

MEMORANDUM OF AGREEMENT

Between the United States Department of Justice,

Montgomery County, Maryland,

the Montgomery County Department of Police,

and

the Fraternal Order of Police, Montgomery County Lodge 35, Inc.

January 14, 2000

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DEFINITIONS	4
III.	POLICY REQUIREMENTS	6
IV.	TRAFFIC STOP DOCUMENTATION AND REVIEW	7
	Documentation of Traffic Stop Data	7
	Management Review of Traffic Stop Data	8
	Implementation Schedule	11
V.	COMMUNITY RELATIONSHIPS	12
VI.	COMPLAINT AND INVESTIGATION PROCESS	13
	Quality Assurance	13
	Receipt of Allegations Regarding Officer Conduct	15
	Investigating Allegations Regarding Officer Conduct	16
	Evaluating and Resolving Allegations Regarding Officer Conduct	18
	Disciplinary Procedures	19
VII.	TRAINING	20
	Ensuring that Officers Receive the Best Possible Training	20
	Field Training Officers (FTO's), Supervisors and Career Development	22
VIII.	OVERSIGHT, REPORTING AND RECORDKEEPING, AND IMPLEMENTATION ...	23
	Consultant	23
	Reports and Records	24
	Compliance	24
	Modifications	25



U.S. Department of Justice

Civil Rights Division

**Memorandum of Agreement
Between the United States Department of Justice,
Montgomery County, Maryland,
the Montgomery County Department of Police,
and the Fraternal Order of Police, Montgomery County Lodge 35, Inc.**

I. INTRODUCTION

- A. This Agreement is entered into by the United States Department of Justice ("DOJ"), Montgomery County, Maryland ("the County"), the Montgomery County Department of Police ("MCPD"), and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. ("FOP"). This Agreement resolves DOJ's investigation of a complaint (number 171-13-53) filed with DOJ by the Montgomery County Chapter of the NAACP alleging that officers of the MCPD engage in racially discriminatory conduct, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"), and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c) ("Safe Streets Act").
- B. The purpose of this Agreement is to provide for a cooperative effort by DOJ, the County, the MCPD, and the FOP to institute management practices by the MCPD that will promote nondiscriminatory law enforcement and community support for the MCPD and its officers. Entry of this Agreement is in the public interest since it provides for expeditious management changes.
- C. Title VI prohibits law enforcement agencies and other entities that receive Federal financial assistance from conducting their programs or activities in a manner that discriminates on the basis of race, color, or national origin. In addition, the Safe Streets Act prohibits discrimination on the basis of race, color, national origin, sex, or religion by law enforcement agencies that receive funds from DOJ. The County and the MCPD are recipients of Federal financial assistance from the Department of Justice's Office of Justice Programs and Office of Community Oriented Policing Services, and are subject to the provisions of Title VI and the Safe Streets Act. The FOP joins as a party to this Agreement pursuant to its contractual interest in the effect on its members of MCPD practices and procedures.
- D. This Agreement is effectuated pursuant to the authority granted DOJ, under Title VI and the Safe Streets Act, to investigate administrative complaints alleging discrimination in the provision of services by law enforcement agencies and seek to resolve such complaints using voluntary, nonadversarial means. 28 C.F.R. §§ 42.101 - .112; 42.201 - .215. This Agreement does not preclude DOJ from carrying out its law enforcement duties under

I. Introduction

Title VI of the Safe Streets Act should a new complaint be filed with DOJ against the County or the MCPD, or should DOJ determine that a compliance review is necessary; however, any such investigation or review shall be conducted with due regard for the purpose and terms of this Agreement. This Agreement does not preclude DOJ from carrying out its law enforcement duties under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141) or 42 U.S.C. § 3789d(c)(3).

- E. Nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of the County or the MCPD under Title VI, the Safe Streets Act, or the Constitution, or an acknowledgment, an admission, or evidence of liability of any MCPD officer under Federal or State law. By entering into this Agreement, the County, the MCPD, and the FOP do not imply that there is validity in any administrative complaints filed with DOJ against the MCPD. The County, the MCPD, and the FOP submit that the MCPD does not have a policy that provides for or condones discriminatory law enforcement practices, and that the County, the MCPD and the FOP have previously agreed to a policy prohibiting such practices. The County, the MCPD, and the FOP assert that the MCPD has acted, and continues to act, in full compliance with Title VI, the Safe Streets Act, and the Constitution. The County and the MCPD hereby reaffirm their obligation and commitment to carrying out law enforcement responsibilities in a nondiscriminatory manner, in accord with the requirements of Title VI, the Safe Streets Act, and the Constitution.

- F. Nothing in this Agreement alters the authority of police officers to effect arrests, conduct searches or seizures, or otherwise fulfill their law enforcement obligations to the people of Montgomery County consistent with the requirements of the United States and Maryland Constitutions, and Federal and State statutes. Nothing in this Agreement shall be construed to impair the right of any person or organization to seek relief against the County for its conduct or the conduct of its law enforcement officers. Nothing in this Agreement is intended to alter any collective bargaining agreement between the County and the Fraternal Order of Police, Lodge 35 ("Collective Bargaining Agreement"). The approval of this Agreement by the FOP signifies the FOP's intent to implement the provisions of this Agreement. Implementation of this Agreement is subject to the requirements of the Maryland Law Enforcement Officers' Bill of Rights ("LEOBR").

- G. The signatures below of the officials representing the Department of Justice, Montgomery County, Maryland, and the Montgomery County Police Department signify that these parties have given their final approval to this Agreement. The signature of the President of the Fraternal Order of Police, Lodge 35 reflects the approval of this Agreement by the FOP Executive Board, however, final approval by the FOP is contingent on a vote of its membership. The FOP commits to hold that vote within four weeks of the date that this Agreement is signed by the parties. The effective date of this Agreement shall be the date

I. Introduction

on which it is ratified by the FOP membership. The Agreement shall remain in effect for five years.

- H. This Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement in any civil, criminal, or administrative action. Similarly, this Agreement does not authorize, nor shall it be construed to authorize, access to any MCPD documents by persons or entities not a party to this Agreement or not serving in a position established by this Agreement.
- I. This Agreement shall constitute the entire integrated Agreement of the parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

II. Definitions

II. DEFINITIONS

A. The following definitions apply to this Agreement:

1. "Complaint" means an allegation that an MCPD officer has engaged in any form of conduct toward a person who is not a police officer or has failed to comply with the documentation and reporting requirements of this Agreement.
2. "Complainant" means any person who files a complaint against an MCPD officer or the MCPD.
3. "Document" and "record" shall be interpreted to include "writings and recordings" as defined by Federal Rules of Evidence Rule 1001(1).
4. "Field Training Officer" or "FTO" means an experienced police officer who provides on-the-job training and supervision of probationary police officers during the Field Training and Evaluation Program, while also serving as a patrol officer.
5. "Police officer" and "officer" mean any sworn law enforcement officer employed by MCPD, including supervisors.
6. The term "positive corrective action" refers to a nondisciplinary action taken by an MCPD supervisor to enable or encourage an officer to undertake a willing modification of his or her performance. It may include oral counseling; training; mandatory professional assistance/evaluation or referral to stress counseling; or a reassignment. Any reassignments of officers covered by the Collective Bargaining Agreement will be in accordance with Article 25 (B)(7) of the Collective Bargaining Agreement.
7. "Supervisor" means a police officer with the rank of sergeant or above and oversight responsibility for other officers.
8. The term "traffic stop" includes any instance in which an MCPD officer for any reason directs a person operating a motor vehicle of any type, traveling on any highway or road, to stop and the motorist is detained for any period of time. "Traffic stops" shall include stops based on motor vehicle violations and criminal suspicion stops, but shall not include checkpoint or roadblock stops. The term "checkpoint or roadblock stop" includes any instance in which an MCPD officer for any reason directs a person operating a motor vehicle of any type, traveling on any highway or road, to stop at a checkpoint or roadblock approved by the MCPD and the motorist is detained for any period of time. These terms do not include

II. Definitions

generalized stops of multiple vehicles arising out of traffic accidents or other emergency situations requiring vehicles to be stopped for safety purposes.

9. "Actions in connection with a traffic stop" include, for example: issuance of a summons or a written warning; making a custodial arrest and selecting the charges upon which the arrest is based; ordering or requesting that a driver or passengers exit their vehicle; asking the driver or passengers for consent to search the vehicle; deploying a drug-detector dog to check for illegal drugs; and conducting any search of the vehicle, the driver, or passengers. "Actions in connection with a checkpoint or roadblock stop" include, but are not limited to, these identified actions.
10. All references to collecting or reporting information by "race/ethnicity" means collecting or reporting information using standard racial categories and the category "Hispanic."

III. Policy Requirements

III. POLICY REQUIREMENTS

- A. The MCPD will continue to prohibit police officers from exercising their police powers in a manner that unlawfully discriminates against individuals based on race, national origin, gender, religion, or ethnicity. In addition, except in the situation described below, MCPD officers will not, to any degree, use the race or national or ethnic origin of drivers or passengers in deciding which vehicles to subject to a traffic stop, or a checkpoint or roadblock stop, and in deciding upon the scope or substance of any action in connection with a traffic stop or a checkpoint or roadblock stop. Where MCPD officers are on the lookout for, or are seeking to stop, detain, or apprehend, one or more specific persons who are identified or described in part by race or national or ethnic origin, MCPD officers may rely in part on race or national or ethnic origin in taking appropriate action.

- B. The County and MCPD will ensure that all sworn officers and other MCPD employees are fully aware of the commitment of the County and MCPD to carry out all law enforcement activities in a nondiscriminatory manner. The County and MCPD shall issue and distribute to all officers and MCPD employees a statement of policy against discrimination, which shall include the provisions of paragraph (III)(A).

IV. *Traffic Stop Documentation and Review*

IV. TRAFFIC STOP DOCUMENTATION AND REVIEW

Documentation of Traffic Stop Data

- A. The MCPD, in consultation with the FOP, will develop and implement a protocol requiring police officers to document all traffic stops (the "data collection protocol"). The protocol shall include the provisions set forth below in paragraphs (B) through (E) of this subpart.
- B. The information to be collected on each traffic stop shall include the following:
- < the MCPD "subgroup" to which the officer is assigned, as defined in paragraph (C) of this subpart;
 - < date, time (in six-hour blocks), and location of the stop;
 - < approximate duration of the stop;
 - < the race/ethnicity and gender of the driver, and the driver's date of birth if known;
 - < the state in which the driver is licensed to drive, and whether the driver is a resident of Montgomery County, as reflected by the driver's license;
 - < the state in which the stopped vehicle is registered;
 - < whether the stop was based on use of radar, laser, or a "be on the look-out" call;
 - < whether the driver was issued a summons or warning and, if so, the types of violations cited or warned;
 - < whether consent to search the vehicle was requested and, if so, whether consent was granted;
 - < whether a nonconsensual search of the vehicle was conducted;
 - < whether any contraband or other property was seized, and if so, a description of the type and quantity of any contraband or other property seized; and
 - < whether the driver or passenger(s) were arrested, and if so, the types of charges.

IV. Traffic Stop Documentation and Review

- C. For purposes of collecting data on traffic stops, and also for purposes of analyzing traffic stop data (as described in paragraph (H) of this subpart), the MCPD shall utilize "subgroups" of officers defined in the following manner. Police officers assigned to patrol duty, other than sergeants and Master Police Officers, shall be in subgroups defined by the specific district, sector, and shift to which they are assigned, such that each subgroup includes no more than six to eight officers. Police sergeants and Master Police Officers together shall be in subgroups defined by their district of assignment, in a manner specified in the protocol, such that each of these subgroups includes no more than six to eight officers. Non-patrol officers shall be assigned to subgroups based on their unit of assignment and shift, in a manner specified in the protocol, such that each of these subgroups includes no more than six to eight officers.
- D. The MCPD will specify in the data collection protocol the method officers shall use to collect the traffic stop information specified in paragraph (B) above. The MCPD may require officers to complete a written form or log, transmit the information by radio to the MCPD dispatch center, transmit the information using a computer terminal, or any combination of these methods. Any written form or log will use a system of check-off boxes to the extent possible to permit officers to complete the form or log in a minimal amount of time. The protocol shall include a copy of any written form or log to be used by officers conducting traffic stops, or any written form or log to be used at the dispatch center to record traffic stop information transmitted by radio. As experience and advancements in technology may warrant, the MCPD may revise the protocol to amend the methods used to collect the traffic stop information and/or amend any forms or logs.
- E. The Department of Justice affirms that officers may ask drivers to self-identify their race/ethnicity without violating the Constitution or Federal law.
- F. The initial data collection protocol is subject to approval by the Department of Justice, and shall be submitted to DOJ and implemented pursuant to the schedule set forth in paragraph (N) of this subpart. Following implementation of the initial data collection protocol, any revision to the protocol must be submitted to the parties for approval and to the Consultant (identified in subpart (VIII) of this Agreement) for review, and shall be implemented within 30 days after the parties approve the revised protocol.

Management Review of Traffic Stop Data

- G. The MCPD will design and implement a computerized system for maintaining and retrieving the traffic stop information specified in paragraph (B) of this subpart.
 - 1. Each traffic stop will be identified in the computer system by a unique incident number generated by the computer and the system will include for each traffic stop a separate data field for each item of information identified in paragraph (B).

IV. Traffic Stop Documentation and Review

2. The computer system will have the capability to search and retrieve information for any user-specified time period for each data entry field or combination of data entry fields, and will have the capability of producing standardized reports or customized reports for any user-specified time period.
 3. Pursuant to the schedule set forth in paragraph (N) of this subpart, the MCPD shall submit a design document for the computerized system to DOJ for approval prior to programming the system.
 4. Following implementation of the computerized traffic stop data system, information on each traffic stop (as specified in paragraph (B)) shall be entered promptly into the computerized system.
- H. The MCPD, in conjunction with the FOP, shall develop and implement a protocol for conducting analyses of the data contained in the computerized traffic stop data system (the "data analysis protocol"). In developing the data analysis protocol, the MCPD, the FOP and the County will build a framework for analyses to identify methods for assuring nondiscriminatory law enforcement in connection with traffic stops. The protocol shall include the following provisions:
1. Traffic stop data analyses shall be conducted on a quarterly basis. The protocol shall identify the persons who are responsible for conducting the analyses.
 2. Traffic stop analyses shall be conducted for each subgroup of officers for which traffic stop data are collected by evaluating trends and differences over time for each subgroup, and by evaluating trends and differences between subgroups that are similarly situated. Similar analyses also may be conducted for larger groupings of officers, as appropriate (e.g., at the sector or district level, or countywide). Analyses for appropriate groupings of officers additionally shall include the following comparisons: a comparison of racial/ethnic percentages of traffic stops with the racial/ethnic percentages for particular post-stop actions taken in connection with the stops; comparisons of the racial/ethnic percentages of vehicle searches with "find" rates by race/ethnicity for vehicle searches (separately for consensual and nonconsensual searches); and a comparison of racial/ethnic percentages of traffic stops with any other benchmark figure that may be available or developed.
 3. In addition to examining traffic stop data included in the computerized traffic stop system, traffic stop analyses shall include a review of commendations and compliments, as well as information on any complaints and civil suits (both pending and resolved) that allege discrimination in the provision of police services

IV. Traffic Stop Documentation and Review

on the basis of race, color, or national or ethnic origin. The subjects of the commendations, compliments, complaints, and civil suits will be identified by the subgroups to which the involved officers belong and not by individual officer. The use of pending complaints in traffic stop analyses shall not affect the disposition of the complaints.

- I. Although traffic stop analyses may lead to changes in traffic enforcement criteria, policies, or practices for the entire MCPD or any individual unit or subgroup, and/or additional training, counseling, or supervisory monitoring for any particular unit, subgroup, or unit or subgroup supervisor, the analyses shall not lead to any discipline. Nor shall the analyses be used to implement traffic stop quotas with regard to the number of traffic stops conducted or the number of actions taken in connection with traffic stops.
- J. The Consultant identified in subpart (VIII) of this Agreement shall assist the MCPD in developing the data analysis protocol, and in developing any appropriate modifications to the protocol based on experience in implementing it.
- K. The data analysis protocol shall be implemented following its approval by the Department of Justice.
- L. Copies of all data included in the computerized traffic stop data system will be provided to the FOP and DOJ in an ASCII format on a quarterly basis. The FOP and DOJ also will be provided with computer programs for all computer-generated reports.
- M. On a quarterly basis and in an ASCII format, the MCPD shall continue to provide DOJ and the FOP with all computerized data currently maintained on traffic citations pursuant to state law. DOJ may analyze the traffic citation data, and report its findings to MCPD and the FOP for use, as appropriate, in considering whether to adopt any changes in traffic enforcement criteria, policies, or practices for the entire MCPD or any individual unit or subgroup, and/or additional training, counseling, or supervisory monitoring for any particular unit, subgroup, or unit or subgroup supervisor. The requirement that the MCPD provide DOJ with computerized traffic citation data is subject to the State's willingness to continue providing the MCPD with the data.
- N. The MCPD and the FOP, either together or separately, may retain one or more experts to analyze the traffic stop information collected pursuant to this Agreement (and any other relevant information). At any time after this Agreement has been in effect for three years, the MCPD and the FOP may present the results of this analysis to DOJ and request that MCPD be allowed to discontinue all or part of the traffic stop data collection requirements set forth in this subpart. Any such change in this Agreement during its term must be memorialized in a written amendment signed by the parties to this Agreement.

IV. Traffic Stop Documentation and Review

Implementation Schedule

- O. The parties shall work together in developing the data collection and data analysis protocols, the design document, and the computerized system outlined in this subpart to ensure that the following schedule is met. The MCPD shall begin collecting data on all traffic stops pursuant to paragraphs (A) through (F) of this subpart within 120 days of the effective date of this Agreement, and shall have the computerized traffic stop data system on-line within 225 days of the effective date of this Agreement. To meet this schedule, the MCPD and DOJ will comply with the following timeline:
1. Within 60 days of the effective date of this Agreement, MCPD shall submit to DOJ for approval the data collection protocol required by paragraph (A) of this subpart. DOJ shall review it within 14 days after receipt, and either approve it or notify MCPD and the FOP of any concerns. The parties shall work together in developing the protocol to ensure that a protocol approved by DOJ is in place within 90 days after the effective date of this Agreement.
 2. Within 120 days after effective date of this Agreement, the MCPD shall commence traffic stop data collection pursuant to the protocol adopted pursuant to paragraph (A) of this subpart and approved by DOJ.
 3. Within 135 days after the effective date of this Agreement, MCPD shall submit to DOJ for approval the design document for the computerized traffic stop data system. DOJ shall review it within 14 days after receipt, and either approve it or notify MCPD and the FOP of any concerns. The parties shall work together in developing the design document to ensure that a document approved by DOJ is in place within 165 days after the effective date of this Agreement.
 4. Within 225 days after the effective date of this Agreement, the computerized traffic stop data system shall be on-line and all traffic stop data collected after the date the system goes on-line shall be entered in the system (in accordance with the requirement of paragraph (G)(4) of this subpart). To the extent practicable, MCPD will also enter in the system the traffic stop data that are collected prior to the date that the system goes on-line.
- P. MCPD shall submit the data analysis protocol required by paragraph (H) of this subpart to the Department of Justice for approval within nine months after the effective date of this Agreement.

V. *Community Relationships*

V. COMMUNITY RELATIONSHIPS

- A. To further enhance the relationship between the MCPD and county residents, the FOP and MCPD agree to engage in a cooperative program of community outreach to explain the duties and responsibilities of police officers, the dangers of the job, the reasons behind practices designed to promote officer safety (but which might be misunderstood by the public), and other issues involving traffic stops, arrests, searches and seizures, and the methods a person has available to acknowledge the good work of an officer or to file a complaint.
- B. MCPD agrees to continue its outreach already in place that provides pamphlets describing the complaint process and provides forms for complaints in English and Spanish and other languages as may be appropriate.
- C. The MCPD shall continue to require officers to provide their name and an explanation of the reason for the traffic stop at the beginning of each traffic stop, unless, based on the specific circumstances of an individual traffic stop, providing this information would compromise officer safety.
- D. MCPD will continue to require that all officers acting in an official capacity provide their name and police identification number when requested by someone who is not a police officer. MCPD and FOP will use positive reinforcement to promote such conduct, but recognize that when an officer has not responded to positive reinforcement initiatives and has violated this requirement, discipline may be appropriate so long as it complies with the Collective Bargaining Agreement and the LEOBR. MCPD officers may use business cards to identify themselves to people who indicate an interest in contacting the officer, submitting a compliment, or filing a complaint. MCPD and FOP shall work together to ensure that officers do not discourage people from filing complaints.
- E. MCPD and the FOP shall work together to develop surveys to better understand whether MCPD is continuing to meet the needs and concerns of the people of Montgomery County.
- F. The MCPD shall prepare semi-annual public reports that include statistical and summary information on complaint investigations, MCPD traffic activities, and commendations and compliments received by officers. The information regarding investigations shall include the number of external, internal, and total complaints received and sustained, by category of allegations and by the race/ethnicity of the complainant. The reports regarding MCPD traffic activities shall include, by race and ethnicity, the number of traffic stops and the number of actions taken in connection with such stops (including summonses, warnings, requests for consent to search, consent searches, nonconsensual searches, and arrests).

VI. *Complaint and Investigation Process*

VI. COMPLAINT AND INVESTIGATION PROCESS

Quality Assurance

- A. The MCPD shall implement a computerized tracking system of its Office of Internal Affairs ("OIA") files to record and track all pending complaints, civil lawsuits challenging actions by an officer while acting in an official capacity, and other investigations of MCPD employees not triggered by a complaint or civil lawsuit. The tracking system shall be on-line and in use within 210 days of the effective date of this Agreement. The computerized tracking system shall include: the file number; the name, race/ethnicity, and gender of all officers who are the subject of the complaint, lawsuit, or investigation, complainants/plaintiffs, and alleged aggrieved persons where the investigation is not based on a complaint; the rank, District, and subgroup of assignment for all officers who are the subject of the complaint, lawsuit, or investigation; the MCPD component to which the investigation is assigned; significant dates; the street address and MCPD District of the incident; a textual description of the allegations; and the current status or disposition of the complaint, investigation, or a civil lawsuit. The system will be used, among other things, to produce a monthly status report on all investigations. The computerized tracking system shall not be used for any adverse personnel actions regarding an officer who is the subject of an investigation included in the tracking system. The MCPD OIA shall be responsible for maintaining the system and tracking all pending investigations and civil lawsuits using the system. After a complaint, investigation, or civil lawsuit is finally resolved, information contained in the tracking system on the complaint, investigation, or lawsuit shall be retained in the system for use in conducting historical analyses of trends and differences over time, however, the names of the officers who were the subject of the complaint, investigation, or civil lawsuit shall be deleted from the system following final resolution.
- B. Except as provided by the LEOBR and other laws, and the Collective Bargaining Agreement, investigative files involving sustained charges shall be maintained for at least ten years from the date of the disposition of the complaint. Investigations or charges disposed of as "not sustained," "unfounded," "exonerated," "policy failure," "acquitted," "not guilty," or "dismissed," shall continue to be kept as provided by the LEOBR and other laws, and the Collective Bargaining Agreement.
- C. The position of Director of OIA shall be made the rank of Captain or above. The Director of OIA shall report directly to the Chief of Police. The MCPD shall encourage highly qualified candidates to become OIA investigators, and shall establish formal eligibility criteria for the Director of OIA and continue to implement eligibility criteria for OIA investigators and for staff who supervise or conduct employee investigations.

VI. Complaint and Investigation Process

- D. MCPD shall develop and implement an OIA manual detailing its policies and investigative procedures. The manual shall be consistent with the requirements of this Agreement, the County's police labor relations law (Article 5, Chapter 33 of the Montgomery County Code), and the LEOBR. The MCPD shall make the OIA manual available for inspection by the public and officers at OIA headquarters and at each MCPD facility. The MCPD will also provide a copy to the FOP.

- E. The County should provide OIA and the County Attorney's Office with sufficient staff, funds, and resources to perform the functions required by this Agreement. The County shall, within 120 days of the effective date of this Agreement, conduct an evaluation of OIA and County Attorney's Office staffing (with respect to police matters) and workload to determine whether additional OIA and legal staff are needed to meet the terms of this Agreement. The County shall contact specialists in the field of law enforcement to determine the appropriate recommended staffing and caseload for OIA investigators and legal staff. The County shall submit the results of its evaluation to DOJ for review. Based upon this information and in consultation with DOJ, the County shall, within 150 days, develop a plan for the selection and assignment of additional qualified OIA investigators and/or additional County Attorney's Office staff, if such additional staff is determined to be appropriate. The County shall exercise best efforts to ensure that any increase in staffing for OIA or the County Attorney's Office will not derive from existing resources within MCPD or the County Attorney's Office, respectively.

- F. The MCPD shall ensure that the Director of OIA and staff that supervise or conduct complaint investigations and other investigations of MCPD employees receive adequate training to enable them to carry out their duties. The training shall include training in MCPD policies and procedures including, but not limited to, use of force, searches and seizures, pursuits, transporting individuals in custody, restraints, arrests (including discretionary arrests), traffic stops, and nondiscrimination on the basis of race, color, national or ethnic origin, religion, or gender; and ethics, integrity, and professionalism. Investigators also shall receive training regarding the LEOBR and the Collective Bargaining Agreement from the MCPD and the FOP. In addition, the MCPD shall ensure that the Director of OIA and staff that supervise or conduct investigations are provided training in investigative and interviewing techniques, evidence, report writing, and disciplinary and administrative procedures, including OIA policies and procedures. Investigators shall be evaluated based on their competency in the foregoing policies and procedures, except investigators who are subject to the Collective Bargaining Agreement shall be evaluated in accordance with Article 53 of the Collective Bargaining Agreement.

VI. *Complaint and Investigation Process*

Receipt of Allegations Regarding Officer Conduct

- G. The MCPD shall train and hold accountable all MCPD employees for properly accepting, processing, and investigating complaints, consistent with the employees' assigned duties and training regarding the complaint process. No complainant shall be required to go to a police station, any police building, or OIA to file a complaint. Complainants may lodge a complaint or otherwise provide information regarding an officer either in person, by telephone (or TDD), mail, or facsimile transmission. Except as provided for by the LEOBR regarding brutality complaints and time limits on filing complaints, there shall be no discretion for any MCPD staff as to whether to accept a complaint. Except as provided by the LEOBR, MCPD shall continue to accept anonymous oral or written complaints, and complaints filed by third parties.
- H. All complaints received at locations other than OIA shall continue to be forwarded to OIA within a reasonably prompt period of time. OIA shall assign a complaint number to each complaint. OIA shall continue to notify the District Commander whenever a complaint has been filed against an officer assigned to that Commander's district. Whenever a complaint is filed against an officer alleging any form of discrimination on the basis of race, color, national or ethnic origin, gender, or religion, OIA shall send written notification of the complaint to the officer through the officer's District/Unit Commander and immediate supervisor.
- I. The County agrees to initiate quarterly meetings with the Montgomery County State's Attorney's Office to obtain information about, and discuss, instances in which judges have dismissed for lack of prosecutorial merit charges of obstruction of official business, resisting arrest, assault on an officer, or disorderly conduct before or during trial and the dismissal was not part of a plea agreement. This information may be used by the MCPD to examine, and amend as appropriate, its policies, practices, procedures, and training, and as set forth in paragraph (VI)(K)(2) may result in the initiation of an investigation.
- J. The County shall notify OIA whenever a person files a civil lawsuit against the MCPD, an MCPD officer, or the County challenging conduct by an officer or other employee of the MCPD while acting in an official capacity. The County Attorney's Office will request the Montgomery County State's Attorney's Office to report to the County Attorney's Office whenever an officer is criminally charged for on-duty conduct, or off-duty conduct involving felonies.

VI. *Complaint and Investigation Process*

Investigating Allegations Regarding Officer Conduct

- K. Except as limited by the LEOBR and as specified in paragraph (L)(2) below,
- 1) An investigation shall be initiated upon the filing of a complaint (as defined in paragraph (II)(A)(1)); and
 - 2) An investigation may be initiated where deemed appropriate upon information received under paragraph (VI)(I).
- L. All investigations conducted pursuant to paragraph (VI)(K) shall be conducted by OIA except as delegated to District Commanders or other unit supervisors. OIA shall monitor and be responsible for the progress and completeness of all investigations, including those it delegates to other MCPD components for investigation. Assignment of investigations shall be made as follows:
1. OIA shall conduct investigations in the following circumstances:
 - a. all complaints alleging discrimination on the basis of race, color, national or ethnic origin, gender, or religion;
 - b. all complaints alleging unreasonable or unnecessary force, an unreasonable search or seizure, or false arrest, an illegal stop, or an illegal detention;
 - c. any investigation undertaken pursuant subparagraph (2) of paragraph (VI)(K); and,
 - d. any other category of complaints or any individual complaint that the MCPD determines should be investigated by OIA.
 2. OIA shall determine, pursuant to the criteria set forth in paragraph (VI)(L)(1), whether an investigation is to be conducted by OIA or another MCPD component. In conducting this review, OIA may determine that a complaint is clearly meritless on its face and that an investigation therefore should not be conducted based on the complaint. OIA also may determine that an investigation should not be conducted because an investigation previously was conducted based on the identical allegations and there is no reasonable likelihood that new information is available regarding the allegations. Where OIA determines that an investigation should not be undertaken for either reason, OIA shall document that disposition in the computerized tracking system.
 3. No officer who is an eyewitness to an incident that is the subject of an investigation or has a conflict of interest related to a pending investigation shall be allowed to participate in any way in conducting or reviewing the investigation.

VI. Complaint and Investigation Process

- M. If complainants or witnesses are unavailable to be interviewed at MCPD offices during business hours, OIA and other investigators shall continue to offer to interview them at alternate sites and times, including by telephone (or TDD), at residences or places of business, and during reasonable weekend or after-business hours. OIA and other investigators shall provide reasonable notice before all interviews. All interviews of complainants, involved officers, and witnesses shall be tape-recorded; tape recordings shall be transcribed as appropriate. These tapes and transcripts shall be maintained and kept as part of the investigative file. If a complainant, witness, or officer under investigation refuses to be tape-recorded, the investigator shall prepare a written narrative of the statement to be signed by the complainant, witness, or officer under investigation, or proceed as provided by the LEOBR. The investigator shall not conduct group interviews in lieu of individual interviews. The investigator shall not accept a written statement from any officer in lieu of an interview, with respect to investigations involving allegations of discrimination on the basis of race, color, national or ethnic origin, gender, or religion and investigations involving allegations of unreasonable or unnecessary force, an unreasonable search or seizure, or false arrest, an illegal stop, or an illegal detention.
- N. Subject to the County's police labor relations law (Article 5, Chapter 33 of the Montgomery County Code), the LEOBR, the Collective Bargaining Agreement, and the Constitution, supervisors on the scene of incidents that result in an investigation of MCPD employee conduct shall be interviewed. Supervisors shall be required to detail their handling of the situation during and after the alleged incident and their observations of what occurred during the incident.
- O. OIA shall continue to be immediately notified and shall dispatch a team of investigators to the scene of the discharge of an officer's firearm resulting in injury or death or any incident resulting in death or requiring immediate hospitalization of a person in police custody.
- P. Investigators shall collect all appropriate evidence to document each incident that is the subject of an investigation, including but not limited to: medical records; photographs; police reports; criminal, administrative, or MVA records; and radio or telephone transmissions from the MCPD Emergency Communications Center ("ECC"). Investigators shall not unreasonably ask complainants or other witnesses to provide evidence that investigators can obtain, including the name of the officer(s) involved. Upon receipt of a new investigation, the investigator shall immediately request copies of all relevant tapes, CAD reports, or other pertinent reports from ECC. MCPD shall not destroy or re-record any ECC tape that has been requested by an investigator as relevant to an investigation. Nothing in this Agreement is intended to imply that the method of investigation described in this provision differs from current MCPD policy. Nothing in this provision is intended to alter the current role of the FOP at the scene of an incident.

VI. Complaint and Investigation Process

- Q. In conducting investigations, the MCPD shall assess the propriety of all officer conduct during the incident. If, during the course of an investigation, the investigator has a reasonable belief that misconduct other than that alleged by the complainant has occurred (not including minor violations of MCPD rules), the investigator shall additionally investigate that matter. If, during the course of the investigation, an investigator has reason to inquire whether an officer had the requisite cause for any stop, search, or seizure, or arrest relevant to the matter under investigation, the investigator shall rely on any determinations made by a court of competent jurisdiction. If the investigator finds that no court of competent jurisdiction has made a cause determination, for the purposes of the investigation the investigator shall request the assistance and advice of the Montgomery County State's Attorney's Office in making the cause determination. A determination by the Montgomery County State's Attorney's Office that cause did not exist does not require any specific action or finding by OIA. This paragraph is not intended to affect determinations made by a hearing board conducted pursuant to the LEOBR and the Collective Bargaining Agreement.

Evaluating and Resolving Allegations Regarding Officer Conduct

- R. In each investigation of MCPD employee conduct, the MCPD shall consider circumstantial evidence as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for the statement of any one person over that of another. Similarly, there shall be no automatic judgment that there is insufficient information to make a credibility determination where the only or principal information about an incident is the conflicting statements of the involved officer and complainant. Credibility determinations shall be made consistent with relevant provisions of the Maryland Pattern Jury Instructions, MPJI-Cr 3:10.
- S. At the conclusion of each investigation, the investigator shall continue to issue a final report setting forth the findings of fact. The report shall describe the alleged conduct, any other misconduct appropriately identified during the course of the investigation, a summary of all evidence gathered during the investigation (including an explanation for the absence of any evidence), and documentation of all credibility determinations. The final report shall be made a part of the investigative file. Except in the case of an especially complex investigation, the investigator shall complete the report within 90 days of his or her receipt of the investigation file.
- T. Upon completion of a final investigation that satisfies the Chief of Police, the Chief shall review the investigation, report, and other relevant documents, and shall continue to report, in writing, his or her agreement or disagreement with the findings and disposition. If the Chief draws different conclusions, he or she shall detail his or her rationale, in writing, and shall render express findings and a final disposition, along with a decision on

VI. Complaint and Investigation Process

appropriate supervisory or disciplinary steps. This information will be provided to the officer in administrative hearing board discovery.

- U. The fact that a settlement agreement has been reached between the County and/or MCPD and an officer resulting in changes or adjustments to a proposed finding or discipline shall be documented in the investigative file. The documentation shall include the rationale for the adjustment.
- V. The MCPD and the FOP shall make every effort to schedule hearing boards to convene within 100 days of the charge. MCPD shall maintain a schedule of all pending hearing boards.
- W. After a complaint is finally resolved by the MCPD, the MCPD shall continue to inform the complainant of the resolution in writing, including the investigation's significant dates, general allegations, disposition, and whether the investigation resulted in any appropriate corrective action or modifications to the MCPD's training program.

Disciplinary Procedures

- X. Following completion of an investigation pursuant to paragraph (VI)(K), and subject to the LEOBR, the MCPD shall seek to discipline any officer who is the subject of a sustained allegation regarding: (a) intentional discrimination on the basis of race, color, national or ethnic origin, gender, or religion; (b) an improper use of force or an improper threat of force; (c) an intentional improper search, seizure, or arrest; or (d) an intentional failure to follow any of the documentation requirements of this Agreement or an intentional provision of false information under the documentation requirements of this Agreement. In these cases, where an allegation is resolved as other than sustained, the MCPD shall consider whether to take positive corrective action. The application of disciplinary action is subject to the officers' right, pursuant to the LEOBR, to have the matter adjudicated by a hearing board. These requirements do not apply to decisions made by a hearing board.
- Y. Subject to the LEOBR, the MCPD shall discipline any officer who is found guilty or who enters a plea in a criminal case regarding a felony while acting in any official capacity, and any officer who is found by a judge in a criminal case to have committed an intentional constitutional violation. Where appropriate, the MCPD also shall require that positive corrective action be instituted (except where the discipline is termination).
- Z. Subject to the provisions of the Collective Bargaining Agreement, the MCPD shall maintain written records at the District level documenting all positive corrective action of officers. At a minimum, these records shall reflect the name of the officer, the reasons for the action and the general nature of the positive corrective action.

VII. Training

VII. TRAINING

Ensuring that Officers Receive the Best Possible Training

- A. In order to continue providing high quality professional training in police practices, the MCPD, with the cooperation, input and assistance of the FOP, will hire an expert to review and evaluate the training program currently being provided by the Montgomery County Police Training Academy ("PTA"). The expert shall be selected with the approval of DOJ within 225 days of the effective date of this Agreement. This expert may be the same individual as the Consultant identified in paragraph (VIII)(A).
- B. In keeping with the mutual desire of the parties to ensure a full program of training that includes recruits and all other members of the MCPD, the expert shall review and evaluate MCPD training concerning: cultural diversity; the nondiscrimination requirements of the Constitution, Title VI, the Safe Streets Act, and the nondiscrimination policy set forth in paragraph (III)(A) of this Agreement; integrity and ethics; traffic stops and actions in connection with traffic stops; pedestrian stops; searches and seizures; arrests; use of force; interpersonal skills; and incident de-escalation techniques. To ensure a continuing high quality program of training, the expert will be expected to review and make recommendations on training quality, content, frequency, amount, and length, and post-training evaluations of whether the concepts, standards, practices, and procedures that are being taught are successfully being learned and implemented.
- C. The expert also shall make recommendations on the integration of other parts of the County workforce into the MCPD training as may be relevant to all employees so that Montgomery County can maximize the benefits of the training program, the expert's expertise, and its investment in the PTA.
- D. MCPD will charge the expert with the responsibility to make an initial assessment of the MCPD's training program and the magnitude of the required review. Based upon that assessment, the expert will identify a deadline for completing a draft report. When the report is submitted, the parties agree to review the draft report and exchange comments on the draft with the expert and each other within thirty days of their respective receipt of the report. Once the expert has received each party's comments, the expert will consider those comments and complete the report. MCPD will ensure that its contract with the expert requires the expert to submit the final report to the parties within 60 days of the expert's submission of the draft report to the parties.
- E. Once the expert has submitted a final report that has been approved by DOJ, MCPD will develop a training plan implementing that report in accord with its recommendations. MCPD will submit the training plan to DOJ for approval within 90 days of receipt of the

VII. Training

expert's final report and prior to implementation. The plan will be responsive to and in accord with the Collective Bargaining Agreement. At a minimum, MCPD will incorporate the training plan into the first recruit training program initiated after its completion and into the next annual training calendar, and recruit and annual training thereafter. MCPD will continue to maintain records regarding each officer's training, including a central repository of curricula, training materials and lesson plans. Revised in-service training will be completed for all officers within the next training calendar year of its initiation.

- F. Because maintenance of this training effort is important to each of the parties, the MCPD will establish a protocol to review its training program at least annually to reconcile the program with changes in law or developments in police practices and to evaluate the effectiveness of training and to detect the need for new or further training. An integral part of this protocol includes the exchange of ideas and information between the Director of Training, the Director of OIA, District Commanders, other unit commanders, the Office of County Attorney, the Office of Montgomery County State's Attorney, and the existing MCPD Training Committee. (The MCPD and FOP reaffirm the importance of including an FOP representative on the Training Committee.) As part of its continuing effort to provide assistance to police departments and other law enforcement agencies throughout the United States, DOJ will be invited to attend all training conducted by MCPD.
- G. To be effective, the parties agree that the MCPD training program must include components that involve the state and federal constitutional provisions that affect the duties of a police officer and the rights of all persons. These rights include the non-discrimination requirements of the state and Federal constitutions and various Federal and state laws designed to implement those constitutional provisions, including the Safe Streets Act, Title VI, and the nondiscrimination provision of this Agreement. The parties acknowledge that no training program for police officers can be effective without including early in the training plan training modules that address the OIA process, community relations, the LEOBR and the Collective Bargaining Agreement, so that officers and other members of the department have available to them sufficient information to understand their rights and responsibilities and the rights and responsibilities of those who may have complaints against them.
- H. The MCPD shall, as soon as practicable, provide copies and explain the terms of this Agreement to all officers and MCPD employees in order to ensure that they understand the requirements of this Agreement and the necessity for strict compliance. After the MCPD has adopted new policies and procedures in compliance with this Agreement, the MCPD shall provide training to every officer regarding the new policies and procedures and the relevant provisions of this Agreement. The MCPD shall incorporate training on these policies and procedures into recruit training at the Police Training Academy.

VII. Training

Field Training Officers (FTO's), Supervisors and Career Development

- I. The parties recognize that any organization can be better served by a well thought out and developed plan of career development. To accomplish this goal within the MCPD, the MCPD after consultation with the FOP will develop training programs that are designed to meet the career development goals of officers. In addition, MCPD will design and implement appropriate training programs that each officer who advances in rank through competition must successfully complete. The MCPD will make best efforts to ensure that officers successfully complete the training before assuming the new rank, but if not before, training will be completed within six months from the date that the officer advances in rank.
- J. Officers in the rank of sergeant and above will be required to attend annual programs that teach command accountability and responsibility, interpersonal relationship skills, theories of motivation and leadership, and techniques designed to promote proper police practices throughout the supervisor's command responsibility and which include proper supervisor/employee communication skills.
- K. Because an important part of a recruit's development involves learning proper police procedures from skilled veteran officers, MCPD and FOP will continue to cooperate in identifying and training veteran officers in the skills necessary and appropriate to be an FTO. These skills include, among others, the ability to mentor and evaluate. Because MCPD and FOP recognize that officers' safety can be jeopardized by poorly trained and unskilled officers, MCPD and FOP will develop methods by which FTO's are evaluated and trained and agree that FTO's must maintain a high level of competence and professionalism in the performance of their duties, including demonstrated proficiency.

VIII. Oversight, Reporting and Recordkeeping, and Implementation

VIII. OVERSIGHT, REPORTING AND RECORDKEEPING, AND IMPLEMENTATION

Consultant

- A. Within 90 days after the entry of this Agreement, the County, MCPD, FOP, and DOJ shall together select a Consultant who shall review and report on the County's implementation of, and assist with the County's compliance with, this Agreement. If the parties are unable to agree on a Consultant, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a Federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to a third party neutral, selected with the assistance of the Federal Mediation and Conciliation Service, and the third party neutral shall appoint the Consultant from among the names of qualified persons submitted. The County shall bear all costs of the Consultant.
- B. The Consultant shall not be retained by any current or future litigant or claimant in a claim or suit against the County, MCPD, the FOP, or its officers. The Consultant shall not issue statements or make findings with regard to any act or omission of the County, the MCPD, the FOP, or their agents or representatives, except as required or expressly authorized by the terms of this Agreement. The Consultant may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement, but not its interpretation.
- C. The Consultant shall offer the County and the MCPD technical assistance regarding compliance with this Agreement. The Consultant may not modify, amend, diminish, expand, or interpret this Agreement.
- D. The MCPD shall provide the Consultant with full and unrestricted access to all MCPD staff, facilities, and documents (including databases) necessary to carry out the duties assigned to the Consultant by this Agreement. The Consultant may not photocopy OIA investigative files nor the operating file and, in taking notes on such files, the Consultant shall not identify officers by name. The Consultant's right of access includes, but is not limited to, all documents regarding traffic stop data, protocols, analyses, and actions taken pursuant to the analyses. The Consultant may not access County and MCPD medical, Employee Assistance Program, Stress Management Program, supervisory, or other personnel files and records.
- E. The Consultant, among other things, shall review and evaluate the quality and timeliness of appropriate samples of MCPD employee conduct investigations pursuant to paragraph (VI)(K); disciplinary actions; positive corrective actions; traffic stop reports and logs, and in-car video tapes prepared in connection with a traffic stop (to the extent that they may be

VIII. Oversight, Reporting and Recordkeeping, and Implementation

available); analyses of data concerning traffic stops and actions in connection with traffic stops, pursuant to paragraph (IV)(H); and any actions taken pursuant to paragraph (IV)(I).

- F. During the first year after the effective date of this Agreement, the Consultant shall issue a quarterly public report detailing the County's and the MCPD's compliance with and implementation of this Agreement. Thereafter, the Consultant shall issue such reports at least semiannually or more frequently as the Consultant determines is appropriate. These reports shall not include information specifically identifying any individual officer. Before issuing a report, the Consultant shall provide a draft to the parties for review to determine if any factual errors have been made, and shall consider the parties' responses and then promptly issue the report.

Reports and Records

- G. Between 90 and 120 days following effective date of this Agreement, and every six months thereafter until this Agreement is terminated, the MCPD shall file with DOJ and the Consultant a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement.
- H. The County and the MCPD shall maintain all records documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement.
- I. DOJ shall continue to have access pursuant to applicable federal laws and regulations to any County documents (including databases), staff, and facilities that are proper and necessary to evaluate compliance with this Agreement. DOJ shall provide MCPD and the FOP with reasonable advance notice of its intent to gain access to documents, staff, and facilities, and shall provide the MCPD and FOP the opportunity to be present at the time that DOJ is reviewing documents.
- J. DOJ shall review documents and information provided by the County and shall provide its analysis and comments to the County and MCPD at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.

Compliance

- K. This Agreement is a public document, and copies shall be provided to members of the public upon request at no charge.
- L. The County and the MCPD agree that they will not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or

VIII. Oversight, Reporting and Recordkeeping, and Implementation

participated in any other manner in an investigation or proceeding relating to this Agreement.

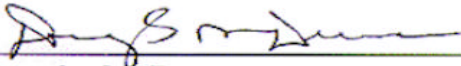
- M. This Agreement is enforceable through specific performance in Federal Court. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.
- N. Failure to comply with this Agreement may result in implementation of administrative enforcement proceedings consistent with the provisions of the Title VI, the Safe Streets Act, and applicable regulations, including, but not limited to, 28 C.F.R. Part 18.

Modifications

- O. If, at any time, any party to this Agreement desires to modify it for any reason, that party shall notify the other parties in writing of the proposed modification and the reasons therefor. No modification shall occur unless there is written agreement by the Parties.

Parties to this Memorandum of Agreement:


For Montgomery County, Maryland:



Douglas M. Duncan
County Executive

1-14-00
Date

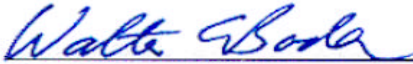
For the Montgomery County Department of Police:



Charles A. Moose
Chief of Police

1-14-2000
Date

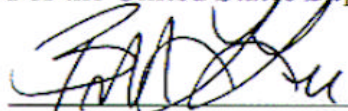
For the Fraternal Order of Police, Montgomery County, Maryland, Lodge 35, Inc.:



Walter E. Bader
President

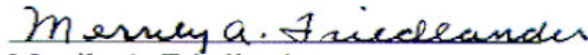
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For the United States Department of Justice, Civil Rights Division:

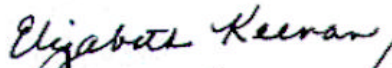



Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

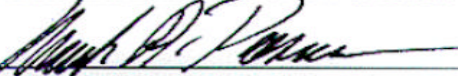
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Merrily A. Friedlander
Chief
Coordination and Review Section

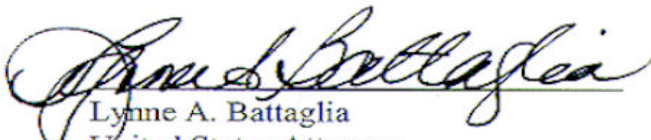



Pamela Brewington, Attorney
Elizabeth Keenan, Investigator
Coordination and Review Section



Mark Posner, Attorney
Special Litigation Section

For the Office of the United States Attorney for the District of Maryland:



Lynne A. Battaglia
United States Attorney
District of Maryland

1/14/00
Date