sufficient in limiting off-leash deployments to serious felonies or instances where a suspect is wanted and suspected of being armed. By limiting our policy to “violent” felonies, as opposed to “serious” felonies, we would be limiting the use of canines in important cases such as the location of burglary suspects in hidden locations where the use of a canine protects the life of the officer. MPD also requests that the Reviewers add context to this recommendation. The recommendation is that MPD change its policy from restricting off-leash deployments to searches for suspects wanted for “serious” felonies to “violent” felonies. MPD’s policy is already consistent with the second part of the recommendation regarding limiting tactical searches to suspects who are reasonably suspected of being armed. As written, this recommendation is currently misleading and could lead readers to believe none of these restrictions are currently in place. Also, it should also be noted that this recommendation is more restrictive than the requirements for canine deployments contained in the MOA.

Recommendation 4: Use of Force Policy

“MPD’s canine policy should require that the number of verbal warnings provided prior to canine deployment be increased from one to three; and that in open field or block searches, an additional warning be given each time the canine team has relocated the equivalent of a city block from where the initial warnings were given.”

MPD agrees in part with this recommendation. MPD agrees that it is good practice, and will incorporate into policy, the requirement that additional warnings be given in certain circumstances, when tactically sound, to include each time the canine team has relocated

the equivalent of a city block from where the initial warnings were given. It should also be noted that this recommendation is more restrictive than the requirements for canine deployments contained in the MOA.

Recommendation 5: Use of Force Reporting, Investigators, and Training

“MPD should reinstate use of force reporting for hand controls and resisted handcuffing.”

MPD disagrees with this recommendation. To be clear, MPD’s policy is, and will remain, that all uses of force that result in injury or complaint of pain to any person are reported and investigated, to include the use of hand controls and resisted handcuffing. However, hand control procedures and resisted handcuffing are the lowest level of force.

Unfortunately, members routinely encounter arrestees who do not willingly submit to handcuffing. In those cases, hand control procedures such as the use of firm grips and escort holds assist the officers in placing handcuffs on arrestees while ensuring both the safety of the officer and the arrestee. In the vast majority of those cases, the result is no injury or complaint of pain. While there may be limited value in tracking this information, on a practical level this must be weighed against the consequences: requiring officers to take time off the street, away from their patrol duties, to complete an administrative report documenting the justified use of hand controls every time a suspect offers minor resistance when being handcuffed. Additionally, this information is often captured by officers in their reports that they prepare for prosecution of the case.

Recommendation 6: Use of Force Reporting, Investigators, and Training

“MPD should reinstate use of force reporting and investigations for individual and team takedowns.”

MPD agrees in part with this recommendation. MPD sees the value in reinstating the requirement that officers report tactical and team takedowns in cases where there is no injury or complaint of pain. However, we disagree that those takedowns should be investigated. The Department will be looking into the best way to have officers report takedowns so that it can be tracked and reviewed as necessary (e.g., by entry in MPD’s Records Management System). As discussed earlier, MPD remains committed to our current policy that has been in place for over a decade of investigating any tactical or team takedown where there is a resulting injury or complaint of pain.

Recommendation 7: Use of Force Reporting, Investigators, and Training

“MPD should make all substantive changes in use of force reporting and investigations policies through a transparent process that ensures that the public, all MPD stakeholders, and MPD officers have access to current MPD policies, rather than through limited internal communications.”

MPD requests the language be changed. As written, the language suggests that MPD was not being transparent. MPD does however agree with this recommendation. As discussed earlier, it has been the Department’s long-standing, decades-old practice to use teletypes as a way to issue policy changes to members expeditiously. MPD agrees that this is a process that can be improved by make accessing these documents easier. MPD will be discontinuing the practice of issuing policy updates by teletype. We are creating new documents called “executive orders.” Executive orders will still allow the Chief of Police to change policies and procedures in an expeditious manner, similar to the teletype process. However, the executive order process will be coordinated by MPD’s Policy Development Branch, and approved orders will be made available on the internal “MPD Directives Online” website as well as the public website until they are rescinded or replaced, and MPD is committed to incorporating these executive orders into the appropriate orders in a timely fashion.

Recommendation 8: Use of Force Reporting, Investigators, and Training

“MPD should recommend that IAD develop a comprehensive use of force investigations procedural manual that incorporates the requirements of the MOA, relevant General Orders, and an appropriate set of procedures based on the original FIT Manuals.”

MPD agrees with this recommendation. MPD’s Internal Affairs Bureau is working on creating an updated manual governing the standard operating procedures of the Internal Affairs Division for conducting both use of force and police misconduct investigations. The revised manual will consolidate the contents of the current FIT and IAD Manuals, relevant MPD policies, and will include the relevant provisions of the MOA.

Recommendation 9: Use of Force Reporting, Investigators, and Training

“MPD should require that all interviews of civilian witnesses and officer witnesses involved in a use of force matter be interviewed and that the interviews be either audio and/or video recorded, except when a civilian witness declines to give consent to taping.”

MPD agrees in part with this recommendation. The MOA required, and MPD's policy since 2002 has been, that in investigations involving a serious use of force or serious physical injury, interviews of complainants, involved officers, and material witnesses are tape recorded or videotaped.¹⁰ However, we disagree that the statements in all use of force investigations need to be recorded. As discussed earlier, IAD reviews all use of force incidents to determine who will conduct the investigations (i.e., IAD or chain of command officials.) By policy, serious use of force investigations (e.g., firearm discharges, canine bites, uses of force indicating potential criminal conduct) are always investigated by IAD and those interviews would be recorded.

Recommendation 10: Use of Force Reporting, Investigators, and Training

"MPD should transcribe all recorded statements in serious use of force and the transcript should be included in the investigative file for ease of reference and to ensure the accuracy of investigative reports."

MPD agrees in part with this recommendation. MPD will modify its policies to require the transcription of statements in the following specific cases:

- Fatal uses of force;
- Police shootings that result in injury;
- Cases where the misconduct will likely result in an adverse action hearing;
- In-custody deaths;
- Vehicle pursuits resulting in a fatality; and
- Any other cases as determined by the Commanding Official of IAD.

Recommendation 11: Use of Force Reporting, Investigators, and Training

"MPD should restructure the Internal Affairs Division so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their special area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this group should be officers who have demonstrated the proper attitude and skills for conducting use of force investigations."

¹⁰ See MOA at paragraph 81a and MPD GO-RAR-901.08 (Use of Force Investigations) Part V.D.2.g.

MPD disagrees. MPD Internal Affairs agents are sufficiently trained in conducting comprehensive use of force investigations. We will continue to conduct specialized in-service training for our internal affairs investigators that includes a section on use of force training and other topics that are central to conducting internal affairs investigations. MPD will also work to ensure that personnel selected for internal affairs positions have the required skills and commitment to producing fair and impartial investigations.

Recommendation 12: Use of Force Reporting, Investigators, and Training

“MPD should provide the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.”

MPD agrees in part with this recommendation. MPD does not agree that there should be use of force specialists within IAD. MPD is committed to ensuring all IAD investigators are both capable and engaged in conducting comprehensive use of force investigations. As described earlier in this response, the training provided as part of the 2012 merger of FIT and IAD was comprehensive and designed to ensure that the members who received the training could conduct appropriate, comprehensive use of force investigations. We acknowledge that the record keeping for that training was not adequate. Accordingly, going forward we will document the core curriculum that all IAD investigators must receive upon being assigned to the unit to include specific training on use of force investigations, and we will ensure those training records are maintained.

Recommendation 13: Use of Force Reporting, Investigators, and Training

“MPD should reinstate the practice of requiring IAD investigators to respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.”

MPD agrees with this recommendation. On November 10, 2015, MPD reinstated the requirement that IAD investigators respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.

Recommendation 14: Use of Force Reporting, Investigators, and Training

“MPD should require that IAD investigators be required to investigate all reported or claimed strikes to the head whether or not the head strike is confirmed by a field supervisor and regardless of whether there is an injury or corroborative evidence; and that IAD investigators be required to investigate all canine bites.”

MPD agrees in part with this recommendation. For over a decade, MPD’s policy has required that the Internal Affairs Division be responsible for conducting the investigation of head strikes and canine bites. MPD remains committed to this policy. However, in cases of alleged head strikes, when there is no supporting evidence that a head strike occurred and, in some cases when there is corroborated evidence that directly conflicts with allegations that a head strike has occurred, the Internal Affairs Division must retain the flexibility to review the available evidence and determine whether the allegation is best suited for investigation by IAD or the chain of command. The Department remains committed to having our IAD agents conduct comprehensive investigations of our most serious allegations of misconduct and our most serious use of force incidents. To ensure that we use our resources appropriately, we cannot agree to mandatory investigations by IAD of “claimed” head strikes where there is a preliminary investigation that reveals no evidence to indicate that a head strike actually occurred. However, to be clear, all allegations of head strikes will continue to be reviewed by our Internal Affairs Division and will be investigated by the appropriate entity in all cases.

Recommendation 15: Use of Force Review Board

“MPD and the United States Attorney’s Office for the District of Columbia should work together to reengineer the system for reviewing the most serious use of force cases involving MPD officers with the goal of eliminating lengthy delays.”

MPD agrees with this recommendation. The Chief of Police meets monthly with the USAO, and at those meetings the status of our serious use of force cases has been and will remain an agenda item. USAO Phillips and his staff are important partners, and we are confident based on the commitment he has shown that some of the delays in USAO reviews can be reduced.

Recommendation 16: Use of Force Review Board

“MPD and the USAO should establish a goal of completing the USAO review of serious use of force cases within six months, with that period to be extended only by explicit agreement

between the US Attorney and the Chief of Police, and with specific reasons provided that justify the need for additional time."

MPD agrees with this recommendation. As described above, we have been very pleased with the commitment shown recently by the USAO, and we will work to support any protocols that can be put in place to help expedite their reviews.

Recommendation 17: Use of Force Review Board

"MPD should require that the IAD administrative investigation move forward expeditiously while a case involving a serious use of force is being considered by the USAO. The objective should be to minimize any additional investigation once the case has been returned to MPD, and to complete the IAD administrative investigation and investigative report within 30 days of the time the letter of declination is received. The IAD investigator's performance evaluation should explicitly consider the timeliness of the investigations he or she conducts."

MPD agrees in part with this recommendation. In response to concerns that were raised regarding several IAD investigations where it appeared that work did not progress while the case was under review by the USAO, MPD will amend our policies to include language requiring that IAD officials ensure investigators proceed with their investigations to the greatest degree possible (conducting interviews, etc.) while awaiting USAO declination decisions. IAD will also ensure that the timeliness and quality of investigations are considered in IAD investigator performance evaluations. Also, as discussed earlier, MPD is currently exploring having IAD conduct their investigations using MPD's new records management system (i.e., Cobalt). Cobalt provides extensive tracking capabilities to document all of the steps that an investigator takes during an investigation. We believe that moving to Cobalt will greatly enhance our abilities to document investigator activities throughout the investigation.

Recommendation 18: Use of Force Review Board

"MPD should provide members newly appointed to the UFRB with specific orientation and training on their responsibility as UFRB members and the responsibilities of others involved in the UFRB process, including the UFRB Administrator, the Assistant Chief of IAB, the Commander of IAD, and IAD investigators."

MPD agrees with this recommendation. MPD will amend its UFRB policy to require that the UFRB Chairperson conduct an orientation with new Board members to include a review of the policy governing the UFRB, the role of the Board members and IAD, and a discussion of

Board operations.

Recommendation 19: Use of Force Review Board

“The UFRB should actively monitor the progress of IAD in completing use of force investigations and raise concerns about the timeliness of use of force investigations with the Assistant Chief of IAB and, if necessary, the Chief of Police. This will help to avoid cases in which the UFRB’s freedom to take appropriate action is hamstrung because it receives the investigative report so late in the process.”

MPD agrees with this recommendation. MPD is committed to ensuring that use of force investigations are completed in a timely manner allowing the UFRB to conduct a comprehensive review of the incident. This recommendation is consistent with existing MPD policy which requires the UFRB Administrator to “(t)rack the progress of investigations conducted by the Internal Affairs Division and notify the Assistant Chief, Internal Affairs Bureau, regarding any cases that are at risk of missing the 90- day deadline...”¹¹ In addition, we will have the ORM conduct quarterly audits during 2016 to review the timeliness of cases reaching the UFRB for review, And we’ll revisit the issue pending the outcome of the audits.

Recommendation 20: Use of Force Review Board

“The UFRB should enforce the requirement that a Decision Point Analysis be prepared for each case that comes before the UFRB, but should consider transferring the responsibility for preparing the Analysis to the IAD investigator rather than the UFRB Administrator.”

MPD agrees in part with this recommendation. MPD sees the value in decision point matrices, but disagrees with the report recommendations as to when they should be developed and how they should be used. MPD’s experience is that when the matrices are prepared in advance of the Board hearings, there are two significant risks. First, the person who prepares the matrix may unintentionally sway the Board members as to what the decision points in the use of force incident actually are. Second, we do not want to risk creating an environment where our Board members would rely on reading the summaries in advance of the hearing in lieu of reading the actual investigation. We will be revising our policies to require that the matrices be prepared during the UFRB hearings, and they will

¹¹ See GO-RAR-901.09 (Use of Force Review Board), Part V.F.2.b

become part of the record. This will enable a more collaborative approach by all Board members in determining the decision points and help facilitate a robust discussion of the tactical decisions made by the member throughout the entire incident.

Recommendation 21: Use of Force Review Board

“The Review Team recommends that the Board Administrator highlight the most significant pieces of evidence so that each member makes sure to examine those items with special care.”

MPD disagrees with this recommendation. MPD believes that for the Board to function as intended, Board members have the responsibility, as part of their review, to highlight what they find to be the most significant pieces of evidence. Similar to our view on the decision point matrix, we believe there is risk in having the expectation that the Board Administrator be responsible for the identification of the most significant pieces of evidence.

Recommendation 22: Use of Force Review Board

“The UFRB should consult with the Assistant Chief of IAB and the Commander of IAD on a quarterly basis to provide feedback on the quality and timeliness of recent IAD use of force investigations.”

MPD agrees with this recommendation, but feels this communication needs to be done more frequently. The UFRB Chairperson and the Assistant Chief of IAB already communicate regarding the quality and timeliness of investigations and we will ensure this communication is codified in policy and continues.

Recommendation 23: PPMS and Supervisory Support Program

“The officer’s direct supervisor, as well as the second-level supervisor, should in all cases be involved in the SSP review.”

MPD agrees with this recommendation and believes that our current policy supports this recommendation. MPD SOP 07-01 (Personnel Performance Management System (PPMS) and Supervisory Support Program (SSP)) requires that the member’s direct supervisor be involved in the process to include an initial meeting with the member to review the incidents that lead to the SSP, meeting with the member’s other command officials to review the intervention plan with the member, and then meeting every two weeks

thereafter to ensure the member is making sufficient progress with his or her plan. We are currently developing training for all supervisors on PPMS and SSP and will reinforce the critical role that supervisors play in the SSP process.

Recommendation 24: PPMS and Supervisory Support Program

“SSP should be modified to flag officers against whom multiple use of force or misconduct allegations have been lodged even if those allegations were not substantiated.”

MPD agrees in part with this recommendation. One focus of the Professional Conduct and Intervention Board has been to review members who have multiple uses of force within a given time period. It is important to note that the use of force is a necessary component of police work and when used consistent with the law and MPD policy, is an important tool that officers have to protect both themselves and others from harm. However, we also realize that use of force situations present a risk both to the officer and the agency. By having the Board examine officers with multiple uses of force, we can help to identify those officers who may need additional training and support, similar to the recent de-escalation training that we conducted. We will also explore how SSP may be modified to also identify patterns of alleged misconduct, even in those cases where allegations are not sustained (e.g., multiple citizen complaints for similar conduct resulting in a finding of “insufficient facts.”)

Recommendation 25: PPMS and Supervisory Support Program

“MPD’s analysis of PPMS data should focus not only on individuals but also on units and sub-units within MPD.”

MPD agrees with this recommendation. Currently, PPMS’s front-end reporting function is limited and does not provide supervisors with existing reports that can be run to compare units and sub-units. However, a review of the “back-end” PPMS database indicates that there is currently data available that would allow us to analyze information at the element level (e.g., police district, division). We will work with our information technology staff to determine how PPMS might be modified to make reporting on this information more accessible to supervisors, as well as how we can drill down further to individual units (e.g., patrol service areas (PSAs.)) In the meantime, MPD has used our Bureau trend reports as a means to identify use of force and misconduct issues.

Recommendations 26-29: Professional Conduct and Intervention Board

- " ♦ *The PCIB Administrator should prepare an analysis of each case in advance of PCIB meetings. At present, substantial raw material is provided to the PCIB but no analysis.*
- ♦ *The PCIB Administrator should outline remedial options based on review of the officer's record and the PCIB's actions in prior similar cases.*
- ♦ *The Assistant Chief of IAB should direct the PCIB Administrator to circulate in writing, on a quarterly basis, developments in cases previously considered.*
- ♦ *The monthly PCIB meetings should be used to discuss new cases rather than review cases previously discussed. Developments in prior cases should be addressed in writing, distributed to Board members, and can be placed on the agenda if requested by a Board member."*

MPD appreciates the suggestions provided by the Reviewers on ways to potentially improve the operation of the Professional Conduct and Intervention Board. However, as the Board is a relatively new entity within MPD we do not want to commit to implementing these specific recommendations at this time. As we continue to move forward with the Board, we will consider these recommendations and how they may be of benefit.

Recommendation 30: Audits and the Office of Risk Management

"ORM must be operated under leadership capable of formulating and directing substantive audits, including MOA-related audits."

MPD agrees with this recommendation. MPD remains committed to ensuring ORM command officials conduct substantive and comprehensive audits.

Recommendation 31: Audits and the Office of Risk Management

"ORM's annual audit plan should contain a significant percentage of audits focused on MOA-related issues."

MPD agrees in part with this recommendation. MPD will ensure that MOA-related audits are conducted on an annual basis. However, the number of MOA audits will be dependent on the risk factors faced by the Department each year. Based on our discussions, we are concerned that the term "significant percentage" may be interpreted differently among readers with some assuming that the intent of the recommendation is to have as many as

50 to 75% of audits focused on MOA-issues. Based on our discussions, it does not appear that is the intent of the recommendation, and we suggest that the recommendation be reworded.

Recommendation 32: Audits and the Office of Risk Management

“ORM should provide its annual audit plan to the District of Columbia Auditor and the District of Columbia Office of the Inspector General.”

MPD disagrees with this recommendation. MPD develops its audit plan as a blueprint for the year, based on the issues identified by the Chief and other command staff members where we feel we additional review and focus may be warranted. We do not want to unintentionally stifle members from making suggestions for the plan if they feel the document will have a wider distribution.

Recommendation 33: Review of Officer-Involved Fatal Shootings

“MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue.”

MPD agrees in part with this recommendation. As we discussed with the Reviewers, it is completely legal and appropriate for a law enforcement officer to pursue a person who flees from them on foot. Officers are trained that flight alone is not sufficient cause for a stop, but other properly articulated factors, such as the discarding of contraband, may form the basis for a stop. MPD does agree to revisit guidelines and/or training on the issue of foot pursuits to reinforce our policy.

Recommendation 34: Review of Officer-Involved Fatal Shootings

“MPD should provide specific intensive training for handling officer-involved shooting cases and limit the handling of those cases to a small number of skilled and experienced IAD investigators.”

MPD agrees in part with this recommendation. As described in our response to Recommendation 12, MPD does not agree that there should be use of force specialists within IAD. MPD is committed to ensuring all IAD investigators are both capable and engaged in conducting comprehensive use of force investigations. We believe the basic

principles of investigations are consistent regardless of the investigation type. These principles can be applied, and with the proper training and retraining, will ensure quality, comprehensive investigations in use of force as well as police misconduct. As described earlier in this response, going forward we will document the core curriculum that all IAD investigators must receive upon being assigned to the unit, to include specific training on use of force investigations and ensure those training records are maintained.

Recommendation 35: Review of Officer-Involved Fatal Shootings

“Once MPD completes the preliminary investigation of the officer-involved shooting in the first 24-72 hours after the incident and the cases has been referred to the USAO, the investigator, in consultation with his or her supervisor, should develop a detailed investigative plan which, as recommended above, is designed to complete the MPD administrative investigation within 30 days of the incident, with the exception of forensic reports and interviews of the involved officers.”

MPD agrees in part with this recommendation. MPD is committed to conducting timely investigations and will ensure that the revised IAD manual includes policies to ensure case progression. However, as described earlier in this report, interviews may be delayed for follow-up because the investigator wants to be armed with additional information not yet available prior to conducting the interview. Investigative plans must be flexible to accommodate the specific facts and circumstances of each case. Accordingly, we do not believe a 30 day deadline is reasonable for completing all aspects of the investigation with the exception of forensics and interviews with the involved officers.

Recommendation 36: Review of Officer-Involved Fatal Shootings

“MPD should modify its Use of Force Investigations General Order to address the problems created by using leading questions during investigative interviews and counsel IAD investigators to avoid using them to the maximum extent possible.”

MPD agrees in part with this recommendation. MPD will add language to our Use of Force Investigations General Order reminding investigators to avoid using leading questions to the greatest extent possible. **However, it is important to note that the report points to only one investigation as an example of where leading questions were used.** MPD agrees with the reviewer’s assessment of that specific case. However, it appears that based on the draft report that is the only case where interviews were uncovered with leading questions. MPD understands the importance of ensuring leading questions are not part of an interview, and

as discussed, MPD selected a new vendor to provide training on interview and interrogations to ensure our investigators were provided with high quality training. In September, 2014, IAD investigators attended two days of training on this topic provided by Wicklander-Zulawski and Associates. Accordingly, we are concerned that as the recommendation is currently written, readers may interpret that MPD has a “problem” with investigators using leading questions in interviews. However, based on the draft report, it appears that the leading questions were only observed in one case. In fact, the report discusses that leading questions were not used in the other investigations that were reviewed. We request that the report be modified to reflect that this is not a systemic issue.

Recommendation 37: Assault on Police Officer Review

“DC’s misdemeanor Assault on Police Officer statute should be amended so that the elements of the offense require an actual assault rather than mere resistance or interference with an MPD officer.”

MPD agrees with this recommendation. As described earlier in this response, the Mayor, at the request of the Chief of Police, has also introduced legislation (the *Public Safety and Criminal Code Revisions Amendment Act of 2015*) to clarify the elements of the assault on a police officer charge, and create a specific offense of resisting arrest that is more comparable to other jurisdictions.

EXHIBIT J

**Metropolitan Police Department's Response to the Executive Summary
of the Draft Report "*The Durability of Reform:
MPD and Use of Force, 2008-2015*," dated December 7, 2015**

The following information is being provided in response to the draft executive summary provided to the Metropolitan Police Department (MPD) on January 6, 2016.

Page 5, Second Full Paragraph

"The cumulative effect of those changes has been to remove certain less serious types of use of force – hand controls and individual and team takedowns – from the reporting and investigation requirements originally established by the MOA."

MPD requests that this sentence be revised to read, *"The cumulative effect of those changes has been to remove certain less serious types of use of force when there is no injury or complaint of pain –hand controls and individual and team takedowns—from the reporting and investigation requirements originally established by the MOA."*

Page 6, First Full Paragraph

"Accordingly, we have recommended that MPD reinstate use of force reporting for certain less serious uses of force – i.e., hand controls and resisted handcuffing – and that it reinstate use of force reporting and investigations for individual and team takedowns."

MPD requests that a sentence be added to clarify that MPD has already agreed to reinstate the requirement for reporting team takedowns.

Page 6, Second Full Paragraph

"The MPD attributed this bias to FIT investigators being members of the police union."

MPD requests that this sentence be removed. MPD believes the language used on page 19 of the draft report accurately describes the merger, *"Multiple MPD senior managers advised us that they became concerned that FIT members, all of whom were (and had been since FIT's inception) members of the police union, had found certain uses of forces to be justified (and consistent with MPD policy) when an objective review of the facts did not support that conclusion. Following the 2012 merger, all IAD members were prohibited from joining the police union, eliminating the potential conflict of interest inherent in having an officer investigate a fellow union member."*

Page 8, First Full Paragraph

"...six-year period of independent monitoring."

MPD requests that this sentence be revised to read, "*...six-year period of independent monitoring, 2002 through 2008.*"

Page 8, Second Full Paragraph

"...the MPD administrative investigation appears to be neglected while the case is being investigated and considered by the USAO and that investigative steps that could be taken without adversely affecting the criminal prosecution."

MPD disagrees that the administrative investigation is "*neglected.*" IAD investigators work with the USAO to take investigative steps for criminal review and potential prosecution as has been the practice since the inception of the old Force Investigation Team and during the entire period of the Memorandum of Agreement with the Department of Justice.

Page 9, Second Full Paragraph

"Our observation of the UFRB's meetings and discussions confirmed the importance of these difficulties caused by IAD's setting the case aside while the USAO considers it."

MPD objects to the characterization of IAD "*setting the case aside*" while the case is under USAO review. As described above, IAD investigators work with the USAO and take the investigative steps necessary for criminal review to aid the USAO in their decision on whether or not to proceed with prosecution.

Page 11, Second Full Paragraph

"According to MPD, 15-20% of SSP cases result in referrals to MPD's Employee Assistance Plan."

MPD requests that the Review Team add language regarding the other potential outcomes of SSP cases to include training and increased supervision.

Page 17, First Paragraph

"As discussed at length in the report, this lack of attention to moving forward with assembling the administrative investigation while IAD awaits a prosecution decision creates problems for the timely completion of the IAD investigation and for the UFRB's full and unhurried consideration of the case."

MPD disagrees with the characterization that there is a "*lack of attention to moving forward.*" Most of the investigative steps are taken during the preliminary investigation and the days immediately following the incident, as well as during the time the case is being reviewed by the USAO. What is not currently done in all cases, and should be, is that the

investigator should write the final report and then insert the other steps once a declination has occurred.

Page 17, Second Full Paragraph

"In some cases, relatively trivial instances of non-violent non-compliance with police officer commands led to misdemeanor arrests for assault on a police officer."

MPD requests that this sentence be clarified. The report should specify the number of cases and whether the behavior in those cases was illegal (i.e., did it fall within the APO statute as currently written).

Page 18, First Full Paragraph

"The likelihood of an officer using force is high in incidents where the officer claims that he has been the victim of an assault, especially in felony APO cases where the statute requires the officer to suffer "significant bodily injury."

MPD reiterates our request that the Review Team include data or references to support the assertion that the likelihood of an officer using force is high in incidents where the officer claims having been the victim of an assault.

Page 18, Third Full Paragraph

"Our review was sufficiently limited that we were unable to determine whether the low percentage of reported uses of force in felony APO cases reflects the under-reporting of uses of force, the over-charging of felony APO, or some measure of both."

MPD reiterates our objection to this statement. As previously stated, it is an opinionated and unsupported guess that there should be a large number of reportable uses of force in felony APO cases, and the draft report provides no data to support this assumption. Furthermore, as written, the report insinuates that there were unreported uses of force by MPD. The Review Team's findings that 91% of uses of force were reported by MPD members in accordance with MPD policy and the finding that there is a "lack of evidence that excessive use of force has been a problem within MPD in recent years"¹ directly contradict that conclusion.

Page 19, Third Full Paragraph

"Specifically, MPD no longer requires the reporting and investigation of certain relatively less serious uses of force, up to and including individual and team takedowns."

MPD requests that this sentence be revised to read, "Specifically, MPD no longer requires the reporting and investigation of certain relatively less serious uses of force when there is no injury or complaint of pain, up to and including individual and team takedowns."

¹ See December 7, 2015 draft "The Durability of Reform: MPD and Use of Force, 2008-2015", page 35.

Page 20, First Full Paragraph

“Unfortunately, the intensive and continuing training needed to maintain high-quality use of force investigations has not occurred. The result is insufficiently trained use of force investigators who perform inadequate use of force investigations and produce unsatisfactory use of force investigative reports. Stakeholders in the process with whom we spoke – members of the UFRB, lawyers in the USAO, and members of IAD themselves – share this view.”

MPD disagrees with the Review Team’s assessment that intensive and continuing training has not occurred. MPD has provided documentation of both the 80 hour training provided during the 2012 FIT and IAD merger as well as the subsequent IAD in-service training that occurs annually. As previously reported, the USAO requested a video of the 2012 training because they wanted to use it to train DOJ attorneys on use of force investigations. We also reiterate our request that the report include the total number of IAD use of force investigations that were reviewed. We have concerns that these generalized allegations cannot be supported based on the limited number of IAD use of force investigations reviewed by the Review Team, to include the three cases that were hand-picked for inclusion. We are not aware of any case identified by the Review Team where they feel the investigator reached an incorrect finding. However, describing MPD use of force investigations as “inadequate” will lead some readers to believe this is the case.

EXHIBIT K



U.S. Department of Justice

Channing D. Phillips
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

December 21, 2015

VIA FEDEX AND EMAIL

Michael R. Bromwich, Esquire
The Bromwich Group LLC
901 New York Avenue, N.W.
Washington, D.C. 20001

Re: Comments on the Draft Report: The Durability of Reform: MPD and Use of Force, 2008-2015

Dear Mr. Bromwich:

The United States Attorney's Office for the District of Columbia ("USAO-DC") thanks you for providing us with a draft copy of the report, entitled "The Durability of Reform: MPD and Use of Force, 2008-2015" (hereinafter, the "draft Report"), and for the opportunity to provide comments on the draft Report. Although we may disagree with certain of the draft Report's statements and findings, as discussed more fully below, we share the Review Team's overall objective to ensure that the policies, practices, and training of the District of Columbia's Metropolitan Police Department ("MPD") remain consistent with both the terms of a June 2001 Memorandum of Agreement ("MOA") between MPD, the District of Columbia, and the United States Department of Justice ("DOJ") and best practices. To that end, we are hopeful that you will take our comments set forth below into account in finalizing the draft Report.

Our comments below fall into three categories: (a) a request that the final Report not comment on ongoing investigations; (b) responses specific to the USAO Referrals process; and (c) general comments on the draft Report.

Commenting on Ongoing Investigations

We object to the Report commenting on ongoing investigations and would request that the Review Team strongly consider removing from the final Report any discussion of ongoing investigations. We are certain that the Review Team would agree that a "best practice" with respect to any investigation of a *potential* crime is to refrain from commenting publicly on an ongoing investigation. As a contractor working on behalf of the District of Columbia, it is

possible that the Review Team's statements might be viewed as party admissions and that its files related to these investigations may be deemed discoverable if the Review Team makes admissions. When assessing whether to bring charges, we will necessarily have to consider any public statements that the Review Team has made about our ongoing investigations and have to consider what impact, if any, those statements have on the viability of any prosecution we might be contemplating. As such, it is possible that the Review Team's statements, alone, could be a dispositive factor in determining whether we proceed with a criminal prosecution. And if we do proceed with a criminal prosecution of a matter on which the Review Team has opined publically, we will need to obtain all discoverable information in its possession related to the matter on which it opined.

The risk of commenting publically seems particularly unwarranted when the Review Team's ability to review these ongoing investigations was so limited. As the draft Report notes, "our review of two of the three officer-involved fatal shootings was sharply limited because of the incomplete state of the MPD administrative investigations into those matters," *see* draft Report at p. 3, n. 4. As will be discussed in greater detail below, the Review Team's lack of visibility into our ongoing criminal investigations makes it impossible for the Review Team to know what investigative steps have been taken to date. Moreover, simply because the MPD administrative investigative file does not reflect that a certain step occurred, does not mean that IAD and USAO-DC have not already taken the investigative step. When the Review Team weighs the inherent limitations of analyzing ongoing investigations against the significant risks of commenting on these ongoing investigations, we hope that it will agree to remove the portions of the draft Report that comment on ongoing investigations in their entirety.

USAO Referrals (Pages 52-55)

This section of the draft Report discusses issues related to, among other things, the length of time MPD use-of-force investigations are pending at USAO-DC. As the draft Report correctly notes, all serious use of force and uses of force indicating potential criminal misconduct by an MPD officer must be reviewed by USAO-DC to determine whether the officer will be criminally prosecuted. As an initial matter, we believe that the final Report should drop "and Declinations" from the Section heading. The heading suggests that every referral will result in a declination.

As discussed below, we believe that this section of the draft Report, which begins by noting statements by MPD officials concerning a recent "pattern of delays" in the length of time MPD use-of-force investigations are pending at USAO-DC, oversimplifies both "use-of-force cases" and the factors that the draft Report characterizes as contributing to a "pattern of delays." The draft Report contrasts the more recent purported "pattern of delay" with how "use of force cases were handled from 2002 through 2008." Draft Report at p. 53. The draft Report states that "[d]uring that time period" USAO-DC "generally completed its reviews within a few weeks if not days." We are unaware of the data that the Review Team relied upon to conclude that USAO-DC, from 2002 through 2008, "generally completed its reviews" of use-of-force cases, particularly officer-involved shooting investigations, "within a few weeks if not days." We would appreciate it if you could provide us with the empirical data or other evidence (beyond anecdotal accounts) the Review Team relied upon for that statement in the draft Report,

particularly the specific types of “use-of-force cases” in which the reviews were completed “within a few weeks if not days.”

The reason such data and validation are important is because, as drafted, this section of the draft Report could be misconstrued as suggesting that all “use-of-force cases” are the same and should be treated the same by USAO-DC. By contrast, other parts of the draft Report note the different types of “use-of-force cases,” ranging from the most serious use-of-force cases, such as intentional firearm discharges, to other types of use-of-force cases, including ASP, canine bites, OC spray, and hand controls/tactical takedowns. While USAO-DC in the past may have generally completed its reviews – and continues to complete its review – “within a few weeks if not days” for less severe use-of-force cases, the more serious use-of-force cases necessarily require more time being investigated by MPD and reviewed by USAO-DC. Given that the use-of-force policies and practices of police departments across the country “have been the focus of community unrest, DOJ civil rights investigations, and intense media scrutiny,” as noted in the draft Report, *see* draft Report at p. 1, it is unlikely that the Review Team intended to suggest that USAO-DC should as a matter of regular practice have as its objective to complete its review of the most serious use-of-force cases, including officer-involved fatal shooting cases, “within a few weeks if not days.” Along these lines, the draft Report frequently slips back and forth between describing these investigations as “use of force” and “officer-involved shootings [or fatalities].” We would ask that the final Report replace “use of force” in this Section with “officer-involved fatality” because the issues the draft Report discusses in this Section are unique to officer-involved fatality investigations.

The distinction in the severity of the use of force is also important because, as drafted, this section of the draft Report equates “this important change” in the amount of USAO-DC’s review time for “use-of-force cases” generally to the most serious use-of-force cases, namely review of officer-involved fatal shooting cases. The draft Report identifies the “Length of Review” for twenty-two fatal shootings between 2009-2014 as evidence to support “MPD’s contention that extended delays in the USAO’s handling of such cases have been the rule rather than the exception.” Draft Report at p. 53. Here, again, we are unaware of the data that the Review Team relied upon to conclude that USAO-DC’s reviews of officer-involved fatal shooting cases from 2009-2014 experienced “extended delays” as compared to the review periods for those same types of use-of-force cases from 2002 through 2008. As before, we would appreciate it if you could provide us with the empirical data or other evidence the Review Team relied upon for its implied conclusion that USAO-DC’s review of officer-involved fatal shooting cases from 2009-2014 was materially longer than it was during 2002-2008.¹

In addition, the draft Report oversimplifies the term “Length of Review” at USAO-DC and, as a result, provides a misleading account of the actual amount of time that the most serious use-of-force cases are actually “pending” at USAO-DC. Although this may not have been intended by the Review Team, the draft Report appears to equate the term “Length of Review” entirely to USAO-DC’s review of the case. As you know from your Review Team’s own

¹ We also note the following errors on Page 53 of the draft Report: it is “James Miller,” not “Jaames Miller”; it is “Cleman Sweptson,” not “Cleman Sweeppson”; McFarlin was declined on November 10, 2011, not September 5, 2009, so this fatality was not declined in a single day; Flythe was declined on June 18, 2011; and Murphy was declined on July 13, 2015.

analysis as well as from your interviews with the two experienced career prosecutors in USAO-DC's Fraud and Public Corruption Section who specialize in use-of-force cases, the length of time between the date of the incident and USAO-DC's completion of its review in officer-involved shooting investigations is attributable to several factors beyond USAO-DC's control, including the following:

- The amount of time that it takes IAD to complete its investigation of the incident. In officer-involved fatal shooting investigations, IAD generally notifies USAO-DC within hours of the incident. But because of the seriousness of the incidents, together with their attendant complexities, the investigation by IAD generally takes a matter of months, rather than days or weeks. In addition to the amount of time such complex matters generally take, the two prosecutors interviewed by the Review Team noted specifically that the lack of experience by certain IAD investigators in investigating the most complex use-of-force investigations had contributed over time to a decrease in the quality of the investigative reports provided to USAO-DC. As a result, there were often times in the officer-involved fatal shooting investigations that IAD considered its investigation to be complete, but USAO-DC's review of the investigative reports concluded that additional investigative work by IAD was necessary. In fairness to USAO-DC, one way to more accurately depict the "Length of Review" at USAO-DC for reasons solely attributable to USAO-DC would be to determine the amount of time it took for USAO-DC to resolve its review of a matter from the date that IAD submitted the last piece of evidence to USAO-DC. As you will recall, at your request, we provided you with specific examples where IAD's internal records specified a date for the "last piece of evidence" submitted to USAO-DC when, in fact, IAD continued to provide evidence to USAO-DC weeks and months after that purported date.
- The amount of time it takes other agencies, beyond IAD and USAO-DC, to complete their investigations of the incident. Regardless of the qualifications of IAD's investigators, or the diligence of USAO-DC's reviewing prosecutors and supervisors, the length of most reviews for officer-involved fatal shooting cases are necessarily dependent, in part, upon the amount of time it takes other agencies to complete their reviews. In the vast majority of officer-involved fatality cases, the completion of IAD's investigation and the ultimate review by USAO-DC must await a report by the District's Medical Examiner, which generally takes at least three to four months and sometimes longer. For example, USAO-DC declined Nathaniel McRae on December 15, 2015, but the McRae case was not brought to USAO-DC until February 10, 2014, and USAO-DC did not receive the autopsy report until October 2014. As such, for nearly a year-and-a-half of the two-and-a-half year period you cite, USAO-DC lacked the evidence needed to assess the case.
- In other cases involving fatalities, IAD's investigation and USAO-DC's review must await findings by other agencies. For example, in the matter involving Raphael Briscoe, the draft Report suggests that the matter was "pending" at USAO-DC for nine months. As we explained to the Review Team, however, that particular matter required enhancement of a videotape, which took over six months to obtain, before

finalizing our determination. In this regard, the draft Report incorrectly states that “this video enhancement was not completed until after the submission” of MPD’s final report. *See* Draft Report at p. 77. To the contrary, we intentionally waited for an enhancement of the video before making our final determination, and MPD’s final report came out after our final determination.

- Similarly, in the matter involving Michael Abney, the draft Report suggests that the matter was “pending” for 10 months (293 days). The draft Report states that the Abney case was “reviewed by the Criminal Division of the Department of Justice.” Draft Report at p. 54 n.93. Please note that the Abney case was reviewed by the Department of Justice’s Civil Rights Division, Criminal Section (the “Criminal Section”). As we understand the purpose of this chart, Abney should not be on the chart because it was not investigated by USAO-DC. To the extent that Abney remains on the chart or is otherwise referenced in the Final Report, the Criminal Section has requested that we pass along to you their following comment on the draft Report: “The Civil Rights Division, Criminal Section, not the USAO, reviewed the fatal shooting of Michael Abney solely for the purpose of assessing whether the incident evinced prosecutive merit under the federal criminal civil rights statutes to include §§ 18 U.S.C. § 241 and 242. The Criminal Section’s review does not speak to whether violations of department policy or other local statutes occurred. The Criminal Section’s review was delayed significantly as it waited for the Division of Forensic Science to provide the firearms report relevant to this incident. Despite requests of the Department of Forensic Science from January to July 2015, by the Criminal Section, the USAO, MPD, and the USMS, the Criminal Section did not receive the firearms report until July 2015. Ultimately, the Criminal Section declined prosecution on August 3, 2015.”

In addition, the table on pages 53-54 of the draft Report is another instance of the draft Report conflating officer-involved fatal shootings involving MPD Officers with the number of fatality investigations that IAD and USAO-DC investigate and review. A recurring issue is that the draft Report conflates the number of incidents involving MPD Officers with the number of cases that IAD and USAO-DC investigate. As you are aware, IAD and USAO-DC investigate use-of-force matters involving law enforcement officers who are not MPD Officers, including federal law enforcement officers, special police officers, and officer-involved shootings in the District by Officers from surrounding jurisdictions (such as Prince George’s County, Maryland). By way of example, the chart does not include the police-involved fatality of the woman who crashed her car into a U.S. Secret Service barricade.² In assessing the reasonableness of the length of time for IAD investigations and USAO-DC’s review of those investigations, we think it is important to accurately note the number of matters on which we are working.

We acknowledge that one factor that has contributed to the length of the review time for officer-involved shooting cases at USAO-DC is the internal review procedures within USAO-DC. Based on the multitude of factors that contribute to the length of review for such cases,

² As such, the chart on page 12 of the draft Report is incomplete concerning the number of officer-involved fatalities investigated by IAD and USAO-DC: IAD and USAO-DC investigated 10, not 8, fatalities that occurred in 2009; 9, not 5, fatalities that occurred in 2012; and 6, not 5, fatalities that occurred in 2013.

including many that are outside the control of either IAD or USAO-DC, we think that it is both unfair and unsubstantiated for the draft Report to attribute “much of the delay” in those cases to the internal review procedures within USAO-DC. Although both prosecutors interviewed by the Review Team mentioned the internal review procedures as a contributing factor in the length of review time for such cases, it is not their recollection (nor that of their supervisor, who sat through both interviews) that they attributed “much” of the delay to the internal review procedures.

In addition to exaggerating the impact of USAO-DC’s internal review procedures on the amount of time officer-involved fatal shooting cases take to be resolved by IAD and USAO-DC, the draft Report makes no mention of the critical role USAO-DC’s internal review procedures are required to play in officer-involved shooting cases. In these types of cases, IAD is investigating and USAO-DC is reviewing potentially serious criminal offenses involving possible violations of citizens’ civil rights under federal law and other possible violations under the criminal laws of the District of Columbia. Although finding a sustained violation of those serious criminal offenses is rare, the rigor of IAD’s investigation and USAO-DC’s review must be commensurate with the seriousness of the conduct under review.

Nor does the draft Report attempt to determine the causes of, or any potential improvements associated with, the more rigorous internal review procedures implemented by USAO-DC. To our knowledge, the Review Team did not ask to speak with USAO-DC supervisors involved in revising or implementing the internal review procedures to determine, among other things, (a) any perceived or actual deficiencies in the pre-existing internal review procedures that the changes were designed to improve, (b) any perceived or actual improvements obtained as a result of the more rigorous internal review procedures, or (c) any perceived or actual downsides of the more rigorous review procedures. Instead, the draft Report concludes – with no real factual basis – that the “main consequence” of the changes made to USAO-DC’s internal review procedures “seems to have been to create obstacles to the prompt completion of MPD’s administrative investigation.” Draft Report at p. 55.³ Please let us know if the Review Team is interested in meeting with supervisors at USAO-DC to learn more about the reasons for the changes to our internal review procedures as well as any positive or negative consequences of them in handling the most serious use of force investigations.

Moreover, we were receptive to MPD’s complaints about delays attributable to USAO-DC’s internal review procedures, having also identified the issue ourselves. We have been working both with MPD/IAD and internally to correct the issue. As a result of recent modifications to our internal review procedures, we have reduced the backlog of officer-involved shooting cases from six cases pending for over a year to one such case pending for over a year.

³ We also disagree with the implication in the draft Report that, in officer-involved fatal shooting cases, either IAD or USAO-DC should place “the prompt completion of MPD’s administrative investigation” above the need for a first-rate use of force investigative report by IAD and a comprehensive review by USAO-DC. Although we are certain that the Review Team did not intend to suggest otherwise, this is another consequence of the draft Report oversimplifying use-of-force investigations and lumping generic “excessive use of force” cases with the most serious “officer-involved fatal shooting cases.”

Given the seriousness of officer-involved shooting cases, the general complexity of most of those cases, and the number of different investigative agencies normally involved in them, we disagree with the draft Report's recommendation "that MPD and USAO establish a goal of completing the USAO review of the most serious use of force cases within six months." Draft Report at p. 55. We think a more realistic and responsible time frame for completing USAO-DC's review of the most serious use-of-force cases would be a nine months presumptive review period, not six months. Nine months is consistent with the amount of time that an individual charged with first-degree murder, second-degree murder, or assault with intent to kill may be detained, pre-trial, while USAO-DC conducts a grand jury investigation. See DC Code §§ 23-1322, 1325; District of Columbia Rule of Criminal Procedure 48(c). Consistent with the reasoning underlying those provisions, nine months provides a reasonable amount of time to investigate and review those types of alleged criminal violations, which includes the time required to obtain, analyze, and review the types of external, third-party reports inherent in such complex criminal investigations.

General Comments

As we reviewed the draft Report, we noted several areas where we believed either some of the information was inaccurate or we could suggest ways of helping to address unresolved issues. We ask you to consider each of the following points:

- Page 15 – We are not sure how the Review Team quantified the total number of allegations of excessive force, but we would note that in every year since at least 2009, we have reviewed in excess of 100 use-of-force referrals.
- Page 46 – We appreciate your noting that the training session provided by USAO-DC in 2015 was "helpful and relevant." We would note that we sent two supervisory attorneys and one senior civil rights attorney to conduct different portions of the training. Also, we note that the draft Report discusses the Review Team's inability to compare the 2015 training to the 2012 training because of a lack of documentation of the 2012 training. It is USAO-DC's understanding that the session was recorded, and we would be more than willing, in any way that we can, to help you obtain a copy of the recording.
- Pages 55-58 (Generally) – As an initial matter, we would object to IAD conducting an administrative investigation that is separate and apart from an ongoing criminal investigation. All of the witnesses whom IAD might interview and the evidence that it might gather for an administrative review could impact not only the use-of-force investigation, but also separate criminal prosecutions. By way of example, it is common for our use-of-force investigations to relate to force used to detain someone who allegedly committed a crime (*e.g.*, shooting an armed suspect who allegedly just committed an armed robbery or a canine biting a suspect who is fleeing from a crime scene). A separate IAD administrative investigation might not only negatively impact the use-of-force investigation, but it also could have significant ramifications for the underlying criminal case. If IAD is not working in close consultation with USAO-DC, IAD could inadvertently damage potential prosecutions. Moreover, the facts needed by IAD to make administrative determinations are frequently developed during the USAO-

DC's criminal investigation. Indeed, outside of interviewing subjects of criminal investigations who did not agree to be interviewed during the criminal investigations, it is our understanding that it is uncommon for IAD to need to conduct any significant amount of additional investigation once the criminal investigation is complete. Accordingly, the emphasis on concurrent investigations seems to be misplaced. USAO-DC does agree, though, that IAD can update its final report to reflect the evidence uncovered during the criminal investigation (except, of course, for evidence subject to secrecy protections) as the criminal investigation progresses, rather than waiting for the criminal investigation to be completed before beginning its final report.

- Page 77 – As noted above, the statement “this video enhancement was not completed until after the submission of [MPD’s] Final Report” is inaccurate. To the contrary, we specifically wanted to wait for an enhancement of the video before making our final determination. This example highlights the need to balance the desire to complete the investigations quickly against the need to thoroughly investigate officer-involved fatalities and to wait for all relevant analyses to be completed. As the draft Report is currently written, it implicitly criticizes USAO-DC on Page 55 for taking more than six months to resolve this case and then implicitly criticizes the FIT team—and by implication USAO-DC—on Page 77 for resolving this case too quickly and not waiting for key evidence.
- Page 81 – You note that “Officer Leo’s actions could be considered consistent with MPD’s policies and training curriculum” In light of the fact that this statement allows for the possibility that Officer Leo’s actions were inconsistent, we think it important to note that there was a civil trial and the jury did not find civil liability.
- Page 83 – Again, the FIT investigators were part of the investigative team that conducted the criminal investigation. In making their administrative decision, they relied on work performed in furtherance of the criminal investigation. It is not accurate to suggest the administrative investigation ceased for the duration of the criminal review.
- Page 84, n. 147 – In characterizing the District Court as providing “withering criticism,” we think it important to note that the jury did not find the District liable.
- Pages 84-88 (Generally) – Please remove any references to USAO-DC in this section. As noted above, USAO-DC had no role in this investigation.
- Page 86 – Preliminary Reports are prepared within days of an incident occurring. Firearms reports are never completed before Preliminary Reports and relevant radio transmissions are rarely retrieved in this short of a timeframe. As such, it is unremarkable that the preliminary report did not mention either these items or any subsequent investigative results obtained after completion of a “preliminary” report.
- Page 88-92 (Generally) – We ask that you remove from the final Report any discussion of this ongoing criminal investigation, particularly because the Review Team was “limited solely to the preliminary investigative file,” *see* draft Report at p. 88. As such,

when the Review Team identifies “follow-up” items that still need to be done, the Review Team does not know whether those issues have already been addressed through the criminal review. The draft Report concedes that its ability “to conduct a full review of the Gray case was limited,” *id.* at 92. As noted above, when weighing the necessarily limited nature of the Review Team’s findings against the risk of commenting on an ongoing investigation, USAO-DC asks that the Review Team adopt a general rule of not commenting on ongoing investigations.

- Page 104 – When the draft Report concludes “we found the system for conducting criminal and administrative investigations to be plagued by significant delays,” we again ask that the final Report distinguish between unnecessary delay and time required to prepare a first-rate investigative report and to conduct a comprehensive review. Indeed, in two of the matters the Review Team examined—Briscoe and Abney—there were critical analyses that were not completed until more than six months after the incident. Obviously, the Review Team would not consider waiting for these results to be “delay.”

If you have any questions or need additional information, please feel free to give me a call.

Sincerely,

CHANNING D. PHILLIPS
UNITED STATES ATTORNEY

By:



Jonathan M. Malis
Chief, Criminal Division

Cc: James Felte, Deputy Chief
Civil Rights Division, Criminal Section

EXHIBIT L



U.S. Department of Justice

Channing D. Phillips
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

December 24, 2015

VIA FEDEX AND EMAIL

Michael R. Bromwich, Esquire
The Bromwich Group LLC
901 New York Avenue, N.W.
Washington, D.C. 20001

Re: Comments on the Draft Report: The Durability of Reform: MPD and Use
of Force, 2008-2015

Dear Mr. Bromwich:

In response to my letter to you, dated December 21, 2015, you sent me a series of follow-up questions via email the following afternoon, December 22, 2015. Below please find your follow-up questions reproduced in full (with one noted redaction) and the responses of my Office, the United States Attorney's Office for the District of Columbia ("USAO-DC").

Follow-up Question 1: You request (pp. 1-2, 8-9) that the report not address ongoing investigations. We understand that request to be limited to our assessment of the Gray case. To more fully evaluate your concerns, please specifically advise which aspects of our discussion of the Gray case implicates the concerns about party admissions mentioned in your comments and, most importantly, which statements in the draft report could pose a threat to "the viability of any prosecution we might be contemplating."

USAO-DC Response: Although our Office's specific interest in this issue is limited to the Gray matter, we note that the Abney matter, which was reviewed by DOJ's Civil Rights Division, Criminal Section, may remain under administrative investigation by IAD. Regardless, we continue to hope that the Review Team will agree to remove the portions of the draft Report that comment on ongoing investigations in their entirety. Because the Gray matter is an ongoing investigation, and because our correspondence with you on this topic may become public before or after completion of our review, we cannot be any more specific in our objection to the Report commenting on ongoing investigations.

Follow-up Question 2: Your comments (p. 2) question our assertions that delays in reviewing serious use of force cases have increased since 2008. We based our assertions on our experience in monitoring MPD from 2002 through 2008 -- including contacts with civil rights lawyers within the USAO during that period -- and multiple recent conversations with senior MPD officials. If you have evidence to the contrary for the period 2001-08, we would be very interested in obtaining it from you.

USAO-DC Response: If we had known that the Review Team intended to comment publicly on the length of time it took USAO-DC to review serious use-of-force cases from 2002 through 2008, and that it intended to conclude publicly that such review periods were generally shorter than the length of such reviews for similar cases from 2009 through 2014, then we could have attempted to obtain the case files for those matters and perhaps other internal material to attempt to validate such a conclusion. Such a process would have been very time consuming, and validating such a conclusion would have been very difficult given the passage of time and the variety of factors, as discussed in our initial response to you, which contribute to the length of IAD's investigation and USAO-DC's review of serious use-of-force cases. In short, we do not have evidence that either supports or refutes the draft Report's conclusions, and we have not attempted to gather such evidence given the time it would take to collect and analyze such data together with your stated intent to release the final Report publicly by the end of the first week in January. While the Review Team may have documents or information that have not been shared with us, we hope that the Review Team reconsiders basing such important public statements on what appears to be anecdotal accounts of what occurred in the period 2001-08.

Follow-up Question 3: Your comments (p. 6) raise the fair and important questions of whether "the more rigorous internal review procedures implemented by USAO-DC" several years ago in connection with officer-involved fatal shooting cases were a) implemented in response to perceived or actual deficiencies in the pre-existing internal review process the changes were designed to improve; b) whether such review procedures produced perceived or actual improvements; and c) any perceived or actual negative consequences of the more rigorous review procedures.

We are interested in all of these issues. Before deciding whether it is necessary to take you up on your generous offer to interview USAO supervisors, please outline your answers to the three questions you raise. To give them fair consideration, we request them by noon on Thursday, December 24. We are also interested in the recent modifications to the USAO's internal review procedures for officer-involved fatal shooting cases. We would very much appreciate any additional information you are willing to provide on those modifications, including when and why they were implemented.

USAO-DC Response: We appreciate your recognizing that the questions raised in our response to you about our internal review procedures are "fair and important questions." In fairness to you, we should have noted in our response that one of the reasons the Review Team may not have attempted to answer those questions is because USAO-DC was not the subject of your review. Instead, as properly noted in the draft Report, your review was limited to MPD. Although our internal review procedures are one of the factors that impact the amount of time that use-of-force investigations take to complete, which is within the scope of your review

of MPD, we do not think that the details of USAO-DC's internal review procedures are (or should be) within the scope of your review of MPD and, thus, we are not inclined to provide details on those procedures. As we noted in our initial response, we were receptive to MPD's complaints about delays attributable to USAO-DC's internal review procedures, having also identified the issue ourselves, and we have been working both with MPD/IAD and internally to correct the issue.

Follow-up Question 4: You state (p. 7) that it is the USAO's understanding that the 2012 training sessions we discuss in the report were recorded. We have requested from MPD any and all information and evidence regarding the 2012 training and have not been previously advised that any aspect of it was recorded. Is it your understanding that only the sessions provided by the USAO were recorded, or that all blocks of training were recorded (we are most interested in use of force investigations training)? We would very much appreciate your assistance in obtaining any aspect of the 2012 training that was recorded.

USAO-DC Response: We understand that the sessions provided by USAO-DC were recorded, and we are working with IAD to obtain a copy of the videotape for you. In addition, USAO-DC presented as part of the 2012 training a videotape provided by DOJ's Civil Rights Division. We have a copy of that videotape and can provide a copy to you if you are interested.

Follow-up Question 5: Michael Atkinson and I have traded phone calls over the past few weeks, which followed up on questions we originally posed to MPD, which were then relayed to [redacted] of your office. The questions center on the number of criminal prosecutions brought by the USAO (or the Criminal Section of the Civil Rights Division) against MPD officers for the excessive use of force in the course of their service as MPD officers. These would be either Section 242 prosecutions, or other prosecutions for on-duty excessive use of force under federal or DC law. Although we are most interested in any such prosecutions brought since 2008, we would welcome information on any such cases brought since 2001.

USAO-DC Response: We have not attempted to obtain data for all such cases brought since 2001, again, given the time it would take to do so and your stated intent to release the final Report publicly by the end of the first week in January. In an email forwarded to you by MPD on November 12, 2015, one of our line AUSAs listed cases involving excessive use of force for MPD and Department of Corrections (DOC) officers. Of those cases listed in the email, there was one § 242 prosecution in United States v. Victor Bell (2012), which involved a DOC officer who pled guilty to a Civil Rights violation for repeatedly punching an inmate, causing a laceration over his eye. He was sentenced to 10 months in jail and 2 months' home confinement. As part of the plea, the officer had to resign from DOC.

Of the remaining cases listed in the email forwarded to you on November 12, 2015, the following were prosecutions for on-duty excessive use-of-force cases:

United States v. Karen Usher (2015): Now-former CCB technician, convicted following a bench trial of two counts of simple assault for assaulting an arrestee at CCB. She was sentenced to 90 days (Execution of Sentence Suspended (ESS)) on each count.

United States v. Clinton Turner (2013): After a bench trial, MPD officer convicted of simple assault for assaulting (and then arresting) a store employee. He was sentenced to 180 days ESS.

United States v. Kisha Coley (2010): MPD officer pled guilty to two counts of simple assault for hitting an arrestee and another MPD officer with her ASP, and was sentenced to 180 days ESS all but 3 days, and 100 hours of community service. As part of the plea, officer had to resign from MPD.

United States v. Jose Medina (2013): MPD officer convicted of simple assault for hitting a handcuffed arrestee, and was sentenced to 30 days ESS, and 500 hours of community service.

We have not attempted to obtain similar case-related information for MPD officers prosecuted by DOJ's Civil Rights Division over that time period.

* * *

Finally, when you and I spoke on December 22, 2015, you asked for my Office's views on the inclusion of our comments on your draft Report as part of the Report itself. Thank you for soliciting our views. We respectfully request that you include our comments in full in your final Report. That is, please append this letter and my letter, dated December 21, 2015, to your final Report.

If you have any questions or need additional information, please feel free to give me a call.

Sincerely,

CHANNING D. PHILLIPS
UNITED STATES ATTORNEY

By:


Jonathan M. Malis
Chief, Criminal Division

Cc: James Felte, Deputy Chief
Civil Rights Division, Criminal Section

EXHIBIT M



U.S. Department of Justice

Channing D. Phillips
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

January 8, 2016

VIA FEDEX AND EMAIL

Michael R. Bromwich, Esquire
The Bromwich Group LLC
901 New York Avenue, N.W.
Washington, D.C. 20001

Re: Comments on the Draft Report: The Durability of Reform: MPD and Use of Force, 2008-2015

Dear Mr. Bromwich:

In response to my letters to you, dated December 21, 2015 and December 24, 2015, you sent me an Executive Summary of your MPD Report and a redrafted section on the Gray case via email on January 6, 2016, and you asked for our comments on those documents by the close of business today.

Based on our review of the Executive Summary, it appears that you took some of our earlier comments on the draft report into account in preparing the Executive Summary, which we appreciate. Although we continue to take issue with some of the statements in the Executive Summary, particularly those related to our Office's review of officer-involved fatality cases, we will not repeat the concerns that we previously expressed to you in my earlier letters. Instead, as previously requested, we trust that you will include our comments in full in your final Report.

In addition, we note the following comments on the Executive Summary:

- Regarding the blank ("XXXX") at the bottom of page 7: Assuming the summary is referring to MPD officers who were on duty and acting under color of law when the officer-involved fatal shooting occurred, we are not aware of any prosecutions by our Office or by the Department of Justice's Civil Rights Division, Criminal Section.

- Page 8, footnote 5: We have previously noted our concern with the report's imprecise references to the number of officer-involved fatalities investigated by MPD-IAD and reviewed by USAO-DC, which does not account for all of the officer-involved fatalities actually investigated by MPD-IAD and reviewed by USAO-DC. This footnote references 13 officer-involved fatal shooting cases involving MPD officers that were declined between 2011-2015. During that same time period, however, MPD-IAD and USAO-DC collectively investigated 34 officer-involved fatalities and deaths-in-custody, including deaths that occurred after the use of a chokehold, unsecured transportation in an MPD transport wagon, fatal shootings by officers from other agencies (USPP, USCP, USSS, PG County), and three accidental deaths/suicides. Because each fatality occurred in the District of Columbia, they were investigated by IAD and reviewed by USAO-DC. Additionally, in just 2015 alone, there were 8 officer-involved fatalities. While five of these fatalities involved officers from other agencies or Special Police Officers, MPD-IAD investigates and USAO-DC reviews each one. The total number of officer-involved fatalities investigated by MPD-IAD and reviewed by USAO-DC during any time period under review is an important factor in analyzing the reasonableness of the amount of time it takes MPD-IAD and USAO-DC to complete their investigations and reviews, respectively.

- Page 16 (Briscoe case): The summary states the following: "In addition, this case raises the important legal and policy issue of whether flight by a suspect, without additional indicia of criminal activity, is sufficient to warrant pursuit and/or a stop of the suspect. We received conflicting answers on this question from different groups of USAO and MPD personnel with whom we discussed it, underscoring the importance of developing a shared understanding of what the law permits and what prudent policy should authorize." First, we think it is important to clarify that the facts in Briscoe did not involve "flight by a suspect, without additional indicia of criminal activity." To the contrary, the case involved flight plus additional indicia of criminal activity, including activity in a known high-crime area and a bulge observed in the decedent's waistband consistent with a concealed weapon. Although a discussion of this issue might have arisen as a result of discussing the facts in the Briscoe case, we think it is important to clarify that the issue in Briscoe was not whether flight by a suspect, without additional indicia of criminal activity, was sufficient to warrant pursuit and/or a stop of the suspect. Second, we are uncertain what the summary means when it states that the Review Team "received conflicting answers on this question from different groups of USAO and MPD personnel with whom we discussed it," specifically whether different groups of USAO-DC personnel provided conflicting answers on this issue. Please let me know if there were different groups within USAO-DC that provided conflicting answers on this issue. As you know, my Office provided you with a copy of the Supreme Court's decision in Illinois v. Wardlow, 528 U.S. 119 (2000), which addresses, among other things, whether a person's sudden and unprovoked flight from identifiable police officers,

patrolling a high crime area, creates reasonable suspicion under the Fourth Amendment.

Regarding the rewrite of the Gray case, we note that the rewrite states that, based on discussions with MPD, “the USAO’s prosecution decision in the Gray case [i]s not imminent.” The timing of our prosecution decision in the Gray case was not relevant to our overall concern about the Review Team commenting on active investigations, which necessarily involved commenting on incomplete records due to the ongoing nature of the investigation. In addition, MPD’s administrative review will remain ongoing for some period of time after the case is resolved criminally. In any event, if by “imminent” the Review Team means a matter of days, then that is accurate. But beyond that, the Review Team should not make assumptions about the timing of the USAO-DC’s prosecution decision in the Gray case.

Finally, we appreciate the professionalism provided by the Review Team and you, in particular, throughout this process, and we are certain the Review Team’s final report will continue to reflect such professionalism. We understand from the rewrite of the Gray case that the Review Team considered certain of our concerns related to the initial description of the Gray case to be exaggerated. Although we disagree with it, we respect the Review Team’s opinion concerning the *extent* of our expressed concerns. We hope the Review Team, however, will respect that the *reasons* for our expressed concerns were grounded in good faith and well-recognized considerations. Indeed, it is quite common for prosecutors and other law enforcement officials to decline to comment publicly about the facts of an ongoing investigation out of a concern that such public comments could have a negative impact on the investigation, in ways predictable and unpredictable. Thus, we hope the Review Team will refrain from suggesting that our expressed reasons were baseless or otherwise not grounded in good faith, even if the grounds for those reasons are not apparent to the Review Team. In terms of the *timing* of our concerns, in fairness to us, you should note that, until we saw the draft Report, we did not understand that the Report would reference ongoing investigations, as you had previously signed non-disclosure agreements with MPD and had specifically agreed with this Office to exclude from the Report any information related to ongoing investigations that you obtained during your interviews with the senior prosecutors.

As before, we respectfully request that you include our comments in full in your final Report. That is, please append this letter and my letters, dated December 21, 2015 and December 24, 2015, to your final Report.

If you have any questions or need additional information, please feel free to give me a call.

Sincerely,

CHANNING D. PHILLIPS
UNITED STATES ATTORNEY

By:


Jonathan M. Malis
Chief, Criminal Division

Cc: James Felte, Deputy Chief
Civil Rights Division, Criminal Section

EXHIBIT N

Review Team Recommendations, MPD Responses, and Review Team Replies

This report contains thirty-eight recommendations that are presented at various points in the report and collected in Section VII. For each recommendation, this exhibit includes the Review Team's recommendations and MPD's responses to the recommendations contained in its December 22, 2015, comments. In those instances where MPD does not agree to accept and implement the recommendation, we reply to MPD's response.

A. Use of Force Policies

Recommendation No. 1

MPD's use of force policy should be modified to include more detailed treatment of neck restraints, and that any use of neck restraints by MPD officers be treated as a serious use of force and be investigated by IAD.

MPD agrees with this recommendation. MPD is in the process of revising our use of force policy to include a more detailed discussion of the prohibition against neck restraints, and MPD agrees that the use of neck restraints by any MPD member will be investigated by the Internal Affairs Division.

Recommendation No. 2

MPD should comprehensively review and, if necessary, revise its use of force policies no less frequently than every two years.

MPD disagrees with this recommendation. MPD has over 400 policy documents and a comprehensive review every two years absent an identified issue or problem seems excessive. The evaluation of our use of force policy is ongoing – MPD considers the policy and its ramifications throughout our use of force investigations, and the UFRB is mandated to continually consider policy and recommend updates if needed. As discussed in our responses, MPD agrees that our long-standing practice of issuing policy updates by teletype needs to be improved, and we are committed to doing so, but we object to language that may lead readers to believe that we have not updated our use of force policies in thirteen years. That is simply not true.

The Review Team believes that use of force policies are of special importance, especially given the current national focus on such issues and ongoing developments relating to use of force in the law enforcement community. These policies deserve substantive review at least every two years.

Recommendation No. 3

MPD's canine policy should restrict off-leash deployments to searches for suspects wanted for violent felonies; searches for burglary suspects in hidden locations inside buildings; or who are wanted for a misdemeanor and whom the officers reasonable believe to be armed.

MPD disagrees with this recommendation. MPD's policy as written is sufficient in limiting off-leash deployments to serious felonies or instances where a suspect is wanted and suspected of being armed. By limiting our policy to "violent" felonies, as opposed to "serious" felonies, we would be limiting the use of canines in important cases such as the location of burglary suspects in hidden locations where the use of a canine protects the life of the officer. MPD also requests that the Reviewers add context to this recommendation. The recommendation is that MPD change its policy from restricting off-leash deployments to searches for suspects wanted for "serious" felonies to "violent" felonies. MPD's policy is already consistent with the second part of the recommendation regarding limiting tactical searches to suspects who are reasonably suspected of being armed. As written, this recommendation is currently misleading and could lead readers to believe none of these restrictions are currently in place. Also, it should also be noted that this recommendation is more restrictive than the requirements for canine deployments contained in the MOA.

The Review Team believes that limiting off-leash deployments as specified in the recommendation is an appropriate balancing of the safety of the officer against the need to limit unnecessary off-leash deployments. Moreover, it reflects current best law enforcement practices in canine use. In response to MPD's comments, we have revised this recommendation to allow off-leash searches in cases where burglary suspects may be in hidden locations inside buildings. We agree with MPD that this is an appropriate off-leash use of canines.

Recommendation No. 4

MPD's canine policy should require that the number of verbal warnings provided prior to canine deployment be increased from one to three; and that in open field or block searches, an additional warning be given each time the canine team has relocated the equivalent of a city block from where the initial warnings were given.

MPD agrees in part with this recommendation. MPD agrees that it is good practice, and will incorporate into policy, the requirement that additional warnings be given in certain circumstances, when tactically sound, to include each time the canine team has relocated the equivalent of a city block from where the initial warnings were given. It should also be noted that this recommendation is more restrictive than the requirements for canine deployments contained in the MOA.

The Review Team believes that the increase in the number of verbal warnings should be incorporated in policy and be standard practice, with exceptions in those circumstances in which additional warnings are not feasible or pose unnecessary risks to the officers.

B. Use of Force Reporting, Investigations and Training

Recommendation No. 5

MPD should reinstate use of force *reporting* for hand controls and resisted handcuffing.

MPD disagrees with this recommendation. To be clear, MPD's policy is, and will remain, that all uses of force that result in injury or complaint of pain to any person are reported and investigated, to include the use of hand controls and resisted handcuffing. However, hand control procedures and resisted handcuffing are the lowest level of force. Unfortunately, members routinely encounter arrestees who do not willingly submit to handcuffing. In those cases, hand control procedures such as the use of firm grips and escort holds assist the officers in placing handcuffs on arrestees while ensuring both the safety of the officer and the arrestee. In the vast majority of those cases, the result is no injury or complaint of pain. While there may be limited value in tracking this information, on a practical level this must be weighed against the consequences: requiring officers to take time off the street, away from their patrol duties, to complete an administrative report documenting the justified use of hand controls every time a suspect offers minor resistance when being handcuffed. Additionally, this information is often captured by officers in their reports that they prepare for prosecution of the case.

The Review Team disagrees that the burdens imposed by requiring the reporting of hand controls and resisted handcuffing are disproportionate to the value of tracking such low-level uses of force. The reporting we recommend could be accomplished in the same way as MPD proposes reporting individual and team

takedowns (see Recommendation No. 6 below), or by including a box that could be checked on one of the forms MPD officers must fill out in connection with an arrest. We believe the burden is minimal and the benefit is potentially significant.

Recommendation No. 6

MPD should reinstate use of force reporting *and investigations* for individual and team takedowns.

MPD agrees in part with this recommendation. MPD sees the value in reinstating the requirement that officers report tactical and team takedowns in cases where there is no injury or complaint of pain. However, we disagree that those takedowns should be investigated. The Department will be looking into the best way to have officers report takedowns so that it can be tracked and reviewed as necessary (e.g., by entry in MPD's Records Management System). As discussed earlier, MPD remains committed to our current policy that has been in place for over a decade of investigating any tactical or team takedown where there is a resulting injury or complaint of pain.

The Review Team believes that individual and team takedowns, even without injury or complaint of pain, are significant uses of force that warrant investigation. We believe MPD can conduct such investigations efficiently and effectively; they need not consume substantial resources. We believe that investigations of such takedowns are consistent with current law enforcement best practices.

Recommendation No. 7

MPD should make all substantive changes in use of force reporting and investigations policies through a transparent process that ensures that the public, all MPD stakeholders, and MPD officers have access to current MPD policies, rather than through limited internal communications.

MPD requests the language be changed. As written, the language suggests that MPD was not being transparent. MPD does however agree with this recommendation. As discussed earlier [in MPD's comments – see Exhibit I, at p. 11], it has been the Department's long-standing, decades-old practice to use teletypes as a way to issue policy changes to members expeditiously. MPD agrees that this is a process that can be improved by make accessing these documents easier. MPD will be discontinuing the practice of issuing policy updates by teletype. We are creating new documents called "executive orders."

Executive orders will still allow the Chief of Police to change policies and procedures in an expeditious manner, similar to the teletype process. However, the executive order process will be coordinated by MPD's Policy Development Branch, and approved orders will be made available on the internal "MPD Directives Online" website as well as the public website until they are rescinded or replaced, and MPD is committed to incorporating these executive orders into the appropriate orders in a timely fashion.

We have added language elsewhere in the report clarifying that the Review Team does not believe that teletypes have been used with the intent to obscure policy changes but instead were consistent with historical practice that MPD has said it will abandon. We welcome MPD's decision to eliminate teletypes as a method to implement policy changes.

Recommendation No. 8

IAD should develop a comprehensive use of force investigations procedural manual that incorporates the requirements of the MOA, relevant General Orders, and an appropriate set of procedures based on the original FIT Manuals.

MPD agrees with this recommendation. MPD's Internal Affairs Bureau is working on creating an updated manual governing the standard operating procedures of the Internal Affairs Division for conducting both use of force and police misconduct investigations. The revised manual will consolidate the contents of the current FIT and IAD Manuals, relevant MPD policies, and will include the relevant provisions of the MOA.

Recommendation No. 9

MPD should require that all civilian witnesses and officer witnesses involved in a use of force matter be interviewed and that the interviews be either audio and/or video recorded, except when a civilian witness declines to give consent to taping.

MPD agrees in part with this recommendation. The MOA required, and MPD's policy since 2002 has been, that in investigations involving a serious use of force or serious physical injury, interviews of complainants, involved officers, and material witnesses are tape recorded or videotaped.¹ However, we disagree that

¹ See MOA at paragraph 81a and MPD GO-RAR-901.08 (Use of Force Investigations), Part V.D.2.g.

the statements in all use of force investigations need to be recorded. As discussed earlier, IAD reviews all use of force incidents to determine who will conduct the investigations (i.e., IAD or chain of command officials.) By policy, serious use of force investigations (e.g., firearm discharges, canine bites, uses of force indicating potential criminal conduct) are always investigated by IAD and those interviews would be recorded.

The Review Team believes that all interviews in use of force matters should be recorded, whether the investigation is conducted by IAD or the chain of command. Given recent advances in technology, including the availability of recording capabilities on every smartphone, the burden of recording such interviews is minimal and the benefits in terms of compiling an accurate record of witness statements are substantial.

Recommendation No. 10

MPD should transcribe all recorded statements in serious use of force cases and the transcript should be included in the investigative file for ease of reference and to ensure the accuracy of investigative reports.

MPD agrees in part with this recommendation. MPD will modify its policies to require the transcription of statements in the following specific cases:

- *Fatal uses of force;*
- *Police shootings that result in injury;*
- *Cases where the misconduct will likely result in an adverse action hearing;*
- *In-custody deaths;*
- *Vehicle pursuits resulting in a fatality; and*
- *Any other cases as determined by the Commanding Official of IAD.*

We accept MPD's recasting of this recommendation, which limits the circumstances in which transcripts of recorded statements be prepared and included in the investigative file.

Recommendation No. 11

MPD should restructure the Internal Affairs Division so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their special area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this

group should be officers who have demonstrated the proper attitude and skills for conducting use of force investigations.

MPD disagrees. MPD Internal Affairs agents are sufficiently trained in conducting comprehensive use of force investigations. We will continue to conduct specialized in-service training for our internal affairs investigators that includes a section on use of force training and other topics that are central to conducting internal affairs investigations. MPD will also work to ensure that personnel selected for internal affairs positions have the required skills and commitment to producing fair and impartial investigations.

MPD's view that IAD agents are at present sufficiently well-trained to conduct comprehensive use of force investigations is contrary to the view of every group with which we discussed the issue and whose views should be taken seriously: prosecutors with the USAO, members of the UFRB, and the agents themselves. The Review Team also heard from both IAD supervisors and agents that some current members of the IAD investigative staff do not want to do use of force investigations. Our recommendation would ensure that the lead investigator on a use of force investigation conducts the assignment with the professionalism, approach, and attitude that are most conducive to conducting a thorough, impartial and competent investigation. The Review Team strongly urges MPD to reconsider its position on this important issue.

Recommendation No. 12

MPD should provide the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.

MPD agrees in part with this recommendation. MPD does not agree that there should be use of force specialists within IAD. MPD is committed to ensuring all IAD investigators are both capable and engaged in conducting comprehensive use of force investigations. As described earlier in this response, the training provided as part of the 2012 merger of FIT and IAD was comprehensive and designed to ensure that the members who received the training could conduct

appropriate, comprehensive use of force investigations. We acknowledge that the record keeping for that training was not adequate. Accordingly, going forward we will document the core curriculum that all IAD investigators must receive upon being assigned to the unit to include specific training on use of force investigations, and we will ensure those training records are maintained.

We think the model originally pioneered by MPD with the creation of FIT in 1999 is worth preserving, if not as a separate unit, then at least as a set of investigators within IAD who have received specialized training. This training provides the investigators with the skills and experience to conduct top-flight use of force investigations and write reports that contain the type of comprehensive analysis – including of policy, training, and tactics – they currently lack.

Recommendation No. 13

MPD should reinstate the practice of requiring IAD investigators to respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.

MPD agrees with this recommendation. On November 10, 2015, MPD reinstated the requirement that IAD investigators respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.

Recommendation No. 14

MPD should require that IAD investigators be required to investigate all reported or claimed strikes to the head whether or not the head strike is confirmed by a field supervisor and regardless of whether there is an injury or corroborative evidence; and that IAD investigators be required to investigate all canine bites.

MPD agrees in part with this recommendation. For over a decade, MPD's policy has required that the Internal Affairs Division be responsible for conducting the investigation of head strikes and canine bites. MPD remains committed to this policy. However, in cases of alleged head strikes, when there is no supporting evidence that a head strike occurred and, in some cases when there is corroborated evidence that directly conflicts with allegations that a head strike has occurred, the Internal Affairs Division must retain the flexibility to review the available evidence and determine whether the allegation is best suited for investigation by IAD or the chain of command. The Department remains

committed to having our IAD agents conduct comprehensive investigations of our most serious allegations of misconduct and our most serious use of force incidents. To ensure that we use our resources appropriately, we cannot agree to mandatory investigations by IAD of "claimed" head strikes where there is a preliminary investigation that reveals no evidence to indicate that a head strike actually occurred. However, to be clear, all allegations of head strikes will continue to be reviewed by our Internal Affairs Division and will be investigated by the appropriate entity in all cases.

The Review Team continues to believe that MPD should reinstate a black-letter rule that all allegations of head strikes and canine bites be investigated by IAD, whether or not there is an injury or corroborative evidence. We think this rule provides clarity and uniformity with respect to two very significant uses of force and eliminates the need for determining what constitutes sufficient corroborative evidence to require IAD to conduct the investigation.

C. Use of Force Review Board

Recommendation No. 15

MPD and the United States Attorney's Office for the District of Columbia should work together to reengineer the system for reviewing the most serious use of force cases involving MPD officers with the goal of eliminating lengthy delays.

MPD agrees with this recommendation. The Chief of Police meets monthly with the USAO, and at those meetings the status of our serious use of force cases has been and will remain an agenda item. USAO Phillips and his staff are important partners, and we are confident based on the commitment he has shown that some of the delays in USAO reviews can be reduced.

Recommendation No. 16

MPD and the USAO should establish a goal of completing the USAO review of serious use of force cases within six months, with that period to be extended only by explicit agreement between the US Attorney and the Chief of Police, and with specific reasons provided that justify the need for additional time.

MPD agrees with this recommendation. As described above, we have been very pleased with the commitment shown recently by the USAO, and we will work to support any protocols that can be put in place to help expedite their reviews.

We note that although MPD agrees to this recommendation, the USAO states that a presumptive review period of nine months is “a more realistic and responsible time frame” for completing the USAO’s review of the most serious use of force cases. See Exhibit M, at p. 7. The Review Team believes that the six-month goal is achievable, and that for those cases where it cannot be achieved, the USAO and Chief of Police can agree that an extension of the timeframe is appropriate. Even the nine-month review period the USAO agrees to would be more expeditious review than all but one of the officer-involved fatal shootings conducted by the USAO in the past four years.

Recommendation No. 17

MPD should require that the IAD administrative investigation move forward expeditiously while a case involving a serious use of force is being considered by the USAO. The objective should be to minimize any additional investigation once the case has been returned to MPD, and to complete the IAD administrative investigation and investigative report within 30 days of the time the letter of declination is received. The IAD investigator’s performance evaluation should explicitly consider the timeliness of the investigations he or she conducts.

MPD agrees in part with this recommendation. In response to concerns that were raised regarding several IAD investigations where it appeared that work did not progress while the case was under review by the USAO, MPD will amend our policies to include language requiring that IAD officials ensure investigators proceed with their investigations to the greatest degree possible (conducting interviews, etc.) while awaiting USAO declination decisions. IAD will also ensure that the timeliness and quality of investigations are considered in IAD investigator performance evaluations. Also, as discussed earlier [See MPD Comments, Exhibit I, at p. 14], MPD is currently exploring having IAD conduct their investigations using MPD’s new records management system (i.e., Cobalt). Cobalt provides extensive tracking capabilities to document all of the steps that an investigator takes during an investigation. We believe that moving to Cobalt will greatly enhance our abilities to document investigator activities throughout the investigation.

After reviewing this response, we were uncertain which aspects of this recommendation MPD disagreed with and requested clarification. On January 8, MPD provided the following:

MPD FOLLOW-UP RESPONSE

MPD agrees that investigations should proceed to the greatest extent possible while under review by the USAO. As the Review Team knows, work continues by IAD investigators while the investigation is ongoing with the USAO. The investigators work with prosecutors to gather additional information and evidence so the prosecutors can consider this information when deciding to bring charges or to issue a declination. However, based on discussions we had with the Review Team, we were concerned that the report and recommendations as written do not allow for those cases where interviews or other investigative steps may best be delayed. For example, sometimes interviews are delayed for follow-up because the investigator is waiting for forensic reports so he or she is armed with the best possible information prior to conducting an interview. Accordingly, MPD disagrees that all cases can be completed within 30 days of a declination. There are times when extensions beyond 30 days of the declination are warranted and allow for a more comprehensive, complete investigation of the incident.

We think this is a semantic rather than a substantive disagreement. Our recommendation described the *objective* of completing the administrative investigation within 30 days, recognizing that completing the investigation within that period will not be possible in every case. Because MPD does not appear to reject the goal of completing the administrative investigation within 30 days, we do not believe there is disagreement with respect to this recommendation.

Recommendation No. 18

MPD should provide members newly appointed to the UFRB with specific orientation and training on their responsibility as UFRB members and the responsibilities of others involved in the UFRB process, including the UFRB Administrator, the Assistant Chief of IAB, the Commander of IAD, and IAD investigators.

MPD agrees with this recommendation. MPD will amend its UFRB policy to require that the UFRB Chairperson conduct an orientation with new Board members to include a review of the policy governing the UFRB, the role of the Board members and IAD, and a discussion of Board operations.

Recommendation No. 19

The UFRB should actively monitor the progress of IAD in completing use of force investigations and raise concerns about the timeliness of use of force

investigations with the Assistant Chief of IAB and, if necessary, the Chief of Police. This will help to avoid cases in which the UFRB's freedom to take appropriate action is hamstrung because it receives the investigative report so late in the process.

MPD agrees with this recommendation. MPD is committed to ensuring that use of force investigations are completed in a timely manner allowing the UFRB to conduct a comprehensive review of the incident. This recommendation is consistent with existing MPD policy which requires the UFRB Administrator to "(t)rack the progress of investigations conducted by the Internal Affairs Division and notify the Assistant Chief, Internal Affairs Bureau, regarding any cases that are at risk of missing the 90-day deadline..."² In addition, we will have the ORM conduct quarterly audits during 2016 to review the timeliness of cases reaching the UFRB for review, [a]nd we'll revisit the issue pending the outcome of the audits.

Recommendation No. 20

The UFRB should enforce the requirement that a Decision Point Analysis be prepared for each case that comes before the UFRB, but should consider transferring the responsibility for preparing the Analysis to the IAD investigator rather than the UFRB Administrator.

MPD agrees in part with this recommendation. MPD sees the value in decision point matrices, but disagrees with the report recommendations as to when they should be developed and how they should be used. MPD's experience is that when the matrices are prepared in advance of the Board hearings, there are two significant risks. First, the person who prepares the matrix may unintentionally sway the Board members as to what the decision points in the use of force incident actually are. Second, we do not want to risk creating an environment where our Board members would rely on reading the summaries in advance of the hearing in lieu of reading the actual investigation. We will be revising our policies to require that the matrices be prepared during the UFRB hearings, and they will become part of the record. This will enable a more collaborative approach by all Board members in determining the decision points and help facilitate a robust discussion of the tactical decisions made by the member throughout the entire incident.

² See GO-RAR-901.09 (Use of Force Review Board) Part V.F.2.b.

The Review Team believes that MPD's proposal to have the Decision Point Analysis prepared during the UFRB hearing rather than either by the IAD investigator or the UFRB Administrator is impractical. Preparing an analytic document such as a Decision Point Analysis on the fly during a free-flowing discussion among six senior MPD officials is extraordinarily difficult. Because we have seen that the UFRB's members are chosen with great care for their diligence and sense of responsibility, we do not believe that providing UFRB members with an analytic summary in advance will deter them from reviewing the entire investigative file but instead will help structure the UFRB's discussions and make those discussions more efficient.

Recommendation 21

The Review Team recommends that the Board Administrator highlight the most significant pieces of evidence so that each member makes sure to examine those items with special care.

MPD disagrees with this recommendation. MPD believes that for the Board to function as intended Board members have the responsibility, as part of their review, to highlight what they find to be the most significant pieces of evidence. Similar to our view on the decision point matrix, we believe there is risk in having the expectation that the Board Administrator be responsible for the identification of the most significant pieces of evidence.

The Review Team does not believe that highlighting the most significant pieces of evidence will prevent UFRB members from reviewing the entire investigative file. The current UFRB Chair asks each Board member whether he or she has read the entire case. Especially if UFRB members know they will be asked that question, the highlighting of specific pieces of evidence by the UFRB Administrator will not prevent them from fulfilling their important responsibilities.

Recommendation No. 22

The UFRB should consult with the Assistant Chief of IAB and the Commander of IAD on a quarterly basis to provide feedback on the quality and timeliness of recent IAD use of force investigations.

MPD agrees with this recommendation, but feels this communication needs to be done more frequently. The UFRB Chairperson and the Assistant Chief of IAB already communicate regarding the quality and timeliness of investigations and we will ensure this communication is codified in policy and continues.

The more frequently this is done, the better for the integrity and quality of the UFRB/IAD process. We also suggest that MPD consider periodic discussions that directly involve UFRB members and IAD investigators so that investigators have the benefit of the UFRB's unvarnished views of their work product and their candid suggestions for improvement.

D. PPMS and Supervisory Support Program

Recommendation No. 23

The officer's direct supervisor, as well as the second-level supervisor, should in all cases be involved in the SSP review.

MPD agrees with this recommendation and believes that our current policy supports this recommendation. MPD SOP 07-01 (Personnel Performance Management System (PPMS) and Supervisory Support Program (SSP)) requires that the member's direct supervisor be involved in the process to include an initial meeting with the member to review the incidents that lead to the SSP, meeting with the member's other command officials to review the intervention plan with the member, and then meeting every two weeks thereafter to ensure the member is making sufficient progress with his or her plan. We are currently developing training for all supervisors on PPMS and SSP and will reinforce the critical role that supervisors play in the SSP process.

Recommendation No. 24

SSP should be modified to flag officers against whom multiple use of force or misconduct allegations have been lodged even if those allegations were not substantiated.

MPD agrees in part with this recommendation. One focus of the Professional Conduct and Intervention Board has been to review members who have multiple uses of force within a given time period. It is important to note that the use of force is a necessary component of police work and when used consistent with the law and MPD policy, is an important tool that officers have to protect both themselves and others from harm. However, we also realize that use of force situations present a risk both to the officer and the agency. By having the Board examine officers with multiple uses of force, we can help to identify those officers who may need additional training and support, similar to the recent de-

escalation training that we conducted. We will also explore how SSP may be modified to also identify patterns of alleged misconduct, even in those cases where allegations are not sustained (e.g., multiple citizen complaints for similar conduct resulting in a finding of “insufficient facts.”)

After reviewing this response, we were uncertain which aspects of this recommendation MPD disagreed with and requested clarification. On January 8, MPD provided the following:

As stated in our original response, one of the initial focal points of our Professional Conduct and Intervention Board was to review members who have multiple uses of force within a given time period, and we expect the Board to continue that role with regard to both use of force and misconduct. However, because modifications to SSP must be negotiated with the Fraternal Order of Police (FOP) prior to implementation, we cannot agree to the implementation of specific changes to SSP at this time.

We urge MPD to address this potential revision of SSP with the FOP in the interests of improving its management of use of force.

Recommendation No. 25

MPD’s analysis of PPMS data should focus not only on individuals but also on units and sub-units within MPD.

MPD agrees with this recommendation. Currently, PPMS’s front-end reporting function is limited and does not provide supervisors with existing reports that can be run to compare units and sub-units. However, a review of the “back-end” PPMS database indicates that there is currently data available that would allow us to analyze information at the element level (e.g., police district, division). We will work with our information technology staff to determine how PPMS might be modified to make reporting on this information more accessible to supervisors, as well as how we can drill down further to individual units (e.g., patrol service areas (PSAs.)) In the meantime, MPD has used our Bureau trend reports as a means to identify use of force and misconduct issues.

E. Professional Conduct and Intervention Board

Recommendations 26-29

The PCIB Administrator should prepare an analysis of each case in advance of PCIB meetings. At present, substantial raw material is provided to the PCIB but no analysis.

The PCIB Administrator should outline remedial options based on review of the officer's record and the PCIB's actions in prior similar cases.

The Assistant Chief of IAB should direct the PCIB Administrator to circulate in writing, on a quarterly basis, developments in cases previously considered.

The monthly PCIB meetings should be used to discuss new cases rather than review cases previously discussed. Developments in prior cases should be addressed in writing, distributed to Board members, and can be placed on the agenda if requested by a Board member.

MPD appreciates the suggestions provided by the Reviewers on ways to potentially improve the operation of the Professional Conduct and Intervention Board. However, as the Board is a relatively new entity within MPD we do not want to commit to implementing these specific recommendations at this time. As we continue to move forward with the Board, we will consider these recommendations and how they may be of benefit.

We understand MPD's desire to retain flexibility with respect to the operations of the PCIB, which has been in existence for less than two years. We believe all of our recommendations would contribute to the effectiveness and efficiency of the PCIB's operations, and do not believe any would be disruptive.

F. Audits and the Office of Risk Management

Recommendation No. 30

ORM must be operated under leadership capable of formulating and directing substantive audits, including MOA-related audits

MPD agrees with this recommendation. MPD remains committed to ensuring ORM command officials conduct substantive and comprehensive audits.

Recommendation No. 31

ORM’s annual audit plan should contain a significant percentage of audits focused on MOA-related issues.

MPD agrees in part with this recommendation. MPD will ensure that MOA-related audits are conducted on an annual basis. However, the number of MOA audits will be dependent on the risk factors faced by the Department each year. Based on our discussions, we are concerned that the term “significant percentage” may be interpreted differently among readers with some assuming that the intent of the recommendation is to have as many as 50 to 75% of audits focused on MOA-issues. Based on our discussions, it does not appear that is the intent of the recommendation, and we suggest that the recommendation be reworded.

We did not intend our recommendation to suggest that “significant percentage of audits” be interpreted to be as many as 50-75% of all ORM audits. Our intention was, however, that the percentage of MOA-related audits substantially exceed the 2-6% range that prevailed from 2011 through 2014. The number of MOA-related audits and the focus of those audits should be determined by ORM in consultation with MPD management.

Recommendation No. 32

ORM should provide its annual audit plan to the District of Columbia Auditor and the District of Columbia Office of the Inspector General.

MPD disagrees with this recommendation. MPD develops its audit plan as a blueprint for the year, based on the issues identified by the Chief and other command staff members where we feel we additional review and focus may be warranted. We do not want to unintentionally stifle members from making suggestions for the plan if they feel the document will have a wider distribution.

Our recommendation is that the final annual audit plan be shared with the Auditor and Inspector General. We do not see how sharing the final audit plan will in any respect stifle members from making suggestions earlier in the process regarding which audits to be included in the plan.

G. Review of Officer-Involved Fatal Shootings

Recommendation No. 33

MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue.

MPD agrees in part with this recommendation. As we discussed with the Reviewers, it is completely legal and appropriate for a law enforcement officer to pursue a person who flees from them on foot. Officers are trained that flight alone is not sufficient cause for a stop, but other properly articulated factors, such as the discarding of contraband, may form the basis for a stop. MPD does agree to revisit guidelines and/or training on the issue of foot pursuits to reinforce our policy.

Our concern is that it may be unrealistic to expect officers to fully understand a policy that authorizes pursuit but not the expected result of a pursuit (a stop) in response to flight. We welcome MPD's willingness to reexamine the issue.

Recommendation 34

MPD should provide specific intensive training for handling officer-involved shooting cases and limit the handling of those cases to a small number of skilled and experienced IAD investigators.

MPD agrees in part with this recommendation. As described in our response to Recommendation 12, MPD does not agree that there should be use of force specialists within IAD. MPD is committed to ensuring all IAD investigators are both capable and engaged in conducting comprehensive use of force investigations. We believe the basic principles of investigations are consistent regardless of the investigation type. These principles can be applied, and with the proper training and retraining, will ensure quality, comprehensive investigations in use of force as well as police misconduct. As described earlier in this response, going forward we will document the core curriculum that all IAD investigators must receive upon being assigned to the unit, to include specific training on use of force investigations and ensure those training records are maintained.

MPD is correct that this recommendation overlaps in part with Recommendation No. 12. As we stated above, we think there is value in ensuring that at least

certain investigators within IAD receive specialized training and have the skills and experience to conduct top-flight use of force investigations. Just as MPD maintains specially trained units to investigate homicides and sexual assaults, the Review Team believes that MPD should have a specially trained cohort of investigators for conducting serious use of force investigations. We welcome MPD's commitment to provide the necessary training and retraining but have concerns, based on our review, whether equipping all IAD investigators with the skills and experience to conduct these investigations is an attainable goal. We think it is more realistic to ensure that a small number of IAD investigators have the requisite skills and experience.

Recommendation No. 35

Once MPD completes the preliminary investigation of the officer-involved shooting in the first 24-72 hours after the incident and the cases has been referred to the USAO, the investigator, in consultation with his or her supervisor, should develop a detailed investigative plan which, as recommended above, is designed to complete the MPD administrative investigation within 30 days of the incident, with the exception of forensic reports and interviews of the involved officers.

MPD agrees in part with this recommendation. MPD is committed to conducting timely investigations and will ensure that the revised IAD manual includes policies to ensure case progression. However, as described earlier in this report, interviews may be delayed for follow-up because the investigator wants to be armed with additional information not yet available prior to conducting the interview. Investigative plans must be flexible to accommodate the specific facts and circumstances of each case. Accordingly, we do not believe a 30 day deadline is reasonable for completing all aspects of the investigation with the exception of forensics and interviews with the involved officers.

We believe that establishing the 30-day goal, with reasonable exceptions and extensions for good cause, will appropriately balance the need for expedited administrative investigations with the need to adjust to the specific facts and circumstances of each case. The deadline is designed to prevent the administrative investigation from being ignored while the USAO is investigating for potential prosecution, will limit the amount of additional work that needs to be accomplished after the declination is received, and will provide much-needed additional time for UFRB to consider the case and take appropriate action.

Recommendation No. 36

IAD investigators should scrupulously follow the requirements of MPD's Use of Force Investigations General Order in officer-involved shooting cases, which requires, among other things, that all relevant witnesses be interviewed, and that the investigator identify and attempt to resolve (if possible) inconsistencies in the accounts of witnesses to the incident.

MPD agrees with this recommendation, and we apologize for the oversight of not including this response with our original reply.³

Recommendation No. 37

MPD should modify its Use of Force Investigations General Order to address the problems created by using leading questions during investigative interviews and counsel IAD investigators to avoid using them to the maximum extent possible.

*MPD agrees in part with this recommendation. MPD will add language to our Use of Force Investigations General Order reminding investigators to avoid using leading questions to the greatest extent possible. **However, it is important to note that the report points to only one investigation as an example of where leading questions were used.** MPD agrees with the reviewer's assessment of that specific case. However, it appears that based on the draft report that is the only case where interviews were uncovered with leading questions. MPD understands the importance of ensuring leading questions are not part of an interview, and as discussed, MPD selected a new vendor to provide training on interview and interrogations to ensure our investigators were provided with high quality training. In September, 2014, IAD investigators attended two days of training on this topic provided by Wicklander-Zulawski and Associates. Accordingly, we are concerned that as the recommendation is currently written, readers may interpret that MPD has a "problem" with investigators using leading questions in interviews. However, based on the draft report, it appears that the leading questions were only observed in one case. In fact, the report discusses that leading questions were not used in the other investigations that were reviewed. We request that the report be modified to reflect that this is not a systemic issue.*

³ This response was provided on January 8 after we notified MPD that its December 22 submission did not address this recommendation.

MPD is correct in noting that we observed the problem of leading questions in only one case, but it was in an officer-involved fatal shooting case, and we had comparable access to audiotapes in only three cases. Significantly, we found no evidence that any supervisory review of the investigative file identified the use of leading questions. Based on our review, we have no basis for concluding that the use of leading questions is or is not a systemic problem.

H. Assault on Police Officer Review

Recommendation No. 38

DC's misdemeanor Assault on Police Officer statute should be amended so that the elements of the offense require an actual assault rather than mere resistance or interference with an MPD officer.

MPD agrees with this recommendation. As described earlier in this response, the Mayor, at the request of the Chief of Police, has also introduced legislation (the Public Safety and Criminal Code Revisions Amendment Act of 2015) to clarify the elements of the assault on a police officer charge, and create a specific offense of resisting arrest that is more comparable to other jurisdictions.