METROPOLITAN POLICE DEPARTMENT

Internal Affairs Bureau Office of Internal Affairs

OPERATIONAL MANUAL



Assistant Chief Michael L. Anzallo Commander Christopher LoJacono

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FORWARD

The Office of Internal Affairs (OIA) was established as the quality control mechanism for the Metropolitan Police Department. Towards this end, it is imperative that this office maintains the highest level of integrity and public trust, while ensuring that the agency fulfills its obligation of excellence and superior police service to the community. Falling under the purview of the Internal Affairs Bureau (OPR), the OIA is comprised of four (4) investigative units. Each of these components has a specific focus and function that ensures the agency's compliance with the standards, rules, regulations, policies, procedures, laws, and statutes of the Metropolitan Police Department and the District of Columbia.

The material presented herein is intended to guide the reader to a greater understanding of the history, philosophy, structure, concepts, policies, procedures and operation of the Office of Internal Affairs. This manual represents a new openness to acknowledge the Department's efforts at policing itself and safeguarding the integrity of the agency. Clearly, the OlA is a constantly evolving office that must remain fluid to address the ever-changing landscape of law enforcement.

HISTORY

In 1991, then Chief of Police Isaac Fulwood, Jr. established the Office of Professional Standards (OPS), headed by Deputy Chief Donald Christian. The OPS was responsible for overseeing the operations of the Internal Affairs Division (IAD). On February 16, 1993, the Field Inspections Unit (FIU) was renamed the Field Inspections Division (FID) and was realigned under the OPS. The FID was responsible for conducting evaluations, inspections and audits to ensure compliance with departmental policies, procedures and directives; and evaluating reporting processes to ensure the deliverance of quality service to the citizens. Both the IAD and FID Directors answered to the Deputy Chief of OPS, who in turn reported directly to the Assistant Chief of the Investigative Services Bureau (ISB), previously known as the Inspectional Services Bureau. Subsequently, the OPS was dissolved and IAD reported directly to the Chief of Police while FID independently reported to the ISB. On July 13, 1993, the IAD was renamed the Office of Internal Affairs (OIA). In 1994, the FID was renamed the Audit and Compliance Branch (ACB).

In February 1995, the <u>Internal Affairs Bureau</u> (OPR) was re-established by then Chief of Police Larry D. Soulsby. With the re-establishment, the OIA and the ACB, two previously separate commands were placed under the OPR's purview. The Director of OPR reported directly to the Chief.

On January 5, 2000, Chief Ramsey announced that the OPR would be under the command of an Assistant Chief of Police, who directly reports to the Chief of Police (COP). In addition, the Chief announced that the OPR would be expanded to include the Disciplinary Review Office, and that the OIA would be reorganized.

The Office of Internal Affairs

The Office of Internal Affairs (OIA) began its existence as the Internal Investigations Unit (IIU) on February 27, 1962, under then Chief of Police Robert V. Murray. The personnel compliment was one deputy chief, two captains, one lieutenant, and one civilian stenographer, for a total of five (5) staff members. The unit handled investigations, emanating from the Office of the Chief of Police, involving alleged criminal misconduct. Since then, the IIU has undergone numerous transformations, to include several name changes, with a gradual increase in scope, responsibility and personnel along the way.

Between 1997 and 1999, the OIA was embodied by one captain, five lieutenants (four unit and one administrative), one administrative sergeant, one administrative officer, three civilians and thirty-one agents for a total of forty-two (42) staff members, who make up the five units of the OIA. The four investigative units: the Public Integrity Unit (PIU), Police Corruption Unit One (PCU-1), Police Corruption Unit Two (PCU-2) and Police Corruption Unit Three (PCU-3) were responsible for investigating ongoing criminal misconduct involving members of the Metropolitan Police Department, as well as the entire District of Columbia Government. Operations handles all administrative aspects of the OIA.

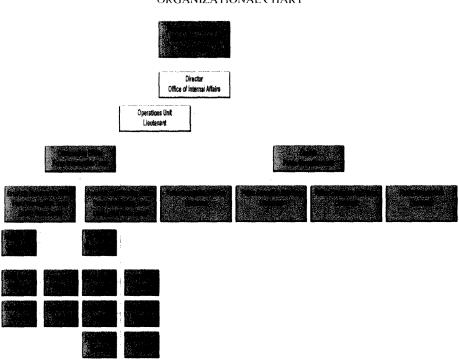
In January 2001, OIA underwent further reorganization to commit separate units to handle

investigations emanating from specific elements of the department; to redistribute the areas of investigative responsibilities more equitably; and, to consolidate those investigations requiring intensified operations or surveillance. Specifically, the Audit and Compliance Branch (ACB) and OIA Operations (formerly the Administrative Unit), each headed by a lieutenant, were realigned under the Director, OIA.

OIA Operations

Formerly the Administrative Unit, OIA Operations shall remain an independent section that supports the investigative units. Staffed by sworn and civilian members, this section is headed by a Lieutenant, who reports directly to the Inspector/Director of OIA. The Operations Unit carries out the daily managerial duties and responsibilities of the OIA.

ORGANIZATIONAL CHART



Internal Affairs Bureau Office of Internal Affairs

The Internal Affairs Bureau acts as the guardian of the Metropolitan Police Department's reputation, and is charged with the accountability, implementation, and maintenance of the department's anti-corruption programs. It is an office of unparalleled integrity that provides effective corruption control and behavior accountability through comprehensive proactive and reactive investigations, inspections, and adjudications of misconduct and corruption. The Internal Affairs Bureau will also conduct extensive statistical data collection for review.

Assessment, and trend analysis.

MISSION STATEMENT

The mission of the Office of Internal Affairs (OIA) is to deter, seek out and investigate allegations of misconduct or corruption within the Metropolitan Police Department. The OIA will be a proactive and comprehensive investigative entity with the ability to conduct covert, objective, criminal and non-criminal investigations requiring extensive surveillance and undercover activities.

VISION

The vision of the OIA is to bolster the department's reputation and enhance confidence in the Metropolitan Police Department through quality internal investigations and early detection of patterns of misconduct.

OBJECTIVES

In order to realize the mission and vision set forth for the OIA, the following objectives must be met:

- To maintain the highest degree of professional integrity and ethics, OIA must procure members of the highest caliber
- Accurately accounting for every allegation received alleging improper conduct by an employee

- Conduct timely follow up requests on allegations referred to other divisions or agencies
- Ensuring every allegation is thoroughly investigated
- Identifying, by early detection, patterns of impropriety that emerge through the tracking of allegations of misconduct, use of force. PD 99s, and corrective actions taken by the Unit
- · Creating and maintaining a state of the art computer based tracking system to enable

us to quickly ascertain the patterns of improper conduct

- Ability to use the computer based tracking system to obtain emerging geographic patterns of misconduct at the PSA, District or City wide level
- · Develop robust working relationship with outside Agencies
- Foster stronger relationship with the department to promote uniform standards for all
 criminal and administrative investigations of employees
- Protect, maintain and keep confidential allegations received by OIA, as well as, the source and those falsely accused
- Increase the effectiveness and efficiency of the OIA through a clearly defined and shared sense of purpose and commitment amongst its members
- · Timely notification to the complainant of the results of the allegation investigation
- Guaranteeing thorough investigations and ensuring constant training opportunities in the latest advances in investigative methods within the Internal Affairs police community
- Advocating supplementary training to maintain the highest degree of professional integrity and ethics
- Render fair and consistent disciplinary recommendations
- · Detection of management deficiencies
- · Be a model investigative force for the department and nation to emulate

Guiding Principles

Accountability

There are two components of accountability. The first is the process of rendering an account to those from whom we derive our authority of what we did, why we did it, how we did it and what we are doing to improve performance or results.

An important element of this component is accepting the personal consequences of our actions. The second component of accountability is one of answerability-the obligation to provide information to with respect to our decisions, actions and results in light of clear, previously agreed upon understandings and expectations.

Respect

The objective, unbiased consideration and regard for the rights, values, beliefs, and property of all people.

Professionalism

Providing professional internal accountability with highly trained and ethical personnel responsible to our department and our community. Having a conscientious awareness of our role, image, skills and knowledge in our commitment to quality use-of-force reviews and investigations.

Honesty

Demonstrating and maintaining the highest ethical standards both personally and organizationally. It means being truthful in character and behavior.

Integrity

Acting consistently with our core values as human beings, public servants, law enforcement professionals, and internal agency guardians.

POLICY

Consistent with the above mission, OIA will:

- Investigate allegations involving felonies, all felony and misdemeanor arrests, positive drug screenings, and conduct targeted and random integrity checks on members of the MPD;
- Investigate malingering by members of the Metropolitan Police Department and the District of Columbia Fire Department (DCFD);
- Conduct investigations for the District of Columbia Police and Firefighter's Retirement and Relief Board (DCPFRRB), relative to violations by disabled annuitants of the United States Park Police (USPP), the Uniformed Secret Service Division (USSD), the Metropolitan Police Department, and the District of Columbia Fire Department;
- Be responsible for those intensified and specialized investigations involving allegations of sex crimes, drug trafficking, and continuing criminal enterprises committed by Metropolitan Police Department members, as well as any high profile or sensitive case as directed by the Chief of Police or the Assistant Chief of the Internal Affairs Bureau;
- Have the authority to refer any allegations of misconduct to other commands or agencies for investigation; and,
- Conduct investigations as deemed necessary by the Assistant Chief of Police, Internal Affairs Bureau, and as ordered by the Chief of Police.

CASE MANAGEMENT

It is the policy of the Internal Affairs Bureau (OPR) to fairly and expeditiously investigate complaints under its authority. Additionally, it is the responsibility of OPR to track the following information:

- All citizen's complaints
- Alleged criminal misconduct
- · Misconduct that may result in adverse action
- All use of force incidents
- All accidents involving police department vehicles

Complaint Numbering System

In order to more efficiently track all allegations of police misconduct, the follow procedures shall be followed:

- 1. Within one (1) hour of occurrence, any official observing or learning of alleged misconduct or receive a citizen's complaint, shall notify the OIA and obtain a tracking number (CS#).
- Prior to being relieved from duty, the official shall fax a copy of the preliminary report and any supporting documentation to the OIA. The CS tracking number shall be affixed to each relative document.
- If the misconduct or complaint is observed or received by a non-supervisory member of the MPD, that member shall immediately notify an official and prepare a written report.

Between the hours of 0700 and 1900, Monday thru Friday, an OlA staff member is available to accept complaints by calling (202) 727-4385. Holidays, and all other hours, complaints can be reported by calling the Communications Division Supervisor on (202) 671-2872, and having the "on-call" OlA Agent paged on (202) 886-3849. The Agent shall log the complaint, issue a CS tracking number, and direct the official to either fax or hand carry a copy of all relevant documents (e.g., PD99, preliminary reports, PD77s, etc.) associated with the complaint to the OlA Operations (FAX # 202-727-4858). The on-call agent shall notify the Operations Support no later than 0700 hours the following morning, of any CS numbers issued between 1900 and 0700 the previous day. The on-call agent is also responsible for preparing a Complaint Summary Sheet for all complaint numbers issued, and submitting it to Operations immediately upon reporting to duty.

In those cases requiring immediate intervention by OIA, on-call Agent shall notify the Assistant Chief, Internal Affairs Bureau through channels, and the on-call Agent shall be required to respond to the scene. If additional OIA Agents are required, the Director or his/her designees will activate the appropriate number of Agents.

Case Intake/Referral

OIA also receives, logs and processes complaints/allegations of misconduct emanating from walk-in complainants, other law enforcement agencies, confidential sources and anonymous tips recorded from the OIA Confidential Hotline or Mailbox.

Each complaint coming to the attention of OIA will be documented on Form UN-938 (Case Summary Sheet), and classified by the Director. Office of Internal Affairs, according to one of the three (3) defined categories listed below, and processed as appropriate:

1. Intake: Criminal activity or such egregious misconduct as set forth in the OIA

Mission Statement, which warrants investigation by one of the units within

OIA.

2. Referral: Allegation or complaint that does not meet the criteria set forth in the OIA

Mission Statement will be referred to the appropriate organizational element for investigation. Allegations referred to other organizational elements shall be routed through the appropriate chain of command. All dispositions of investigations conducted by an organizational element shall be forwarded to

the OIA for recording and tracking purposes.

3. Intelligence: A complaint which lacks sufficient information for investigation at the time

received, however, it shall remain on file for future reference; or a complaint which has undergone cursory investigation and has been found to be without

merit.

Process of the Complaint Summary (CS) Sheet:

Members who receive complaints or allegations of misconduct shall immediately prepare a UN-938 Complaint Summary Sheet and forward to the OIA Operations Support Unit. The OS staff will process the information as follows:

- Assign CS tracking numbers
- Enter the data into the computerized CS database and logbook
- Complete a historical information check on members who are the subject of the complaints/allegations, and attach the information to the CS Sheet.
- Forward the CS sheet information, as appropriate, to the proper unit for investigation.

Referral cases: These cases shall be routed for investigation through the subject member's chain of command via a return receipt referral memorandum. Elements investigating referral cases are required to submit a final investigative report with disposition to the OIA Operations Support Unit for filing.

The Operations Staff will periodically query the CS System for overdue investigations and send notification correspondence to appropriate elements referred to other units. Upon determining that a referral investigation is overdue, a memorandum shall be generated for the signature of the Assistant Chief, and forwarded through channels to the appropriate District/Division for action. The memorandum shall contain the CS log number, the subject member's name, the original due date, and a request for immediate action and response to include an explanation for the lateness.

Intelligence cases: Agents, who receive complaints classified as intelligence, shall have twenty (20) days to gather relevant information to assess the merits of the complaint. It is incumbent upon the Unit Lieutenant to meet with the assigned agent, immediately upon receipt of an intelligence case, to provide specific instructions and guidance on how to proceed with the case. The lieutenant shall monitor the progress of these cases, by meeting with the agent ever five (5) days, and documenting on the left side of the intelligence file, the progress and course of action being taken. An intelligence case, which can be closed within the 20-day period, shall be forwarded for approval to the Assistant Chief, OPR, for closure as "intelligence only" and the case jacket filed within the Operations Support. However, those complaints which cannot be assessed within the 20 day period, shall be forwarded by the Unit Lieutenant, through the chain of command, to the Assistant Chief, OPR, with a recommendation that the intelligence case be reclassified as an OIA intake case. Upon approval of the Assistant Chief, the Operations Staff will assign intake log numbers and return the case file to the appropriate Unit Lieutenant for handling. Under no circumstances shall an intelligence case remain open for more than twenty (20) days.

The Operations Staff is responsible for closing out the intelligence case by entering the OIA case intake number in the disposition section of the intelligence log. Thereafter, the OIA case intake number shall be used to track the investigation.

Policy and Procedures for the Management of Internal Affairs Case Files

OIA case files shall be returned to the file room at the close of business each day. No case files shall be stored in Agent's desks or at workstations.

All case files, whether open or closed, shall be stored in the file room unless actively being worked. Agents may check out case files by preparing a manila check out card. The appropriate Intake or CS number, the requesting agent's name, (legibly printed), date checked out, his/her initials, and reason needed, shall be entered on the card. The card shall be filed in place of the original file. Case files shall be returned at the close of business each day, unless otherwise approved by the Director, OIA or the Assistant Chief, OPR. Members who return case files to the file room shall initial and date the check out card accordingly.

Case File Retention

Intelligence and OIA cases shall be retained within the department for three (3) years after conclusion of the case. They shall then be retained in the Federal Records Center for seven (7) years, and then destroyed.

INVESTIGATIONS

Progression Timelines for OIA Intake Investigations

It is incumbent upon the Unit Lieutenant to manage the progress of all OIA intake cases assigned to agents within his/her unit for investigation. Towards that end, the Unit Lieutenant shall, within seven (7) days of receipt of an intake case, meet with the agent assigned to the case for the purpose of defining the specific course of action to be taken, and to provide guidance, instruction, and/or direction. Within twenty-one (21) days, a follow-up meeting shall be scheduled with the agent to assess the progress of the investigation, at which point any problems should be addressed and redirection given, if necessary. Thereafter, the Lieutenant shall meet with the agent every two (2) weeks to assess the progress until such time as the case is closed. Each meeting with the agent shall be documented on the "Case Review Log Record" on the left side of the case jacket, on top of the CS Sheet. Additionally, the status of all cases shall be reported in the synopsis section of the Unit Lieutenant's monthly report. All investigations shall be completed 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.

PD Form 854

All interviews and investigative steps shall be recorded or paraphrased on a PD Form 854 Report of Investigation (first action in the case will provide the allegation), and PD Form 854-A (follow-up, or record of on-going investigation). Completed reports must be submitted to the Supervisory Lieutenant for review, not later than 24 hours following the action or interview (not including weekends and Holidays).

The PD Form 854-A may also be used in place of the standard memorandum for closure of any case not leaving this Office, or recommended for classification of any class other than SUSTAINED. The format is further discussed on page 17, Case Closure.

Revocation of Police Powers

Revocation of a target member's police powers is not necessary in every case; but when the task becomes necessary, timing is important. Each investigation is unique, and the complexities of each case sometimes actually dictate the exact sequence of the investigative steps to be undertaken. Generally speaking, however, whenever the investigating official feels that probable cause is present to believe a member committed a criminal act, or gross misconduct tending to publicly discredit the department or endanger the public, the member's police powers should be revoked.

When an investigating official believes that probable cause exists to believe the member is involved in criminal or gross misconduct, the investigating official shall bring the matter to the attention of a superior officer. Unless revocation of a member's police powers would compromise the investigation, the target member shall be summoned to the Office of Internal Affairs, where he/she

shall be served with PD Form 77, revoking the member's police powers. This does not preclude District/Unit officials from revoking their respective members' police powers, at the request of OlA personnel. In all instances of revocations, the Director of OlA or his/her designee shall be notified through the chain of command, before such action is taken.

The member shall be advised of the criminal allegations pending his/her constitutional rights, and served with FL-36, FL-16 and UN-203. The member shall be asked if he wishes to make a statement concerning the incident. If he chooses to make a statement, an attorney of his/her choosing may be present if requested by the member. However, should the member wish a representative from the labor union, the representative need only be advised that the member is suspected of criminal misconduct, and that the representative will not be permitted to witness the statement.

In those instances where a member's police powers are being revoked as a result of a criminal investigation by another law enforcement agency, e.g. arrest for a criminal violation, careful consideration should be given concerning whether to question the target member. One should be mindful that doing so might disrupt or cause damage to the criminal case. In that event, questioning may be delayed until after the resolution of the criminal matter.

Preliminary Reports

Immediately following the revocation of police powers of a member, the investigating official shall prepare a preliminary report for the signature of the OlA Director, through the Assistant Chief, OPR, to the Chief of Police, and immediately make the following notifications:

- 1. Assistant Chief, OPR
- 2. Assistant Chief of Police or Senior Executive Director, as appropriate
- Members Organizational Element
- Human Services
- 5. Office of the Chief of Police
- 6. Office of Operational Services
- 7. Director, Disciplinary Review Division

The memorandum shall briefly state the preliminary facts, circumstances, purpose for the revocation, member's appointment date, and shall be routed through the chain of command to the attention of: 1) the member's unit, 2) the Human Services Division, and 3) the Director of the Institute of Police Science when the member is still in the academy. The report shall be typed and in most cases should not be more than one and one-half pages in length.

In some instances, an *addendum to the preliminary report* will be required, such as: 1) an indictment or arrest of a member in connection with the case under investigation, or 2) a trial or jury verdict. In those cases where an addendum is required, the report must be submitted no later than 0900 hours the next business day following the development giving rise to the memorandum.

AUSA Referrals

The Internal Affairs Bureau (OPR) is tasked with the responsibility of reviewing all criminal matters to be referred to the United States Attorney's Office for determination. Accordingly, upon receipt of a criminal investigation being conducted by another District or Division, the OPR will assign a due date and forward the package to the appropriate OIA Unit Lieutenant for review. The Unit Lieutenant shall review the documents, and make a recommendation whether to forward the matter to the United States Attorney's Office for determination. This recommendation shall be forwarded through the chain of command to the Assistant Chief, OPR, by the due date. If the matter is to be referred to the USAO, the Unit Lieutenant shall serve as overseer to the case. An OIA Agent is responsible for monitoring the criminal court proceedings until the case is concluded, and preparing the administrative investigative report. Should the AUSA issue a Letter of Declination, the matter will be referred to the subject member's district/division for handling, unless the Director, OIA determines that OIA will assume responsibility for the final investigative report. All correspondence shall bear the relative CS numbers, with a request that referral to those numbers be made on all future correspondence.

AUSA Review

The Assistant Chief, Internal Affairs Bureau (OPR), the appropriate Inspector, Captain, and Unit Lieutenant shall review and approve all cases prior to being submitted to the United States Attorney's office (USAO) or the Office of the Corporation Counsel (OCC) for determination of prosecutorial merit. The USAO shall be notified immediately, in no case later than the next business day, following the receipt or discovery of any allegation of criminal misconduct outlined in General Order Series 1202.3. Where evidence supports "probable cause" to believe that criminal conduct has occurred and a member of the department or a District of Columbia Government employee committed it, a summary of the facts and all relevant evidentiary information, including witness statements, shall be compiled for presentment. This summary shall be reviewed by the Assistant Chief, OPR prior to being presented to the USAO for the District of Columbia or the States Attorney for the jurisdiction in which the crime occurred. A cover letter shall be prepared for AUSA referrals, which shall contain the following terminology:

It is requested that the United States Attorney's Office review the facts outlined in this investigation and consider the charge of ______ against Officer ______. Should you require any additional information, please feel free to contact OIA Agent _____ on (202) 727-____. Additionally, please refer to CS#_____, on all future correspondence concerning this matter.

It is further requested that the United States Attorney's Office notify the Metropolitan Police Department in the event that 1) a person is arrested by an officer and charged with a) assault on a police officer (APO), b) resisting arrest, or c) disorderly conduct; and the United States Attorney's Office or a judge dismisses the charges against the person based upon member credibility, 2)

evidence was suppressed in a criminal case due to a constitutional violation involving potential misconduct on the part of a MPD member; and/or 3) a judicial finding of officer misconduct was made in the course of a judicial proceeding, or a federal or District of Columbia judge or magistrate requests a misconduct investigation based on information developed during a judicial proceeding.

Under no circumstances shall a case be presented for any type of review without prior approval of the Assistant Chief, OPR, or the Acting Assistant Chief.

The fact that criminal allegations are made by a complaining witness(es) does not, in itself, mandate a review by the United States Attorney's office. If no evidence is revealed to cause a reasonable and prudent Agent/official to believe that a crime was committed, this fact must be documented on a PD Form 854-A at the time this determination is made. Cases of this nature shall not be presented to the AUSA for review. This documentation is imperative, should a grievance or appeal be filed later in relation to the case.

Cases falling under the jurisdiction of the District of Columbia Superior Court, where an arrest has not occurred, shall be presented to the Chief, Grand Jury Intake Section. Those cases falling under the purview of the United States District Court for the District of Columbia, where an arrest has not been made, shall be presented to the Assistant United States Attorney serving as Chief, Criminal Division. Those cases falling under the purview of the Office of the Corporation Counsel shall be presented to an Assistant Corporation Counsel for review.

Except in exigent circumstances, all arrest affidavits in police cases must be reviewed by the Assistant Chief, OPR, prior to review by the USAO or the OCC. Additionally, the Assistant Chief, OPR must be notified prior to the arrest of any police officer, unless exigent circumstances exist.

OIA Agents are responsible for monitoring criminal court proceedings of target members under investigation by OIA. Accordingly, agents shall attend all proceedings and document the status of each case on a PD 854, after each attendance.

Letters of Declination

If the USAO or the OCC declines criminal prosecution after reviewing the evidence submitted by the lead Agent, a Letter of Declination shall be prepared by the declining entity and forwarded to the Assistant Chief, OPR. At this juncture, the investigation becomes administrative in nature.

Should the USAO or the OCC initiate criminal charges against a member of the department, the matter will usually be resolved through a court proceeding or trial. If the member pleads guilty or is found guilty by a court of competent jurisdiction of any criminal or quasi-criminal offense, the OIA will submit an Adverse Action Report recommending disciplinary action or termination. If a court of competent jurisdiction finds the member not guilty and departmental violations exist, the OIA will

submit an Adverse Action Report recommending disciplinary action or termination. If the member is found not guilty by a court of competent jurisdiction and no departmental violations exist, the OIA will prepare an administrative report closing out the case with the appropriate recommendation.

Administrative Cases

Once a Letter of Declination has been received from either the USAO, the OCC, or a State's Attorney from another jurisdiction, or a Grand Jury refuses to indict, or a member is found not guilty in trial, or only gross misconduct exists, the OIA will conduct an administrative investigation into the allegation(s). An investigative report shall be prepared, and the case jacket shall contain a detailed summary of the investigative efforts expended in the case with supporting documentation. Each allegation of a complaint must be closed with one of the following classifications:

Unfounded: The investigation determined no facts to support that the incident

complained of actually occurred.

Exonerated: A preponderance of the evidence shows that the alleged conduct did

occur but did not violate MPD policies, procedures, or training.

Insufficient Facts: There are insufficient facts to decide whether the alleged misconduct

occurred.

Sustained: The person's allegation is supported by sufficient evidence to

determine that the incident occurred and the actions of the officer

were improper.

For those instances where an allegation of misconduct is sustained, the Agent shall prepare a report of adverse action recommending appropriate disciplinary action. The report shall specifically outline the charges and specifications against the target member(s). The report shall be directed to the Disciplinary Review Officer, through the chain of command.

If an agent, during the course of an investigation, identifies deficiencies in management or training that could have prevented or remedied the incident, the deficiency shall be addressed in the conclusion section of the report, and a recommendation for improvement cited.

Case Status

All inquiries from MPD officials or other sources from within and outside the department, concerning the existence and/or the status of any open or closed case, shall be referred to the OIA Director. Furthermore, information regarding any newsworthy matters (arrests, high profile investigations, etc.) shall not be released without the approval of the Assistant Chief, OPR, or his designee.

Intercept/Recording of Oral Communications

Members of OIA shall follow department guidelines outlined in General Order 304.4, concerning interception of messages carried over the wire. Specifically, no member may intercept communications without the lawful approval of a court with jurisdiction, or voluntary consent of one-party to the conversation. The law does not restrict one-party consent recording in the District of Columbia and Virginia. Maryland state law does restrict the recording of one-party consent conversations.

In the state of Maryland, **only** Maryland State investigative or law enforcement officers, or any other person acting at the direction or under the direct supervision of a Maryland investigator or law enforcement officer, or any attorney authorized to prosecute or assist in the prosecution of criminal cases in the State of Maryland, are authorized to conduct one-party consent recordings. Moreover, authorization can **only** be given for the investigation of murder, kidnapping, gambling, robbery, bribery, extortion, dealing in controlled substances, or the conspiracy to commit any of these seven (7) offenses.

Prior to engaging in any one-party consent recordings, the investigating OIA Agent/official shall complete and obtain the signature of the person giving consent on UN-577 (OIA One-Party Consensual Recording Form). The original UN-577 shall be maintained in the official OIA case file. (NOTE: UN-577 is not needed when the consenter is an Agent/official of OIA. Instead, the OIA Agent/official shall document the circumstances surrounding the interception on a PD-854.)

Interviews/Recording Statements

A vital component of the investigative process is the art of interviewing. Towards that end, the successful disposition of a case hinges on the Agent's ability to constructively extract pertinent details of an allegation in order to reach the truth, whether it exonerates or implicates the target. Members are encouraged to hone their interviewing skills to achieve maximum efficiency as investigators.

The OIA's policies for conducting interviews and recording statements are as follows:

1. Weapon Security

Per Division Order Series 98, Number 8, it is the policy of the OIA that any law enforcement member summoned to the OIA for an interview, shall immediately surrender his/her firearm by placing same in a locked gun box, located at the OIA entrance. The key to the locked gun box shall be surrendered to the OIA Agent or official conducting the interview. If a Fraternal Order of Police (FOP) representative is present for the interview, he/she shall also surrender his/her firearm in the manner prescribed above. OIA Agents/officials shall also adhere to these safety requirements while engaged in the interview process.

2. Conducting an Interview

Statement taking is an important and demanding task for which careful preparation is essential. For this reason, Agents are encouraged to plan their interviews by developing lead and alternate questions in anticipation of responses given by the interviewee. The Agent must know prior to beginning an interview the reason for the meeting and the information sought. Rambling, pointless and meaningless statements by witnesses/targets cause a needless burden on the resources of the OIA. The Agent must keep each witness/target focused in order to extract pertinent information. This will allow the witness/target to bring to the Agent's attention, any points that may not have been addressed or known to the Agent.



3. Investigative Questioning, Miranda/Garrity Warnings, and Representation

a. Not the target of the investigation or discipline not expected.

Whenever an investigating official wishes to question any member during an investigation he/she shall contact the member's Administrative Lieutenant or any onduty supervisor either personally or by telephone, and request the member's presence for the interview at a time and place agreeable to both parties. Officials should be mindful, though, that interviews conducted in unfamiliar surroundings can be subject to interruptions and conditions beyond the interviewers control. Therefore, efforts should be made to hold the interview(s) in the Office of Internal Affairs.

In this situation, if the member(s) is not considered to be a target, or if there is no reason to believe that the member about to be questioned will reveal incriminating evidence, the member shall be advised that he/she is not a target of the investigation. There is no need to advise the member of his/her constitutional rights, and the member may be ordered to answer questions concerning the investigation.

Although, the member about to be questioned is not the intended target of an investigation, the bargained labor agreement provides that if the member reasonably believe that discipline may result, questioning shall be delayed, at the member's request, for up to **one and one-half hours** to allow the member to consult with a representative of the labor union, and the member may have a labor representative present during questioning, unless the questioning concerns a criminal matter. The labor representative may not, however, act as an attorney or interrupt the questioning.

except to object on any issue that may be a violation of the bargained agreement.

Should a member of the labor union serving as a representative become disruptive during an interview, he/she shall be dismissed, after having been given at least one prior verbal warning concerning the conduct, and the member being questioned shall be given an opportunity to obtain another representative if the member so desires. In both instances questioning may be delayed up to **one and one-half hours** for the member to obtain representation from the labor union.

b. Target member of the investigation.

Officials are again reminded that according to the bargained labor agreement, only ONE official may question a TARGET member of ANY investigation.

When a member of the department is about to be questioned and the member is a target of an investigation, the member shall be contacted and a meeting arranged as above. Questioning shall proceed as stated below:

1) Suspect in a criminal matter.

If the member being questioned is the suspect in a criminal investigation, the member shall be given the opportunity to obtain counsel and have counsel present during questioning. Union representatives shall not be permitted to monitor questioning sessions where criminal conduct is suspected.

Prior to questioning the member shall be:

- Advised of the official's name, rank and assignment, who will be conducting the questioning and those present;
- Given the Miranda/Garrity warnings and served with IAD FL-36, and advised of all allegations of suspected criminal conduct; additionally, the member shall be advised to sign the warning form;
- Notify the member of the official's intention to charge misconduct resulting in disciplinary action at the level of an official reprimand or above;
- Postpone the interview until the following day, if necessary, to allow a member to consult with a lawyer.
- Target of an administrative investigation or subsequent to declination of prosecution.

When a member is being questioned as the <u>target of administrative</u> investigation the member shall be ordered to submit to questioning under the <u>same conditions as stated</u>. At the request of the member, questioning may be

delayed up to **two hours** for the member to consult with a union representative. The member shall be informed of the nature of the allegations and questioning as previously stated, and the union representative may be present during questioning.

When the member about to be questioned was the suspect in alleged misconduct and questioning is taking place following a declination of prosecution from the United States Attorney or following adjudication in the courts, the official conducting the interview shall:

- Advise the target of the officials' identity and the nature of the allegation.
- Show the member the original letter of declination from the USAO or OCC, if applicable, and order the member to sign and date the bottom right corner of the letter;
- Both read to the member and have the member read to himself, and sign FL-35, Reverse Garrity Warnings;
- Directly order the member to answer questions put to him concerning the allegations under investigation, and advise the member that disciplinary action could result for refusal to answer questions, and failure to answer truthfully.

4. FOP Labor Agreement

Prior to conducting an interview of sworn members, Interviewing Agents shall refer to and be guided by the provision of Article 13, Sections 1 through 8, of the current Labor Agreement between the Fraternal Order of Police and the Metropolitan Police Department. (Effective Fiscal Years 1998 through 2000.)

Members are reminded that in order to comply with the FOP Labor Agreement, Article 13, Section 3D, only **ONE** Agent may ask questions of the **target/witness** during an interview. Accordingly, during an interview, one Agent will be designated as the Interviewing Agent, and the other, the Witnessing Agent. The Interviewing Agent will be the only member authorized to ask questions! This shall be the practice in OIA, regardless of who is being interviewed. During the interview, the Witnessing Agent may pass notes to the Interviewing Agent, or, during an arranged break, information may be exchanged.

5. Tape Recorders

ONLY OIA Agents/officials are permitted to tape record conversations during an OIA interview. Per General Order 304.4, Part I D, privately owned tape recorders may **only** be brought into, kept or used on Metropolitan Police Department premises or in connection with department business or investigations, if the tape recorder has been <u>registered</u> on PD Form

298 with the Administrative Lieutenant of the relevant organizational unit.

Confidentiality

Historically, the OIA is one of three units within the Metropolitan Police Department, bound by confidentiality restrictions. The other two units were the Homicide Branch and the Sex Offense Branch, which are now decentralized and part of each District's Violent Crime Unit.

The nature of the investigations conducted by these units necessitates the need for confidentiality control. The purposes vary from the investigative tactics employed: the possibility of jeopardizing the successful conclusion of a case, victims rights, juvenile laws, anonymity rights of sex victims, and the need to notify the next-of-kin in cases of death, to name a few. One of the criterions for Agent selection is that each applicant possesses the highest standards of integrity. With this comes the charge that each OIA Agent maintains absolute confidentiality to ensure the security of all information in every case. Each member is required to sign a confidentiality form upon entry into a position within the OIA, acknowledging this important requirement.

ONLY the Assistant Chief of OPR is authorized to release any information contained within the OIA to a requestor. Those requests supported by a court ordered subpoena shall be forwarded to the Assistant Chief, OPR for processing. Under NO circumstances shall any member release information without the expressed approval of the Assistant Chief, OPR. Any member receiving a request for information contained within the OIA shall channel the request to the Assistant Chief, via the chain of command.

Lewis Checks

The United States Attorney and the Corporation Counsel for the District of Columbia are mandated to check on the credibility of prosecution witnesses. This credibility check is referred to as "Lewis Checks". The United States Attorney's Office (USAO) and the Office of the Corporation Counsel (OCC) are responsible for conducting the initial criminal checks on testifying police officers. If a check reveals a criminal record (hit), the SCU of the Office of Internal Affairs (OIA) is notified of the hit by the respective agency. This notification can be via telephone, fax, or letter.

At this juncture, it becomes the immediate responsibility of SCU to verify the arrest of the Metropolitan Police Officer by conducting a review of the following Metropolitan Police Department files: Washington Area Crime Intelligence Information System (WACIIS), National Crime Information Center (NCIC), and Interstate Identification Index (III). Confirmation of the arrest is then forwarded, in writing, on department letterhead, under the signature of the Assistant Chief of the Internal Affairs Bureau (OPR), to the respective agency. The SCU shall maintain an alphabetical file listing of all "Lewis Check" responses generated at the behest of the USAO or OCC. All Lewis Check requests by other units shall be forwarded to SCU for handling.

Any arrest, not previously reported to the department, shall be investigated in full by the OIA. The

circumstances surrounding this arrest will be reported to the requesting agency, as indicated above.

OPR's policy is **not** to release any OIA case information without the expressed approval of the OIA Director, and/or the Assistant Chief, Internal Affairs Bureau, or a court ordered subpoena.

Photo Arrays

The Office of Internal Affairs has the sole authority for producing official police officer photographs for the purpose of providing a photo array for any criminal investigation. Upon receiving a request from SID, a district violent crime unit, or any other law enforcement agency, OIA shall determine the need for the police photograph. This is to ensure that the photograph is being used for law enforcement purposes, that the member is not currently a target of OIA, or that an OIA case may not otherwise be jeopardized. Upon approval of an OIA captain or his/her designee, OIA members shall obtain the target(s) photo from the OIA Livescan Machine, and eight (8) other photographs of the same general description. The release of the photo array shall be documented on a PD Form 854 by the OIA member obtaining the photographs, and submitted to the Operations Staff for filing in the Photo Array File.

Composition of Investigative Report

It is imperative for the facts uncovered in an investigation to be presented in a standardized form that is both sequential and thorough to the reader. Accordingly, the following format is an ideal that Agents should endeavor to achieve when preparing their final investigative reports.

1. Allegation

This section will entail a brief synopsis of the nature of the allegation/complaint, to include date, time, location, allegation, complainant's name, target(s) name, etc.

2. Investigation

This section should be a chronological delineation of the events/evidence surrounding the Agent's fact-finding efforts. It is a recounting of the details discovered during the course of the investigation in narrative form. It should be a constructive flow of information in sequential order of occurrence. This accounting should be concise and contain only those specific facts germane to the outcome of the investigation, and should not be overburdened with minor details or irrelevant information. This also applies when summarizing interviews of witnesses/targets.

3. Findings/Conclusion

This is the Agent's findings based on the facts uncovered during the investigation. The facts reported in the investigation should support the findings reached by the Agent. Each

allegation should be addressed and resolved with supporting documentation derived from the evidence collected. By the same token, any discrepancies discovered should also be brought to light and discussed, and attempts to resolve the discrepancies should be articulated. The evidence must either support or refute the allegation(s) by the complainant and lead to a determination of the target's innocence or guilt in each instance. Agents are reminded that proper weight must be given to the evidence when formulating their conclusions.

4. Recommendation

Based upon the findings, the Agent will classify each allegation in the investigation in one of four categories: Exonerated, Unfounded, Insufficient Facts, or Sustained. In those instances where there are insufficient facts to decide whether the alleged misconduct occurred, the classification shall be Insufficient Facts. In those instances where an allegation of misconduct is Sustained against a member of the department, the Agent shall cite charges and specifications against the target member(s). (See Page 8 for definition of case closure classifications.) In those instances where management and/or training deficiencies are evident, a recommendation for management reform or additional training shall be made.

Case Jacket

Members shall utilize a six section case jacket when presenting an OIA case for closure. The case jacket shall be assembled as follows:

1. Case Summary Sheet

The first section of the case jacket consists of the case summary sheet (Form UN-938), which indicates how the allegation/complaint was received and contains the pertinent information relative to the nature of the complaint. As discussed on Page 4 of this manual, the Assistant Chief, OPR, who determines the category for processing the complaint, must approve the case summary sheet.

2. Background Information

The second section of the case jacket consists of a photograph(s) of the target(s), if available, and his/her personnel records.

3. PD Form 854 Report of Investigation

The third section of the case jacket contains the Agent's detailed account of the investigative steps taken during the course of the investigation. This section is chronologically assembled, with the latest information on top.

4. Miscellaneous Information

The fourth section of the case jacket consists of any other relevant data uncovered by the Agent during the course of the investigation, such as, messages, newspaper articles, case law, preliminary reports, WALES/NCIC/III printouts, OIA confidentiality agreement forms, transcriptions, etc.

5. Attachments

The fifth section of the case jacket contains a list of all relevant documents cited by the Agent in the investigative report to support his/her findings of fact. Each item cited should be tabbed as an attachment, and numbered sequentially as referenced in the investigative report.

6. Final Investigative Report

The sixth and final section of the case jacket consists of the Agent's final investigative report. This report is usually a memorandum to the Assistant Chief, Internal Affairs Bureau through the chain of command. In those instances where the classification is other than Sustained, a PD Form 854-A may be used for closure in place of the standard memorandum. In Sustained cases of a departmental member, the memorandum shall contain a recommendation for Adverse Action with charges and specifications. A cover letter shall be prepared and attached to this memorandum in all cases involving a swom or civilian member of the MPD. The cover letter shall be routed to the COP, with attention to the EAC and the Disciplinary Review Officer, for the Assistant Chief's signature.

Case Closure

Prior to completing final investigative reports, the investigating Agent shall meet with his/her supervisor to discuss the merits of the case and the proposed recommendation, in order to avoid needless revisions. Each allegation of a complaint must be closed with a recommendation that one of the four (4) classifications outlined on page 8 be considered. Additionally, the propriety of all conduct by the member during the incident shall be assessed and a determination made as to whether the member engaged in any other misconduct other than that alleged. Recommendations to close a case shall normally be submitted on formal memorandum to the Assistant Chief, OPR. However, the PD Form 854-A may also be used in place of the standard memorandum for closure of any case not leaving this Office, other than those classified as SUSTAINED.

Arrest Affidavits for Sworn Members

The Assistant Chief, Internal Affairs Bureau shall personally review and approve all affidavits for Prior to submitting any arrest affidavits in police cases to the USAO or OCC for review,

Arrest of Sworn Members

Prior to the arrest of any sworn member, the Assistant Chief, OPR, shall be notified through the OIA Director, except when exigent circumstances exist. Members are reminded of the protocol to follow the chain of command when making notifications. In those instances wherein on-call agents receive notification that a member has been **arrested**, the agent shall immediately notify the Assistant Chief, OPR, through their chain of command.

INVESTIGATIVE TOOLS

Computer Voice Stress Analysis (CVSA) Examinations

The CVSA examination conducted by members of this office will fall into one of four categories: 1) OIA investigations; 2) Internal investigations conducted by another unit; 3) Non-internal investigations being conducted by an investigative unit of this department; and 4) Investigations conducted by other agencies.

1. Office of Internal Affairs Investigations

Office of Internal Affairs cases that require a CVSA examination will have the OIA case number entered on all examination material. This includes the Truth Verification Release Form, and the Results Memorandum.

The assigned individual team's "Certified CVSA Operator" will handle the CVSA examination conducted by Agents of the Office of Internal Affairs. Should that team not have a certified operator available, the CVSA coordinator for the Office of Internal Affairs shall be contacted. The coordinator shall then assign a certified operator from another unit to conduct the examination.

The CVSA is designed for developing leads, validity and obtaining case direction. It is to be used as an investigative tool and not to be the determinant of an investigative conclusion.

a. Qualified Examiner

An individual who has satisfactorily completed a Certified Examiners Course given by a recognized instructor in truth verification and the use of the CVSA instrument. Currently, the National Institute for Truth Verification offers the only recognized training. (See list of qualified OIA examiners on page 26.)

b. CVSA Coordinator for OIA

The Lieutenant of the SCU is the Computer Voice Stress Analysis Coordinator. The CVSA Coordinator will receive all requests for CVSA examinations through the Assistant Chief, Internal Affairs Bureau (OPR), and will designate the Agent who shall conduct the examination. A secure file will be maintained by the CVSA Coordinator, which will contain the original request for the CVSA examination, the test results, and copies of any CVSA paperwork generated by this office.

In the case of CVSA examinations conducted by the OIA, the CVSA Coordinator will be given a copy of the final report after it has been reviewed and initialed by the Assistant Chief, OPR. Each CVSA Examiner will keep a log of the tests they conduct. The log shall be reviewed and noted by the CVSA coordinator on a monthly basis. This procedure will be followed to insure all reports conducted by the CVSA operator have been turned in to the CVSA coordinator in a timely manner and have been accounted for by the end of the month.

The CVSA examiner shall request their respective Unit Lieutenant to place his or her initials in the log acknowledging that they are aware of the request prior to the examination being conducted.

The CVSA examiner will refrain from conducting examinations that may compromise their integrity. This includes but is not limited to tests regarding personal matters on or for peers unrelated to an assigned case, on or for close friends, relatives and/or persons whom the examiner has a relationship. The CVSA coordinator will resolve any question concerning possible conflicts.

The CVSA examiner will receive a second opinion on all major cases from another certified examiner.

c. Monthly Reporting Responsibilities

The CVSA coordinator will submit a monthly report on all CVSA examinations to the Assistant Chief, OPR. This report will be submitted by the 10th of the following month.

The report will list each certified CVSA operator, the number of examinations each member conducts and the OIA case number or unit requesting the examination. Each report will reflect the total number of certified examiners, by rank, number of tests by examiner, and total number of tests by the office.

The CVSA Coordinator will maintain the OIA CVSA files which shall be composed of the four sections previously mentioned above. Any questions concerning CVSA examinations or procedures shall be directed to the CVSA coordinator.

d. Release Forms

A CVSA release form shall be initiated prior to any CVSA examination being administered. It should be noted that once this form has been initiated, the subject voluntarily agrees to take the examination.



2. Internal investigations conducted by another unit

When members from other units of this department request an Office of Internal Affairs member to conduct a CVSA examination in an internal investigation, the requesting unit shall be required to submit the request, in writing, through channels to the Assistant Chief, Internal Affairs Bureau.

3. Non-internal investigations being conducted by an investigative unit of this department

Occasionally, other units of the department will make a request for a CVSA operator to conduct tests on individuals in cases assigned to their units. These are criminal cases that are unrelated to any internal investigations.

These requests must be submitted through channels to the Assistant Chief, Internal Affairs Bureau. However, when an Agent is requested to conduct a CVSA on an EMERGENCY BASIS, the CVSA operator will require the requesting member to provide a written request to the Assistant Chief, Internal Affairs Bureau signed by the requesting unit's Watch Commander, or the official then in charge of that unit. The member conducting the examination shall forward the request for the CVSA examination, examination results, and other documents related to the examination to the CVSA Coordinator by the next business day.

4. Investigations conducted by other agencies

Occasionally, representatives from other agencies will make a request for CVSA examinations to be conducted on individuals for various forms of misconduct. In these cases, that agency head shall forward a written request to the Assistant Chief, Internal Affairs Bureau. If the investigation is criminal in nature, the examination SHALL NOT be conducted unless the United States Attorney's Office has reviewed the case. Should the request be made by another jurisdiction, the appropriate States Attorney's Office shall be consulted.

In all cases, the final decision on conducting a CVSA examination will be made by the Assistant Chief, Internal Affairs Bureau.

Polygraph Examinations

The polygraph instrument is a useful, but not frequently employed, tool of the criminal investigator that is immediately available to the OIA officials. Polygraphs can be used at any point during the investigation to help verify truthfulness or accuracy of a statement, or for interrogation. Officials are encouraged to attempt to employ polygraph examinations during the course of an investigation where statements or acts of targets or witnesses cannot be independently corroborated. The result of a polygraph examination is an investigative aid and will not be used as the sole determining factor in any investigation.

It is the policy of the Chief of Police, as well as the contractual agreement with rank and file personnel that no member of the department will be ordered to submit to a polygraph examination. Therefore, all members of the department and civilians must voluntarily consent to such an examination. (See list of qualified polygraph examiners on page 26.)

DO:

- Offer witnesses the opportunity of undergoing an examination
- Suggest that the subject might aid the investigator by undergoing a future polygraph examination
- Receive voluntary consent to undergo examination

DON'T:

- Attempt to prepare the candidate for the examination
- Discuss the technical aspect, or electrical responses of the equipment
- Suggest how a candidate might answer a hypothetical question except to be truthful
- Attempt to explain the legality, acceptability of test results as evidence in court, etc.
- Use threat of the polygraph as intimidation

1. Requests for Polygraph Examinations

Requests for polygraph examinations shall be submitted in writing through channels to the Assistant Chief, Internal Affairs Bureau, as expeditiously as possible, after a thorough and complete conventional investigation reveals that a polygraph examination will be a useful supplemental tool in achieving resolution to the investigation (criminal or internal). Requests shall include:

- a. The full name of the subject to be examined
- b. The name of the member handling the case
- c. A brief synopsis of the investigation
- d. The reason the polygraph examination is being requested

2. Preliminary Conference

- a. If approved, the polygraph examiner will contact the requesting member to arrange for a mutually acceptable time for a preliminary conference.
- b. If disapproved, the requesting member will be advised, in writing (FL-32) of the reason(s) for disapproval.
- c. The requesting member shall bring all pertinent records to the preliminary conference. These include but are not limited to:
 - (1) Crime reports
 - (2) Investigative reports
 - (3) Background information on the subjects to be examined
 - (4) Any statement of denial or admission made by the subject
 - (5) Tape Recordings
 - (6) Newspaper articles, etc.

Investigating officials from other units who feel polygraph examinations would benefit an investigation shall submit a case file to the SCU Lieutenant who shall arrange for a polygraph examiner to review the case file. After reviewing the file, this supervisor shall inform the investigating official of his/her decision.

Once approval is granted, the investigating official shall then meet with examiners and review the investigative file for the formulation of relevant questions. The investigating official will be responsible for scheduling interviews with the candidates.

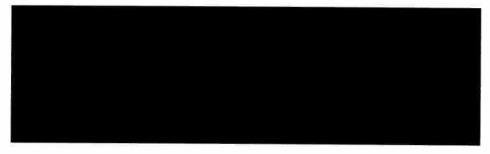
Following examinations, the polygraph examiner shall prepare a written report directed to the investigating official, through the Supervisory Lieutenant and the Supervisory Captain, which states his opinion of the test results.

Electronic Equipment - The Technical Surveillance Squad

The Technical Surveillance Squad (TSS) of the Office of Internal Affairs (OIA) was established on May 27, 1999, to provide technical surveillance for the investigative units of OIA. The Squad is currently under the Special Investigations Unit and staffed with one Supervisory Sergeant and a lead Technical Agent. Two Unit Technical Service Agents assigned within PCU Units 1 and 3, respectively, further complement this Squad. (See list on page 26.)



Surveillance Operations



It is critical for Agents to develop a written tactical operation plan, which specifically delineates tactics to be employed, and all aspects germane to the successful completion of the surveillance. All tactical plans shall be approved by the Assistant Chief, OPR prior to execution. Tactical plans must be submitted in memorandum form, to the Assistant Chief, OPR, through the chain of command. The subject of the memorandum shall reflect the date and time of the operation and should be outlined as indicated below:

1. Tactical Plan

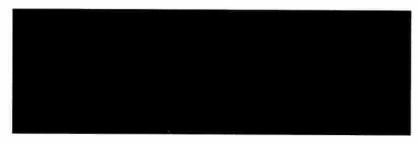
a. Situation

The first paragraph should contain a brief summary of the specific allegation(s) warranting the surveillance, to include the elements of the criminal activity under investigation; target(s) name(s); case/intelligence (OIA) number, etc.

b. Mission

This paragraph reflects the goal or objective of the surveillance operation.

c. Plan/Execution



Note: Members are reminded that a preliminary briefing on the execution plans is essential prior to implementing any surveillance.

d. Equipment



2. Results of Surveillance

a. Debriefing

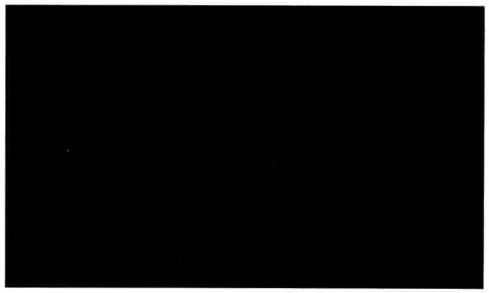
At the conclusion of an operation, all participants shall be debriefed for information and to identify problem areas.

b. PD 854 Report of Outcome

Within 24 hours of the execution, a PD Form 854 shall be prepared by the case Agent to document the outcome of the surveillance.

Confidential Fund

The Confidential Fund is established by language contained in the annual appropriations act for the District of Columbia. The Office of Internal Affairs (OIA) obtains a working confidential fund from a main cash advance made to the Chief of Police, in an amount authorized by the Mayor.



Receiving Cash

Members requesting cash from the confidential fund shall prepare the top portion of PD Form 153 (Receipt for Expended Advanced MPDC Funds) and submit it to her/his immediate supervisor. The member's Unit Lieutenant or any OIA Lieutenant or above, shall approve the request. Upon receiving the confidential funds, the member shall initial the appropriate column on the PD Form 129 (Officer's Account Record) maintained with the fund for that purpose.

Expending Cash

Members who expend cash shall, within ten (10) workdays, prepare and submit a PD Form 127 (Confidential Expenditure Report) reporting the details of the expenditure. This shall be approved by an OIA Lieutenant or above. All persons to whom funds are paid shall sign the lower portion of the PD Form 153 acknowledging receipt of payment. The OIA confidential fund is audited quarterly. Therefore, Agents should use care not to provide information on the PD Form 127 which, if disclosed, would compromise an investigation.

Members assigned to the OIA who require the use of confidential funds shall familiarize themselves with General Order Series 304, Number 5, Confidential Funds; Special Order Series 79, Number 100; Special Order Series 80, Number 6; Special Order Series 85, Number 26; and all relevant forms and their proper preparation.

Qualified Polygraph Examiners

Detective Wallace Carmichael, 7D Lieutenant Kim Gregory, Youth & Family Services Division Agent John Rentz, OIA

Qualified OIA CVSA Examiners

Agent Joseph Bonner
Agent Scott Guthrie
Agent Dwayne Jackson
Agent Emmanuellan Moore
Agent Pamela Prather
Agent Dewey Watkins
Lieutenant Charles McKeown, OIA Coordinator

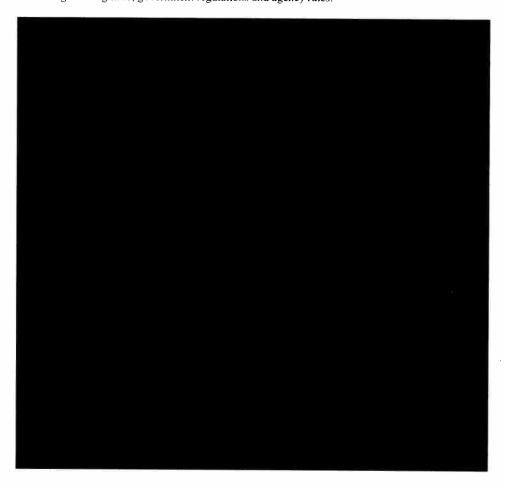
Unit Technical Service Agents

Agent Theresa Ostazeski Agent Diana Rodriguez

SPECIALIZED INVESTIGATIONS

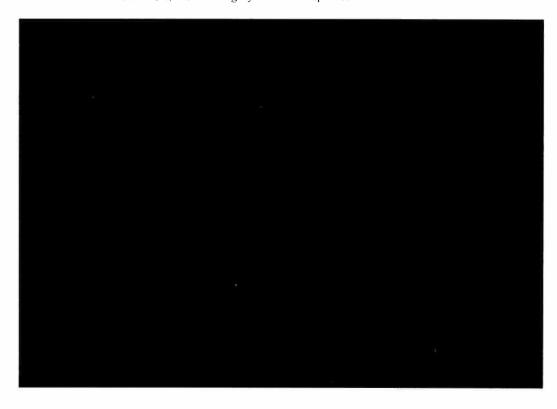
Integrity Checks

The Office of Internal Affairs (OIA) is strongly committed to the task of maintaining the highest level of integrity within the MPD. The OIA is further committed to ensuring that all MPD employees continuously provide professional/quality services and that these services are consistent with the governing laws, government regulations and agency rules.



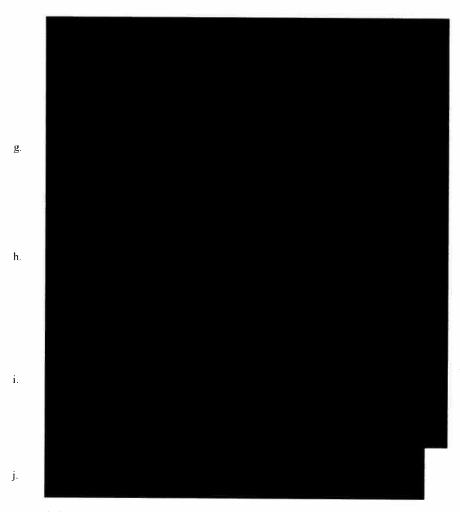
Once an integrity check scenario plan is approved, the CUE will assign an OlA I/C log number to the plan. The plan is subsequently logged in the logbook. The Integrity Check Log is a record of all integrity checks conducted by the OlA. The log is maintained in the CUE. Each time an Agent conducts an integrity check; he/she shall record the information and disposition of the integrity check into this log. The information listed in the log consists of: integrity log number, date of the check, target name/assignment, location of check/District, approving OlA official unit, type of check (random or specific), and disposition.

The Integrity Check File consists of Forms UN208 (Integrity Check Form) prepared by the Agent and maintained within the CUE, once an integrity check is completed.



c. d. e. f.

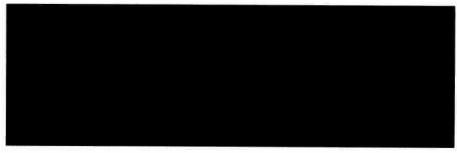
- 33 -



3. Tactical Plan

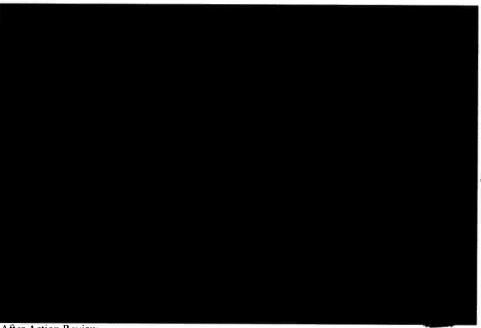
a.
b.
c.
d.
e.

4. The Integrity Test



- с.
- Document Evidence: All evidence recovered during the test shall be documented in accordance with existing departmental guidelines.

5. Results of Integrity Check



6. After Action Review

Integrity testing is a constantly evolving process. Integrity testing is not an exact science, mistakes will be made. We must learn from the mistakes, correct the procedures and always seek to improve the testing procedures.

a. After Action Conference: All participants in integrity check scenarios will be

debriefed after an operation for information and to identify problem areas.

- Test Evaluation: Each test will be evaluated for proper procedures and problem analysis.
- c. Suggestions: Suggestions will be made to improve procedures in place and to correct any deficiencies uncovered during the test. Any minor violations that occur during a scenario that do not fall under the purview of the OIA, should be referred to the member's element commander at the conclusion of the operation.
- d. Classification: After completing the after action review process, the integrity check should be classified according to one of the categories provided on page 32, #5.
- Follow-up Report: A follow-up report will be prepared outlining the results of random integrity checks, and forwarded through channels to the Assistant Chief, OPR.

Integrity checks will be conducted on members of the Metropolitan Police Department, primarily due to the higher standard of conduct required by our members. To this end, it is OIA's belief that integrity checks will aid in improving the overall image and reputation of the Department.

Drug Screening

1. Suspicious Drug Screening

If any member needs to facilitate a suspicious drug screening, they shall notify the PCU2 Unit Lieutenant, or his/her designee. Additionally, after clinic hours, the Director, Medical Services Division (MSD), shall be contacted via a Communications Division SNAP page, to respond to the clinic and administer the drug screening.

2. Confirmed Drug Screening

Upon being notified by the MSD of a positive confirmed drug screening, the PCU2 Lieutenant shall ensure that the target-member is located, his/her police powers revoked, and placed in an Administrative Leave w/Pay Status.

The agent in charge of the investigation shall:

 Prepare and submit a preliminary investigative report to the COP, attention Director, Human Services Division, recommending that the member's pay status be changed to Indefinite Suspension, without pay.

- Conduct an administrative and criminal investigation of confirmed positive drug screens.
- Collect supporting documentation, interview and interrogate members in respect to positive drug screens.
- Prepare and submit an investigative report to the United States Attorney's Office (USAO) for criminal review relative to the member testing positive for drugs. This report must be approved by the Assistant Chief, OPR.
- Prepare and submit a final investigative report to the COP, with attention to the
 Disciplinary Review Officer, with recommendations that the member be cited for
 Adverse Action.
- Provide staff supervision to MSD and/or the members assigned unit investigating any attempts to circumvent the drug screening process.

PCU2/Corruption Unit East History

The Corruption Unit East (CUE), formerly named the Casualty Investigative Unit, was first established within the Metropolitan Police Department as the Casualty Investigation Branch (ClB), under the Internal Affairs Division (IAD), in 1976. Its establishment was in accordance with Mayor's Order 76-213. The Mayor's Order dictated that the Chief of Police be given the responsibility of establishing and maintaining files on each disabled annuitant, or applicant therefore, retired in accordance with the District of Columbia Code, Title 4, Chapter 6, Police and Firefighters Retirement and Disability. The Chief of Police shall collect, evaluate and compile statistical data as required by the D.C. Code, and as he deems appropriate, to assist the Retirement Board in fulfilling its mission. Furthermore, the Order directs the Chief of Police to examine and investigate matters concerning disabled retirees, or applicants therefore, referred by the Chairman of the Retirement Board.

On September 1, 1993, as a result of a reorganization of IAD, the CIB, was transferred to the Police and Fire Clinic (PFC), Medical Services Division. On February 26, 1997, PFC was officially reorganized and placed under contract, thus CIB responsibilities were again transferred to the Office of Internal Affairs (OIA). Today, the primary responsibility for investigating malingering casualty cases is conducted by PCU2.

Prior to 1993, CIB had been staffed with one (1) captain, one (1) lieutenant, six (6) sergeants and (1) secretary. Additionally, two (2) lieutenants from the District of Columbia Fire department (DCFD) were also detailed to the Branch. However, upon being transfer to PFC, the unit was staffed with two (2) sergeants, who have since retired, and a civilian investigative aide.

Duties and Responsibilities for casualty cases conducted by CUE are as follows:

- 1. Investigate allegations of sick leave abuse by members of the MPD and DCFD. If requested to do so, provide staff support to outside agencies, such as the United States Park Police (USPP), and the United States Secret Service Uniform Division (USSS/UD).
- Prepare and submit investigative reports to the USAO for review relative to any criminal concerns regarding sick leave abuse. This report must be approved by the Assistant Chief, OPR.
- 3. Prepare and submit final investigative reports with recommendations of adverse action to the Chief of Police3, to the attention of the Director, Disciplinary Review Division.
- Provide staff supervision to other units of MPD that are conducting investigations of sick leave abuse.
- 5. Conduct investigations for the District of Columbia Police and Firefighter's Retirement and Relief Board (DCPFRRB) relative to annuity violations by disabled retirees.
- Upon request, conduct administrative investigations for the DCPFRRB, of members being considered for disability retirement.
- 7. Make annual notification to all disable annuitants, under the age of fifty-one (51), of their responsibility to file reports of their previous year earnings, update their personal history (UN-344), as well as, release authorization of their previous year federal tax information (UN-345).*
- Review all documentation associated with an annuitant's income to ensure that the 80% restrictive earning of their base salary has not been exceeded.*
- 9. Report to DCPFRRB all violators of annual reporting procedures.*
- 10. Maintain a file and data base on all annuitants under the age of fifty-one (51) years of age.*
- 11. Maintain an Integrity Check Log File, and prepare a monthly report to the A/C of OPR.
 - *(Primary duties prepared and maintained by the OIA civilian aide.)

MEMBER RESPONSIBILITIES

Inspector

There will be one (1) Inspector assigned to the OIA. The Inspector is responsible for the management of all internal functions and controls within the office; and oversees the daily tasks and responsibilities of all subordinates. The Inspector shall report to the Assistant Chief, OPR.

Captain

Currently there are two (2) Captain positions within the OIA, however only one captain is assigned. Each Captain shall be responsible for training, pro-active investigations, case management, organization, surveillance operations, administrative functions, and liaisons with the USAO, FBI, OIG and other agencies.

Lieutenant

1. General Duties

Lieutenants shall be responsible for the general supervision of the functions performed by their respective units. The general duties include but are not limited to:

- Submission of monthly status and statistical reports.
- b. Ensuring the maintenance of computer files.
- c. Ensuring the performance of weekly vehicle inspections.
- d. Submission of investigative reports, responses to grievances, etc.
- e. Submissions of a quarterly inventory report of all equipment, e.g., tape recorders, pagers, typewriters, etc.
- f. Maintain a file for "Lewis Checks," and bring to the attention of the Assistant Chief of OPR, those instances where "Lewis Checks" are confirmed. (SCU)
- g. Constantly monitor OIA's role in the department Random Drug Screening Program and report to the Assistant Chief, OPR, all suspected compromises or need for improvement. (CUE)
- h. Review PD 99 Citizen's Complaints, and CS Sheets (UN 938), referred by the

Operations Support staff, for any patterns of misconduct in their areas of responsibility.

 Preparation of a monthly awards report due by the 10th of the month, listing any awards received by members of the unit.

2. 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.
- Demands placed on the investigator by the particular case.

The Lieutenant shall monitor all cases under investigation by members of his/her unit for establishment of probable cause to believe the target is involved in criminal conduct. Upon making this determination, the Lieutenant shall promptly recommend to the Assistant Chief, OPR, through the chain of command, that the United States Attorney for the District of Columbia, or the Office of the Corporation Counsel review the cases.

3. Quality Control Maintenance

The quality of an investigation is the foundation on which the reputation of the Office of Internal Affairs is based. Every effort will be made to preserve this reputation, demonstrated by the integrity and hard work of every member assigned. To this end the supervisory Lieutenant shall monitor and ensure quality at every step of every investigation. To accomplish this goal he/she shall perform the following:

- a. Upon receiving a Complaint Summary Sheet from the Operations Support staff, the Lieutenant shall review each complaint within his/her area of responsibility for patterns of misconduct, and any previous history of target members involved. Within two (2) working days of the date the complaint was forwarded by the Operations Support staff, the Lieutenant or his/her designee, shall make a preliminary assessment of the complaint, attach a buckslip with a recommendation to intake or refer the complaint, and forward same through the chain of command to the Assistant Chief, OPR.
- b. Immediately upon receipt of an intelligence case, the Unit Lieutenant shall meet with the assigned agent, to provide specific instructions and guidance on how to proceed

with the case. The Lieutenant shall monitor the progress of these cases, by meeting with the agent ever **five (5) days**, and documenting on the left side of the intelligence file, the progress and course of action being taken. An intelligence case which can be closed within the 20 day period, shall be forwarded for approval to the Assistant Chief, OPR, for closure as "intelligence only" and the case jacket filed within the Operations Support staff. However, the Unit Lieutenant, through the chain of command, shall forward those complaints, which cannot be assessed within the 20-day period, to the Assistant Chief, OPR, with a recommendation that the intelligence case be reclassified as an OIA intake case. Upon approval of the Assistant Chief, the Operations Support will assign intake log numbers and return the case file to the appropriate Unit Lieutenant for handling. <u>Under no circumstances shall an intelligence case remain open for more than twenty (20) days.</u>

- c. Upon receiving an OIA intake case, the Unit Lieutenant shall, within seven (7) days of receipt of an intake case, meet with the agent assigned to the case for the purpose of defining the specific course of action to be taken, and to provide guidance, instruction, and/or direction. Within twenty-one (21) days, a follow-up meeting shall be scheduled with the agent to assess the progress of the investigation, at which point any problems should be addressed and redirection given, if necessary. Thereafter, and until the closure of the case, the Lieutenant shall meet with the agent every two (2) weeks to assess and discuss:
 - 1) progress of cases under investigation;
 - 2) investigative steps completed and formulate an action plan;
 - 3) ways to bring the case to a swift, but impartial, conclusion;
 - 4) deadlines are being met;
 - 5) management and/or training deficiencies discovered; and,
 - 6) estimated timeframe for anticipated closure.
- d. Document on the "Case Review Log Record" each meeting with the agent.
- e. Report the case status in the synopsis section of the monthly report.
- Conduct counseling or in-service training as needed to address problems that hamper progress of investigations.
- g. Submit department and outside training requests for members of their units that will further the expertise and skills of the individual members, lend quality to the office, and gain experience in a new field. This training should be germane to the mission of the OIA.
- Monitor polygraph results to ensure a high quality program, and identify the need for additional training of polygraph operators.

- Ensure the daily and weekly completion of appropriate PD775 forms for all unit vehicles.
- j. Ensure that each investigative Agent assigned to their units submit a complete and accurate activity report by the 4th day of the month following the close of the previous month.
- k. Forward to the Assistant Chief, OPR, through the chain of command, OIA, all monthly reports by the 10th day of the month following the close of the previous month.
- Review for completeness all confidential investigations submitted to them for approval of recommendations for closure or referral and forward to the Assistant Chief for approval, via the chain of command.
- Ensure that agents are actively monitoring all court proceedings or, if the case agent is unavailable, ensure that a substitute is assigned to cover the proceedings.

4. Public Information and Outreach

Unit Lieutenants shall be required to attend one (1) PSA meeting per quarter in their area of responsibility, to inform the public about the provisions of the Memorandum of Agreement between the Metropolitan Police Department, the District of Columbia, and the Department of Justice. At least one (1) week before such meetings the City shall publish notice of the meeting in public areas, including libraries, schools, grocery stores, community centers; taking into account the diversity in language and ethnicity of the area's residents; on the city and MPD website, and in the primary languages spoken by the communities in such area.

Agent

1. Preparing CS Sheets

Upon receipt of a complaint, agents shall prepare a Complaint Summary (CS) immediately, and forward it directly to the Operations Support. The Operations Support staff, only, shall issue CS numbers, process the complaint, and forward the complaint to the appropriate Unit Lieutenant for review.

On-call agents shall issue a **CS tracking number** and direct the official to either fax or handcarry a copy of all relevant documents (e.g., PD99, preliminary reports, PD77s, etc.) associated with the complaint to the OIA Operations Support (FAX #202-727-3664). The on-call agent shall notify the Operations Support **no later than 0700 hours** the following morning, of any CS numbers issued between 1900 and 0700 the previous day. The on-call

agent is also responsible for preparing a Complaint Summary Sheet for all complaint numbers issued, and submitting it to the Operations Support immediately upon reporting to duty.

In those instances wherein on-call agents receive notification that a member has been arrested, the agent shall immediately notify the Assistant Chief, OPR, through their chain of command.

2. General Duties

Agents are responsible for the investigation of allegations/complaints of misconduct assigned to them by their Unit Lieutenant. Their general duties include but are not limited to:

- a. In-depth criminal/administrative investigations such as:
 - 1) gathering evidence/developing leads
 - 2) documenting actions undertaken in the case/allegation via PD 854
 - 3) obtaining witness statements
 - 4) conducting interviews
 - 5) developing operation plans
 - 6) conducting covert surveillance operations and documenting results
 - 7) preparing affidavits in support of search/arrest warrants
 - 8) presentment of case to United States Attorney's Office, if applicable
 - 9) preparing preliminary reports
 - 10) participating/monitoring court proceedings
 - 11) serving subpoenas
 - 12) initiating one-party consent recordings
 - 13) obtaining handwriting exemplars and pen registers
 - 14) preparing final investigative reports closing OlA cases
- b. Preparing press releases for the Public Information Office when a sworn member has been arrested or found guilty in a court proceeding.
- c. Completing daily PD Form 775 Daily Vehicle Inspections
- d. Obtaining photo arrays
- e. Conducting integrity checks
- f. Participating in strategy sessions with the USAO/FBI/OIG when warranted
- g. Revoking police powers of members when required

- h. Within 24 hours, documenting all activities undertaken in a case on PD Form 854
- i. Proper handling of all property (See OlA Division Order 99-2)
- Completion of confidential fund reports
- k. Submission of CVSA/polygraph requests to their Lieutenant for approval
- I. Preparation of the Take Home Cruiser Report
- m. Monitoring court proceedings of target officers under OIA investigation

3. Monthly Reports

Agents are required to prepare and submit monthly status and activity reports on all cases under their investigation by the 3rd day of each month.

4. Quality Control

The quality of an investigation is the foundation on which the reputation of the Office of Internal Affairs is based. Every effort will be made to preserve this reputation, demonstrated by the integrity and hard work of every member assigned. To this end Agents shall ensure quality at every step of every investigation. To accomplish this goal he/she shall attend required meetings with his/her Lieutenant to discuss:

- a. Progress of cases under investigation;
- b. Investigative steps completed and any action plans:
- c. Ways to bring the case to a swift, but impartial, conclusion:
- d. Deadlines for open cases;
- e. Management and/or training deficiencies discovered; and,
- f. Estimated timeframe for anticipated closure.

Standards of Performance

The reputation of the Office of Internal Affairs rests squarely on the shoulders of its members. As such, the standard of honor, integrity and confidentially set by the Office of Internal Affairs must never be compromised.

The Inspector shall immediately investigate any violation of standards of integrity and/or breeches of confidentiality. Any member found in violation shall be disciplined appropriately, and removed from the OIA, if warranted.

OPERATIONS SUPPORT

Complaint System Log and Case Tracking System

The Complaint System (CS) Log is maintained in the Operations Support (OS) which contains information on all complaints received. Upon receipt of a complaint, the following data is entered into the logbook:

- CS Log Number: This number is prefaced by the current year, hyphen, and the next available number in sequential order (i.e., CS 99-123)
- Date and Time (The date and time the complaint was received)
- Name of the person making the notification to OlA
- Name of the OIA member receiving the complaint
- Disposition of the case

A case summary sheet is completed as discussed on pages 3 and 4 of this manual. The information from the case summary sheet is entered into a case tracking system database.

Policy and Procedures for Receiving Complaints and the Office of Citizen Complaint Review

It is the policy of the Internal Affairs Bureau (OPR) to ensure that a thorough and objective investigation is conducted of every complaint of alleged misconduct against a sworn or civilian member of the Metropolitan Police Department.

Effective January 8, 2001, in accordance with D.C. Law 12-208, the Office of Citizen Complaint Review (OCCR) opened to the public. Complaints falling under the purview of the OCCR will be referred to that office for investigation and resolution. These complaints will continue to be assigned Complaint System (CS) numbers and tracked by the Office of Internal Affairs (OIA) operations staff. All other types of complaints will continue to be received and referred to other units or the OIA for investigation.

As such, members shall familiarize themselves with the contents and guidelines outlined in Special Order 01-01 Office of Citizen Complaint Review and the Citizen Complaint Review Board in order to more efficiently assist citizens who file complaints and to support the mission of the OPR.

The OCCR is responsible for investigating and resolving citizen complaints alleging the following types of misconduct:

- Harassment
- · Use of unnecessary or excessive force
- · Use of language that is insulting, demeaning or humiliating
- Discriminatory treatment
- · Retaliation for filing a complaint

If an alleged use of unnecessary or excessive force is serious in nature, the complaint will be investigated by both the OCCR and the MPD.

Citizens may file a complaint on behalf of themselves, other citizens, or anonymously. They may call the OIA hotline (1-800-298-4006), appear in person, hand carry or send a written complaint via facsimile or mail.

Complaints falling within the purview of the OCCR will be referred to that office for investigation. The OCCR Director may refer complaints received independently to the MPD due to untimely receipt or because the complaint does not fall within the OCCR purview. The OIA Director will determine how these complaints will be handled. OPR shall notify the complainant in writing that either the OPR or the appropriate MPD element commander will handle their complaint. The complainant shall also be subsequently notified of the outcome and appeal process as outlined in General Order 1202.5 (Citizen Complaints) for those complaints handled by the OPR.

Responsibilities of Members of OPR

- 1) Members who receive a **complaint of alleged misconduct of any type** shall ensure that a Complaint Summary (CS) sheet is prepared and delivered to the OIA operations staff on the same date the complaint is received.
- 2) Members who receive a complaint of alleged misconduct that falls under the purview of the OCCR shall refer the complainant to the OCCR by informing the complainant of the existence and purpose of the OCCR, and providing the address and telephone number of the OCCR to the complainant. This information is as follows:

Office of Citizen Complaint Review 730 11th Street, NW, Suite 600 Washington, DC 20001 202-727-3838

This procedure applies if the complaint is received in person, or by telephone from the complainant or an element official.

 Complaint System numbers shall be obtained and CS sheets shall be prepared in accordance with existing departmental and office policies. If the member receiving the complaint referred the complainant to the OCCR, this fact shall be reflected in the synopsis section of the CS sheet, along with the name of the member who referred the complainant, until such time as the form is revised to capture this information.

- 4) On-call agents who receive complaints during non-business hours shall ensure a CS sheet is prepared and delivered to the OIA operations staff no later than 1200 hours the next business day after receiving the complaint.
- 5) Members awaiting receipt of additional documents relative to a complaint via facsimile, hand carry, or any other method, shall not delay the timely submission of the CS sheet to the OIA operations staff. However, if it becomes necessary to submit the CS sheet prior to receiving such documents, members shall follow the instructions outlined in number 6 of this section.

Members are reminded that if CS numbers are issued to a District/Other Element official for a complaint handled by the OCCR, and if the official obtaining the numbers correctly referred the complainant to the OCCR, that official is <u>not</u> required to transmit any forms or documents to the OPR, only to make a logbook entry in the District OCCR Referrals Logbook, (unless the MPD will conduct a concurrent investigation).

6) It is the responsibility of the member receiving the complaint to ensure that all relative documents are transmitted and delivered to the OIA operations staff immediately upon receipt (except as provided in item 5). All documents shall be appropriately marked with the corresponding CS number.

Responsibilities of OIA Operations Staff Members

- The information from all CS sheets shall be entered into the Complaint System database on the same date the CS sheet is received in operations, by the designated operations staff member on CS duty.
- 2) A manila file folder shall be created for each complaint with the CS number marked on the folder in bold black print. A photocopy of the CS sheet shall be placed in the folder along with a copy of any documents relating to the complaint.
- 3) The original CS sheet and documents relating to those complaints shall be forwarded to the Operations Lieutenant for review on the same date the CS sheet is received and entered. The Lieutenant shall forward the information to the Director.
 - a. The Director or his/her designee will check the "Referral" box on the upper left corner of the CS sheet and write "OCCR Liaison Unit" to the right of the Referral box on those complaints he/she determines will be referred to the OCCR. These complaints shall be clearly identified in the database by keying the letters "OCCR" in the "Investigator" field at the top left portion of the main screen. The CS duty operations staff member will do this after the Director has made the determination and appropriately signed the CS sheet.

- b. The Director or his/her designee will check the "Referral" box on the upper left corner of the CS sheet and write "OCCR Liaison Unit & the MPD Unit Name" to the right of the Referral box on those complaints he/she determines will be referred to the OCCR and to an MPD unit for investigation. These complaints shall be clearly identified in the database by keying the letters "OCCR & Unit Name" in the "Investigator" field at the top left portion of the main screen. The CS duty operations staff member will also do this after the Director has made the determination and appropriately signed the CS sheet.
- 4) Original CS sheets and documents relative to those complaints to be referred to the OCCR shall be placed in the OCCR box in the operations office.
- 5) Each Friday the CS duty operations staff member shall prepare a memorandum for the signature of the Operations Lieutenant listing the CS number and nature of complaint of those complaints to be referred to the OCCR. A copy of all CS sheets and any relative documents shall be attached to the memorandum.
- 6) The package shall be submitted to the OIA Operations Lieutenant who will review, approve, and cause the package to be transmitted to the OCCR Liaison Unit via the inter-office mail system.
- 7) The OPR mail person shall deliver the package to the OCCR Liaison Unit with the following Monday morning mail.
- 8) Upon receipt of final investigative reports from either the OCCR or the MPD investigating unit, the CS duty member shall enter the disposition in the database. (The CS duty member shall be attentive to reports with multiple targets to ensure a disposition is entered for each target.) The disposition shall also be entered in the appropriate logbook.
- 9) The report shall be placed in the manila folder and filed in the file room.

Any deviations from this policy shall be made only with the expressed approval of the Director, OIA, or the Assistant Chief, OPR.

Transcripts and Tape Log

Procedures for Agents requesting the preparation of transcripts from recorded statements of interviews are as follows:

 The requesting Agent shall deliver the original cassette(s) of the statement to the TSS for dubbing. A dubbed cassette will be made from the original, assigned a log number, logged, and given to the Agent in return for the original. The original tape shall be maintained as "evidence" in the case, and stored in the TSS office by the coordinator.

- The requesting Agent shall then deliver the dubbed cassette to the Operations Support (OS),
 where it is logged in the OS's tape log and assigned to a transcriber. Transcripts are
 completed in the order that they are received, unless priority circumstances dictate otherwise.
- A draft is prepared by the transcriber and returned to the Agent along with the cassette(s).
 The date and time of the return is recorded in the OS tape logbook.
- The requesting Agent makes any necessary corrections to the transcripts and returns it to the transcriber for correcting. The date returned is entered in the OS tape logbook.
- The transcriber completes the final transcript and returns it to the requesting Agent. The date returned shall be entered into the logbook.

Interstate Identification Index (III) Log

The III logbook is maintained in the Operations Support next to the computer terminal. Agents running checks through III shall complete all required information in the III logbook. The required information consists of date, CCHH (criminal history check) or CCHR (criminal record check), officer/Agent name, subject name, DOB, social security number, PDID number, FBI/SID number, purpose, and whether or not a printout/copy was retained.

File Maintenance and Records Retention

The Operations Support maintains files on all intake and referral cases. Files on closed cases are retained in the OIA for three (3) years from the date of the final disposition. The files are then transferred to the Washington National Records Center (9th & O Streets, NW) where they are retained for seven (7) years, then destroyed.

1. Case Intake File

The case intake file houses all cases investigated by OIA. These files are confidential and not subject to release without the authority of the Assistant Chief, OPR, or a court ordered subpoena. (See Page 13 for release of information.)

2. Case Referral File

The case referral file houses all case files that are referred to other elements for investigation. They are filed sequentially by CS number, and maintained in the Administrative Office. Each file consists of a manila file folder containing a case summary sheet and any other pertinent information concerning the case. The final investigative report is filed in this file upon receipt from the investigating element.

3. Intelligence File

Intelligence files contain information that was received and preliminarily investigated. Usually, these allegations/complaints are anonymous, lack investigative leads, and all avenues of recourse have been exhausted. Intelligence files are maintained within the Administrative Office for future information and reference purposes.

4. Alphabetical Index Card File

A 3X5 card file is maintained by the OIA as a tool to cross reference all OIA intake cases. The cards are filed alphabetically by target's name, and contain a brief summary of the following information: OIA number, allegation, Agent assigned, and case disposition. Agents utilize the file to reference previous cases involving subjects investigated by the OIA.

5. Separation File

As part of the Metropolitan Police Department's clearance procedures, all swom and civilian members are required to notify and clear through the Operations Support of the OIA. The OIA will verify whether there is a pending investigation involving the member, which may cause to delay their departure. The OIA Operations Support maintains a database with the following information on members separating from the department: member's name, badge number, unit, EOD date, type of departure (i.e., resignation, voluntary retirement, disability retirement, removal or termination), effective date, notified by, received by, date/time received, and whether or not the member was a target in a sustained case.

6. OIA Personnel File

These files contain the unit personnel folders of all sworn and civilian members of the OIA, and are maintained secure within the Operations Support.

7. Criminal/Revocation of Sworn/Civilian Members File

This file contains preliminary reports, which have been prepared and forwarded to the OIA by other elements concerning members who have been arrested and their police powers revoked. Elements are required to notify the OIA when a member's status is changed as a result of arrest, grand jury indictment, or serious misconduct.

8. Change of Duty Status Notification File

Upon being notified that a member's duty status has changed, the OIA staff member shall prepare a UN Form 160 Change of Duty Status Notification card. This card contains the following information: member's name, unit, OIA number (if applicable), action taken, date/time of status change, reason for action, location, complainant, initiating official, reporting official, recorded by (receiver), and date/time of notification. This card file is

maintained within the Operations Support and is used in compiling monthly statistical reports.

Confidential Hotline/Confidential Mailbox

The **confidential hotline** was established as a means of enabling citizens and police officers to report any misconduct on the part of any sworn or civilian District of Columbia Government employee, while maintaining the ability to remain anonymous or their identity confidential. This is a 24 hour hotline on which the caller may leave a recorded message. The telephone number is *1-800-298-4006*.

The responsibilities for obtaining complaint messages and subsequent investigation of complaints are as follows:

- 1. The Operations Support shall:
 - a. Each workday morning, retrieve and transcribe recorded messages verbatim on a "confidential hotline report" form. The complaint shall then be logged in the "Hotline" logbook. CS numbers shall be issued at this time, and a UN 938 CS Sheet prepared.
 - Enter the information from the CS Sheet into the case tracking database, and complete all information in the logbook.
 - Retrieve and attach any historical information on the subject member to the CS Sheet.
 - d. Forward the CS Sheet with attachments to the appropriate Unit Lieutenant for review of any patterns of misconduct within his/her area of responsibility.
 - Upon return of the CS Sheet to the Operations Support, issue case numbers if appropriate, and process as directed by the Assistant Chief or the Inspector.
 - f. Monitor and track all complaints referred to other elements for investigation, and generate appropriate memoranda for the signature of the Assistant Chief, for any overdue investigations.
 - g. Prepare monthly Confidential Hotline Report.

2. Unit Lieutenants shall:

 Cause preliminary investigations to be conducted on all hotline complaints received for their area of responsibility.

- b. A PD Form 854 shall be prepared with the actions taken and the preliminary findings. Dispositions of complaints that lack investigative leads may be recorded in the appropriate space on the hotline report, in lieu of preparing a PD Form 854.
- The Lieutenant shall, through the chain of command, recommend to the Assistant Chief, OPR, to refer or intake the complaint, or to file it as intelligence.
- d. Upon receiving the determination made by the Assistant Chief or his designee, the complaint shall be returned to the Operations Support for processing.

The **confidential mailbox** was established as an additional mechanism to uncover misconduct, corruption and abuse within the District of Columbia Government. Complaints should be addressed to *The Metropolitan Police Department, Internal Affairs Bureau, Post Office Box 77892, Washington, DC 20013-7892.* (See OIA Division Memorandum Series 98, Number 6, effective March 13, 1998.)

The Operations Support shall be responsible for checking the mailbox on a weekly basis and preparing appropriate reports. Procedures for handling complaints via the confidential mailbox shall be handled in the same manner of course and progression as outlined above for the confidential hotline.

Reports Prepared by the Operations Support

1. Monthly Reports

- a. OlA Statistical Report
- b. Awards Report
- c. Confidential Fund Report
- d. Confidential Hotline and Mailbox Report
- e. Take Home Cruiser Report

2. Quarterly Reports

- a. Outside Employment Report
- b. Emergency Mobilization Report
- c. Recapitulation Report
- d. Training Report
- e. Equipment Report
- f. Notification Report to the OIG

3. Biannual Reports

a. Clothing Allowance Report

4. Annual Reports

- a. Fiscal Report
- b. Confidential Statement of Employment and Financial Interests
- c. OIA Budget Report
- d. OPR Calendar Year End Report
- e. Status Report for the OIG

Transcribing Recorded Statements

The Operations Support has staff members who are available to transcribe audio taped statements in those instances dictated by OIA procedures. (See Page 10 of this manual for procedures for recording statements.)

Time and Attendance Court Information System (TACIS)

The Operations Support staff is responsible for entering all time and attendance information on OIA members into the TACIS (Time and Attendance Court Information System).

Court Appearance Notification System (CANS)

The Operations Support staff is responsible for printing CANS notifications on a daily basis for distribution to each Unit Lieutenant for service. Upon return of the served notice, the Administrative Sergeant inputs the information into the TACIS, and files the hard copy notices in a file within the Operations Support.

Posted OIA Records

The Administrative Sergeant is responsible for posting the following master schedules on the bulletin board within the Operations Support.

- 1. On-call Duty Roster
- 2. Training Details
- 3. Schedules
- 4. OIA Division Memoranda/Orders

OIA Correspondence File

The Operations Support maintains a file of all outgoing correspondence generated within the OIA.

1997 UN939 (Domestic Violence Survey) File

This is an historical file of surveys completed by all sworn MPD officers in 1997 pursuant to Federal Law. The purpose of the survey was to ascertain any domestic violence convictions involving the member. The Federal law prohibits law enforcement officers who have been convicted of domestic violence from carrying a firearm.

Photo Array File

The photo array file consists of PD Form 854s that have been prepared by OIA Agents who assist other investigative elements/agencies in obtaining/assembling photo arrays of sworm MPD members. Procedures for obtaining photo arrays are further discussed on page 14 of this manual.

PERSONNEL SELECTIONS

General Requirements

Members interested in the position of AGENT are required to have a minimum of five (5) years of MPD service. This experience must include at least two (1) year at the grade of sergeant *or* three (2) years in the position of detective. A combination of supervisory and detective experience may meet the requisite requirements.

The Office of Internal Affairs is an excepted position and member's assigned work at the pleasure of the Assistant Chief, OPR and the Chief of Police. While assigned to the Office of Internal Affairs, the FOP/MPD Labor Committee cannot represent that member in administrative or grievance proceedings. Employees assigned to the Internal Affairs Bureau are required to sign a Security Agreement and will be subjected to a rigorous background investigation.

Background Investigations

Applications submitted to the OIA for the position of Agent undergo an exhaustive background check. An Agent assigned to the Technical Services Squad (TSS) of the OIA conducts these background checks. Background checks include, but are not limited to, review of criminal, personnel, disciplinary, and administrative record checks. Prospective members will undergo verifications with outside law enforcement agencies such as the Federal Bureau of Investigation (FBI), the United States Attorney's Office (USAO), and the Office of the Inspector General (OIG). A formal interview, a writing exercise, contact with previous supervisors, writing examples, disciplinary record, favorable recommendations from current/past supervisors, past performance evaluations, outside employment history, and sick leave history are other qualifications that may be considered/used in the selection process.

Selection of Agents

Vacancies within the Office of Internal Affairs are filled at the discretion of the OlA Director, Assistant Chief, Office Professional Responsibility, and subject to approval of the Chief of Police.

REFERENCE LITERATURE

OIA Directives and Office Memoranda

Туре	Series	Number	Effective	Subject
Division	90	2	11-6-90	Process of Investigations of Probationary/Sworn
Division	92	1	1-9-92	Recording of Complainant and Target Statements
Office	93	2	11-16-93	Security Agreements
Division	94	6	2-18-94	Use of Electronic Surveillance Equipment
Office	94	8	3-16-94	Dialed Number Recorder Equipment
Office	94	10	3-31-94	Release of Information
Office	94	11	4-1-94	Equipment Inspections
Office	94	15	7-12-94	Correspondence
Office	94	16	8-31-94	OIA Clearance Procedures
Office	94	21	11-4-94	Procedures for Conducting CVSA Exams
Office	95	3	3-5-95	Submission of Adverse Action Packages
Memo			7-25-95	Release of Information
Office	97	1	7-12-96	Policy for Conducting Integrity Checks
Division	98	l	1-14-98	Computer Aided Dispatch (CAD)
Division	98	2	1-28-98	Restricted Overtime
Division	98	5	1-28-98	Management Deficiencies
Division	98	6	3-13-98	Mailbox Pick Up Procedures
Division	98	7	6-18-98	Pre-select Process for OIA Apps
Division	98	8	8-4-98	OlA Procedures For Firearms when Interviewing Members
Division	99	1	2-9-99	Notification of Casualty Cases
Division	99	2	6-7-99	Recording, Handling, and Disposition of Property Coming into the Custody of Members of the OIA

CASE LAW

Agents should become familiar with any cases in which judicial decisions have been rendered that directly affect the authority and conduct of members while executing their official duties as police officers. The following represents some, but not all, decisions in cases with which OlA members, in their roles as Agents, should be familiar. However, Agents are encouraged to study cases that affect all aspects of law enforcement.

MIRANDA v. ARIZONA

This case deals with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation, and the necessity for procedures that assure that the individual is accorded his privilege against self-incrimination. The Supreme Court of the United States laid down the governing principles, the most important of which is that, as a constitutional prerequisite to the admissibility of such statements, the suspect must, in the absence of a clear, intelligent waiver of the constitutional rights involved, be warned prior to questioning that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

SUMMARY: The defendant was arrested by the police and taken to a special interrogation room where he signed a confession, which contained a typed paragraph stating that the confession was made voluntarily with full knowledge of his legal rights and with the understanding that any statement he made might be used against him. At his trial in an Arizona state court, at which the confession was admitted in evidence, he was convicted of kidnapping and rape. On appeal, the Supreme Court of Arizona affirmed. On certiorari, the Supreme Court of the United States reversed, holding that the defendant's confession was inadmissible because he was not in any way apprised of his right to counsel nor was his privilege against self-incrimination effectively protected in any other manner.

GARRITY ET AL. v. NEW JERSEY

The United States Supreme Court held that the protection against coerced confessions under the Fourteenth Amendment prohibits the use in subsequent criminal proceedings of confessions obtained from public officers under a threat of removal from office.

SUMMARY: Police officers in certain New Jersey boroughs, when questioned by other state officers concerning the alleged fixing of traffic tickets, answered the questions after a warning that they were entitled to remain silent and any information given might be used against them in any criminal prosecution, but that if they refused to answer they would be subject to removal from office. Over their objections, some of the statements thus obtained were used subsequently to convict them in a prosecution for conspiracy to obstruct the administration of the traffic law. Their conviction was sustained by the Supreme Court of New Jersey over their protests that their statements were coerced because of the threat that if they refused to answer, they could lose their position with the police department. On certiorari, the United States Supreme Court reversed.

GARDNER v. BRODERICK, POLICE COMMISSIONER OF THE CITY OF NEW YORK

Because in conflict with the protections afforded by the constitutional privilege against self-incrimination, a provision in a municipal charter for the removal from office of any municipal employee, called as witness before a judicial or legislative body, who refuses to waive his privilege against self-incrimination and his immunity from criminal prosecution, cannot stand.

SUMMARY: In August 1965, pursuant to subpoena, Appellant, a police officer, appeared before a New York County grand jury, which was investigating alleged bribery and corruption of police officers in connection with unlawful gambling operations. He was advised that the grand jury proposed to examine him concerning the performance of his official duties. He was advised of his privilege against self-incrimination, but he was asked to sign a "waiver of immunity" after being told that he would be fired if he did not sign. Following his refusal, he was given an administrative hearing and was discharged solely for this refusal, pursuant to the New York City Charter.

GIGLIO v. UNITED STATES

SUMMARY: Pending appeal of a forgery conviction in the United States Court of Appeals for the Second Circuit, defense counsel discovered evidence that an Assistant United States Attorney, the first to deal with the accused's co-conspirator, promised the co-conspirator that he would not be prosecuted if he testified for the government. The government's case depended almost entirely on the co-conspirator's testimony. The District Court, in denying the accused's motion for a new trial, ruled that the promise by the Assistant United States Attorney was unauthorized and that its disclosure to the jury would not have affected its verdict. The Second Circuit affirmed.

On certiorari, the United States Supreme Court reversed the judgment of the conviction and remanded the case for a new trial. The Court unanimously held that I) the Assistant United States Attorney's promise was attributable to the government; 2) evidence of the agreement or understanding was relevant to the co-conspirator's credibility; and 3) the nondisclosure of this evidence affecting the co-conspirator's credibility violated due process and justified a new trial, irrespective of the government's good faith or bad faith.

SYLLABUS: Petitioner (Giglio) filed a motion for a new trial on the basis of newly discovered evidence contending that the Government failed to disclose an alleged promise of leniency made to its key witness in return for his testimony. At a hearing on this motion, the Assistant United States Attorney who *presented* the case to the grand jury admitted that he promised the witness that he would not be prosecuted if he testified before the grand jury and at trial. The Assistant who *tried* the case was unaware of the promise. (Italics added.) Held: Neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling, and the prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process requiring a new trial.

O'CONNOR ET AL. v. ORTEGA

DECISION: Summary judgment for state hospital employee, based on warrantless search of his office during investigation of his alleged misfeasance, held inappropriate where search might have been reasonable.

SUMMARY: A doctor employed by a state hospital managed the hospital's psychiatric residency program. Hospital officials became concerned about possible improprieties on the doctor's part, including his acquisition of a computer by means of possibly coerced contributions of residents, and alleged incidents of sexual harassment of female employees and inappropriate disciplinary action against a resident. The hospital placed the doctor on paid administrative leave and conducted an investigation of the charges. As part of the investigation, hospital officials searched the doctor's office several times and seized personal items as well as articles belonging to the state. No formal inventory was made of the property in the office, but all the papers that were not seized were put in storage for the doctor to retrieve. After the investigation, his employment was terminated. The doctor brought suit against the officials in the United States District Court for the Northern District of California under 42 USCS 1983, alleging that the search of his office violated the Fourth Amendment. The District Court, granting the officials' motion for summary judgment, held that the search did not violate the Fourth Amendment because there was a need to secure state property in the office. The United States Court of Appeals for the Ninth Circuit reversed with respect to the 1983 claim, holding that the search was unreasonable because the doctor had a reasonable expectation of privacy in his office. The Court of Appeals said that the record justified a grant of partial summary judgment for the doctor on the issue of liability for an unlawful search, and it remanded the case for a determination of damages.

On certiorari, the United States Supreme Court reversed and remanded. Although unable to agree on an opinion, 1) five members of the court agreed that summary judgment was inappropriate because the evidence indicated that the search might have been reasonable under the circumstances, 2) five members of the court agreed that the doctor had a reasonable expectation of privacy in his office, and 3) all the members of the court agreed that the doctor had a reasonable expectation of privacy in his desk and file cabinets.

Thus, we must determine the appropriate standard of reasonableness applicable to the search. A determination of the standard of reasonableness applicable to a particular class of searches requires "balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." In the case of searches conducted by a public employer, we must balance the invasion of the employee's legitimate expectations of privacy against the government's need for supervision, control, and the efficient operation of the workplace.

AMERICAN POSTAL WORKERS UNION ET AL. v. UNITED STATES POSTAL SERVICE

The issue in this case is whether or not the U.S. Postal Inspectors had a right to make a warrantless search of over 1650 employee lockers. The inspectors were concerned about alleged drug use among employees. The search disclosed no drugs or evidence of drug sales. On January 19, 1984, the district court dismissed all of the plaintiffs' claims for monetary damages.

It is Senior Circuit Judge Edwards' view that searches of this nature are appropriate but should be performed after application for the issuance of a search warrant. The Fourth Amendment right to a reasonable search can, however, be waived. The employees hired after 1973 expressly waived their rights under the Fourth Amendment when they signed Postal Service Form 4943, which reads in part ... "Locker is subject to inspection at any time by authorized personnel." All of the named plaintiffs in the instant case signed the 1973 version of the form.

SUMMARY: Each postal employee who had requested the use of a locker within the Columbus Post Office had completed and signed a waiver (Postal Service Form 4943), which specifically provided that the lockers were subject to random inspection by authorized postal authorities. The waiver had been employed by the Postal Service since 1973. It is undisputed that all of the named plaintiffs representing the class of postal workers in the instant action had signed the form hereinbefore identified. In addition, the administrative manual of the Postal Services provided that all property furnished by the Postal Service for the use of its employees was subject to inspection by authorized postal officials. All USPS-owned or furnished property under the custody or control of the Postal Service, including that individually assigned to postal personnel, is for official use only. This property, and its contents, are at all times subject to examination and inspection by duly authorized postal officials in the discharge of their official duties. The Chief Postal Inspector, officers and heads of installations, and their designated representatives are authorized to examine and inspect, as their duties may require, such USPS-owned or furnished property and its contents. In addition, the

collective bargaining agreements applicable to the named plaintiffs in this action, which included ninety percent of the postal employees at the Columbus Post Office, provided for random inspection of the lockers under specified circumstances. The applicable collective bargaining provision effective during the time period relevant to the case at bar stipulated: INSPECTION OF LOCKERS: The Employer agrees that, except in matters where there is reasonable cause to suspect criminal activity, a steward to the employee should be present at any inspection of employees' lockers. For a general inspection where employees have had prior notification of at least a week, the above is not applicable.

In October 1982, the Postal Inspection Service had learned of possible illicit drug traffic and use within the Columbus postal facility. During that month Postal Service Inspectors and maintenance workers had located a marijuana cache in an elevator and had received numerous anonymous tips of cocaine use during working hours. Several postal managers had reported that they had received complaints from postal employees that certain personnel were dealing drugs at the Columbus facility. In addition to the reports of drug activity, postal inspectors had also received information, which disclosed that a number of postal employees had concealed weapons on their person during their working hours, and several bullets and shell casings had been recovered from the floor of the workroom. The postal medical examiner had reported that postal employees had appeared to be working while under the influence of intoxicants. Moreover, there had been increased incidents of absenteeism and physical altercations during working hours. The rate of human error in monitoring the mechanical equipment had also significantly increased during this same time period.

The President of the Local Chapter of the American Postal Workers Union, had submitted to the Postal Inspection Service, a list of some fourteen named postal employees suspected of using or dealing in illegal drugs while at work.

The Postal Inspector in charge of the Cincinnati Division of the Postal Inspection Service concluded that, based upon the above information, an unannounced inspection of employee lockers at the Columbus Post Office was in order. Postal Inspector Brulport scheduled a locker search for January 15, 1983 at 1:00 a.m. because most drug-related incidents had occurred during the late night shift (10:00 p.m. through 8:00 a.m.).

Subsequent to this inspection, the American Postal Workers Union, Columbus Area Local and six named representative postal employees representing the class of postal employees whose lockers had been searched at the Columbus Post Office, initiated this action in the United States District Court for the Southern District of Ohio alleging that the named defendants had violated the Fourth Amendment rights of the plaintiff class by conducting unreasonable searches of the postal employee's lockers. The plaintiffs requested monetary and injunctive relief... The district court concluded that a Bivens action for damages, stemming from a violation of constitutionally protected rights, was not available against the Postal Service. This judgment was AFFIRMED.

TENNESSEE v. GARNER

<u>DECISION</u>: Police use of deadly force to prevent the escape of an apparently unarmed suspected felon held to violate the Fourth Amendment.

<u>SUMMARY</u>: The United States Supreme Court held that the Fourth Amendment prohibits the use of deadly force to prevent the escape of a suspected felon unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others, and thus, the Tennessee statute was unconstitutional insofar as it authorized the use of deadly force to prevent the escape of an apparently unarmed suspected felon. (Emphasis added)

At about 10:45pm on October 3, 1974, Memphis Police Officers Elton Hymon and Leslie Wright were dispatched to answer a "prowler inside" call. Upon arriving at the scene they saw a woman standing on her porch and gesturing toward the adjacent house. She told them she had heard glass breaking and that "they" or "someone" was breaking in next door. While Wright radioed the dispatcher to say that they were on the scene, Hymon went behind the house. He heard a door slam and saw someone run across the backyard. The fleeing suspect, who was Edward Garner, stopped at a 6-feet-high chain link fence at the edge of the yard. With the aid of a flashlight, Hymon was able to see Garner's face and hands. He saw no sign of a weapon, and, though not certain, was "reasonably sure" and "figured" that Garner was unarmed. He thought Garner was 17 or 18 years old and about 5'5" or 5'7" tall. While Garner was crouched at the base of the fence, Hymon called out "police, halt" and took a few steps toward him. Garner then began to climb over the fence. Convinced that if Garner made it over the fence he would elude capture, Hymon shot him. The bullet hit Garner in the back of the head. Garner was taken by ambulance to a hospital, where he died on the operating table. Ten dollars and a purse taken from the house were found on his body. (In fact, Garner, an eighth-grader, was 15. He was 5'4" tall and weighed somewhere around 100 or 110 pounds.)

GRAHAM v. CONNER

<u>DECISION</u>: Claims under 42 USCS 1983 that excessive force was used by law enforcement officers in seizing person held properly analyzed under Fourth Amendment's "objective reasonableness" standard rather than under "substantive due process" standard.

SUMMARY: The United States Supreme Court held that 1) all claims brought under 1983 in which it was alleged that law enforcement officers used excessive force--deadly or not--in the course of an arrest, investigatory stop, or other seizure of a free citizen were properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under the more generalized standard of "substantive due process" pursuant to the due process clause of the Fourteenth Amendment, because the Fourth Amendment provided an explicit textual source of federal constitutional protection against such physically intrusive governmental conduct, and 2) under the Fourth

Amendment standard, the inquiry is whether the officer's actions in using the force alleged to be excessive are objectively reasonable in light of the facts and circumstances confronting the officer, without regard to the officer's underlying intent or motivation. An individual who was a diabetic felt the onset of an insulin reaction and desired to purchase some orange juice to counteract the reaction. A friend drove the individual to a convenience store, but the individual, upon entering the store and seeing a number of people ahead of him at the checkout line, hurried out of the store and returned to the friend's automobile, whereupon the individual requested that the friend drive him to another friend's house. A municipal law enforcement officer, who had seen the individual's hasty entrance into and exit from the store, made an investigative stop of the automobile about ½ mile from the store and was informed by the friend that the individual was suffering from a "sugar reaction." The officer nevertheless ordered the friend and the individual to wait until the officer could determine what, if anything, happened at the convenience store, and then called for backup assistance.

When the backup officers arrived, the individual, who had meanwhile left the automobile, was tightly handcuffed, shoved face-first against the hood of the friend's automobile, and then thrown head-first into a police car. Finally, the officer who had stopped the automobile received a report that the individual had done nothing wrong at the store, whereupon the individual was driven home and released. The individual, who had sustained multiple injuries during the incident, thereafter filed an action in the United States District Court for the Western District of North Carolina against the officers involved, alleging that the officers had used excessive force in making the investigatory stop in violation of rights secured to him under the Federal Constitution's Fourteenth Amendment and 42 USCS 1983. During the ensuing jury trial, the officers moved for a directed verdict at the close of the individual's evidence. The District Court granted the officers' motion, finding that the officers' excessive use of force did not give rise to a cause of action under 1983, since the amount of force used 1) was appropriate under the circumstances, 2) did not inflict any discernable injury, and 3) was not applied maliciously or sadistically for the very purpose of causing harm, but in a good-faith effort to maintain or restore order in the face of a potentially explosive situation. On appeal by the individual, the United States Court of Appeals for the Fourth Circuit affirmed, ruling that the District Court had applied the correct legal standard in assessing the individual's excessive force claim. (Emphasis added.)

BRADY v. MARYLAND

SUMMARY: After the petitioner (Brady) had been convicted in a Maryland state court on a charge of murder in the first degree (committed in the course of a robbery) and had been sentenced to death, he learned of an extra judicial confession of his accomplice, tried separately, admitting the actual homicide. This confession had been suppressed by the prosecution notwithstanding a request by the petitioner's counsel to allow him to examine the accomplice's extra judicial statements. Upon appeal from the trial court's dismissal of his petition for post conviction relief, the Maryland Court of Appeals held that suppression of the evidence by the prosecution denied petitioner due process of law, and remanded the case for a retrial of the question of punishment only. (226 Md 422, 174 A2d 167.)

On certiorari, the United States Supreme Court affirmed. In an opinion by Douglas, J., expressing the views of six members of the Court, it was held that (1) the prosecution's suppression of the accomplice's confession violated the due process clause of the Fourteenth Amendment, but (2) neither that clause nor the equal protection clause of that amendment was violated by restricting the new trial to the question of punishment.

OFFICE FORMS

PD77	Revocation/Restoration of Police and Notice of Duty and Pay Status		
UN-141	Security Agreement		
UN-208	Integrity Check Form		
UN-577	One Party Consent Recording		
UN-938	Complaint Summary Sheet		
FL-10	Confidentiality Acknowledgement Memorandum (for service to Union Rep.)		
FL-16	Confidentiality Acknowledgement Memorandum (for service to Interviewee)		
FL-35	"Reverse Garrity" Warning		
FL-36	Miranda-Garrity Warning		
Unnumbered	General Orders 201.26 and 1202.1 Awareness and Acknowledgement Form		
Unnumbered	OIA Preliminary Questions Guide Sheet		
Unnumbered	OIA Medical Records Release Authorization		
Unnumbered	OIA Records Release Authorization		

MEMORANDUM OF UNDERSTANDING BETWEEN THE METROPOLITAN POLICE DEPARTMENT AND THE OFFICE OF INSPECTOR GENERAL

SUMMARY OF MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE DISTRICT OF COLUMBIA AND THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT (MPD)

The Memorandum of Agreement (MOA) addresses the following matters: policy requirements and limitations on the use of force by officers, including the use of firearms, ASP batons, Oleoresin Capsicum spray, canines and physical force; procedures regarding the reporting and documentation of use of force; procedures to ensure thorough investigation of all uses of force; procedures for receiving, investigating, and resolving misconduct complaints; supervisory measures to reduce use of force and promote police integrity; training; public reporting by MPD about its use of force incidents, investigations and outcome; and the establishment of an independent monitor to review and analyze implementation of the MOA by MPD and the District of Columbia.

The MOA includes the following specific provisions:

- Use of Force Policy Requirements: MPD officers may not use any degree of force that is more than is objectively reasonable. MPD will complete development of a Use of Force Policy addressing both lethal and non-lethal use of force that complies with applicable law and current professional standards. With respect to its Canine Unit, MPD will continue to retrain its canines in the "find and bark" methodology, which minimizes unjustified bites because the canines will be trained to bark, rather than bite upon locating a suspect. The Use of Force Policy will emphasize the goal of de-escalation and will encourage officers to use advisements, warnings, and verbal persuasion when appropriate. Also, the Policy will define and describe the types of force and the circumstances under which use of such force is appropriate. The Policy also will advise that the use of excessive force will subject officer to discipline and possible criminal prosecution and/or civil liability.
- Use of Force Documentation and Supervisory Review: MPD will require officers to notify their supervisors immediately following any use of force or receipt of an allegation of excessive use of force. Supervisors will then respond to the scene and will ensure that the officer documents the use of force. In every incident involving a serious use of force, a specialized use of force investigatory team will be notified and will conduct the investigation. All investigations will be conducted in a timely manner by qualified investigators. Supervisors regularly will review MPD use of force reports to ensure that officers are employing appropriate amounts of force and are engaging in de-escalation techniques. Where concerns arise, supervisors may require that an officer be counseled, receive additional training, or that some other non-disciplinary action be taken.

 Supervisors also can refer specific incidents for further investigation, where appropriate.
- Supervisory Review of Patterns of Conduct: MPD will develop and implement an early
 warning system, called the "Personnel Performance Management System," that uses
 computerized information on use of force incidents, misconduct investigations, and other
 matters to assist MPD supervisors to identify and modify potentially problematic

behavior. At least quarterly, MPD supervisors will conduct reviews and analyses of computerized data and other information, including data on uses of force, weapons used, and type of law enforcement activity. These reviews and analyses, as appropriate, may result in supervisors implementing changes in training, policies and practices, implementing non-disciplinary interventions for particular officers (such as supervisory counseling or additional training), and/or requiring further assessment or investigation.

- Misconduct Allegations: MPD will implement a variety of changes in its procedures for receiving, investigating, and resolving misconduct allegations. MPD will develop a plan to coordinate activities with the new Office of Citizen Complaint Review. MPD will make complaint forms and informational materials available at a variety of locations and will institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. MPD also will institute procedures for ensuring that MPD is notified of criminal cases and civil lawsuits involving the conduct of officers on-duty and, as appropriate, off-duty as well, so that consideration may be given to whether an officer's conduct warrants disciplinary action. Allegations of excessive force involving a serious use of force, unlawful searches and stops, and other significant misconduct allegations will be investigated by the Internal Affairs Bureau. All investigations will be properly documented. Disciplinary and non-disciplinary supervisory steps will be taken in a timely manner.
- Training: MPD will implement measures to improve training for recruits and current
 officers. The training will address such matters as critical thinking and decision making
 skills to reduce the use of force and ensure officer safety, compliance with Fourth
 Amendment and other constitutional requirements and MPD policy on use of force, safe
 gun handling procedures and supervisory issues. MPD will also take steps to improve its
 field training program for new officers.
- MPD Public Reports: MPD will issue quarterly public reports containing aggregate
 statistics of MPD use of force incidents broken down by districts covering each of the
 geographic areas of the City, indicating race/ethnicity of the subject of force, the weapon
 used and the 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. Also, the report shall include the total number of complaints of
 excessive force received and the resolution.
- Independent Monitor: An Independent Monitor will be selected by the Justice
 Department, MPD and the District of Columbia to review and report on MPD's
 implementation of, and assist with MPD's compliance with the MOA. The
 responsibilities of the Monitor will include evaluating use of force reports and
 investigations; analyzing data concerning uses of force and any actions taken by MPD to
 address deficiencies; assessing supervisory reviews of use of force incidents, misconduct
 investigations and supervisors' use of the Personnel Performance Management System,
 and the use of non-disciplinary procedures to address at-risk conduct.

MOA Term: The basic term of the MOA will be five years, based on MPD and the
District of Columbia's substantial compliance with each of the provisions of the MOA
and maintaining such compliance for at least two years.

To read the entire agreement, go to http://www.usdoj.gov/crt/split/documents/demoa.htm.