



U.S. Department of Justice

Civil Rights Division

*Special Litigation Section - PHB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

March 13, 2003

Mr. Alejandro Vilarello
City Attorney
City Attorney's Office
Miami Riverside Center
444 NW 2nd Avenue
Miami, FL 33130

Re: Investigation of the Miami Police Department

Dear Mr. Vilarello:

As you know, the Civil Rights Division is conducting an investigation of the Miami Police Department (MPD), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). In 2002, Mayor Manuel Diaz and Chief Raul Martinez separately requested a thorough investigation by the Civil Rights Division of the MPD's policies, procedures, and practices. As an initial matter, we would like to express our appreciation for the considerable cooperation we have received thus far from the City, Chief John Timoney, former Chief Martinez, and the men and women of the Miami Police Department.

At the beginning of our investigation, we told you that we would inform you as soon as possible if concerns arose during the course of the investigation. To date, we and our consultants have reviewed relevant policies and procedures, interviewed City officials, members of the Office of Professional Compliance and the Community Relations Board, and a broad cross-section of members of the MPD, including command-level and line officers. We have also talked with representatives of the Fraternal Order of Police and the Miami Community Police Benevolent Association, as well as community leaders and citizens. Based on this preliminary review, we have identified several areas of concern, which we set forth below, along with our recommendations for

addressing these problems. We have previously addressed most of these areas of concern in our exit interviews with Chief Martinez, the command staff, and the training staff. Additionally, on January 29, 2003, we gave Chief Timoney an overview of our preliminary concerns and recommendations thus far.

Important aspects of our fact gathering process have yet to be completed, most notably reviewing incident reports, shootings files, citizen complaint files, arrest reports, and early warning system files. This letter is not meant to be exhaustive, but rather focuses on significant concerns we have identified and recommendations we can provide based on our review thus far of the MPD's policies and procedures that are contained in the Departmental Orders (DO) manual,¹ selected Standard Operating Procedures (SOPs),² and our observations of officers in the field. This letter is therefore preliminary in nature and does not reach any conclusion about whether there is a violation of Section 14141.

The issues identified below focus on the following areas: use of force and use of force reporting, vehicle pursuit driving policy, search and seizure, complaints and investigations, early warning system, training, and structure of the DO manual generally. Please note that we may identify additional issues as our investigation progresses. We would also be happy to provide examples of policies used by other police departments that might address some of the issues we raise below, as well as to review additional policy revisions the MPD makes.

¹ We reviewed the March 2002 version of the DOs, and the December 2002 version of the Taser DO. We have requested but have not yet received the most current versions of DO 9.13 (Juvenile/Missing Persons detail) and DO 12.10 (untitled) which we understand were recently revised.

² We reviewed the following SOPs: Internal Affairs, Canine, Special Threat Response Team, Tactical and General Investigations, Violent Crime Intervention Unit, Homicide, and Inspections. We have not yet finished reviewing the Patrol SOPs, which we received on December 17, 2002.

I. Use of Force Policies

A. Definition of use of force and use of force continuum

The MPD is not consistent in its definition of appropriate use of force. Departmental Order 2.6.4.1 (Use of Force, Procedures) appropriately limits use of force to those situations where force is reasonably necessary. However, in other places in the DOs the definition of use of force does not meet constitutional requirements. For example, DO 1.11.6.5.2 (Arrests, Unnecessary Force) states that "members shall not use unnecessary force" in making an arrest. Similarly, DO 1.11.6.5.3 (Degree of Force to be Used in Making an Arrest) states that officers will be justified in using force if "they fulfill their duty in a consistent, careful, and prudent manner." In addition, the Internal Affairs SOP governing the duties and responsibilities of members refers to a "flagrant use of excessive force" as the standard for review of excessive force incidents by Internal Affairs. Finally, DO 2.6.4.2 (Situations Requiring A Control of Persons Report) could be read as excluding uses of force from its definition, such as pain compliance holds and takedowns, that should be included. We recommend that the MPD review all of its DOs and SOPs for consistency on the standard for acceptable uses of force.

The MPD also fails to provide officers with clear guidance on what constitutes a reasonable use of force. The main use of force policy, DO 2.6, does not contain a use of force continuum, matrix or any description of levels of resistance and appropriate responses, and does not address de-escalation techniques. The DO on Using Force, DO 2.6.4.1, refers to a use of force matrix card given to officers at training, and at the officer survival training we observed in September 2002, MPD trainers referred to a document entitled "Recommended Use of Force/Levels of Resistance Matrix" as its use of force matrix. However, as our consultants advised Chief Martinez and Chief Timoney, the matrix we saw at survival training is outdated, and does not include some of the specific types of force MPD officers use, such as canines and Tasers. Lack of specific guidance may lead officers to believe they are justified in using force in situations in which it would be unreasonable or unnecessary.

When properly designed and implemented, a use of force continuum is a fluid and flexible policy guide. Many major city

police departments employ a use of force continuum because it provides a useful tool in training officers to consider lower levels of force first, which protects the safety of both the officer and the civilian. Moreover, a use of force continuum emphasizes that officers' presence, verbal commands, and use of "soft hands" techniques (using hands to escort rather than control subjects) can often be used as an alternative to other more significant uses of force.

We recommend that the MPD create a DO governing use of force that includes a use of force continuum. The continuum should include the actual types of force instruments used by the MPD, including canines and Tasers. We suggest that the continuum clearly indicate which response is appropriate for which type of resistance encountered.

B. Canines

The MPD's canine policy, DO 12.6, fails to identify the MPD's canine handling methodology, and does not define important elements of canine use. The MPD does not specify whether it uses a "find and bite" policy (which allows dogs to bite upon locating a subject) or a "find and bark" policy (requiring a dog to bark, rather than bite). Based on our discussions with canine unit command staff, supervisors, and officers it appears that the MPD actually uses a "find and bite" policy because the dog is trained, when off leash, to bite when it encounters a subject, regardless of whether the subject is actively resisting or attempting to flee. Based on our discussion with canine unit officers, we understand that most newly acquired canines arrive at the MPD trained to alert rather than bite in most circumstances, and that the MPD retrains the dogs to bite.

A "find and bark" policy prevents canines from biting subjects in situations in which such force is not necessary to effect an arrest or protect the safety of officers or civilians, such as where a subject is passively hiding in a building. We understand from our meetings with Chief Martinez and Chief Timoney that the MPD continues to evaluate "find and bark" as compared to "find and bite" policies. We look forward to learning the MPD's conclusions. We recommend that the MPD explicitly adopt a "find and bark" policy.

The MPD's policy provides in DO 12.6.4.6.2 (Prohibited Canine Usages) that canines are not to be used to "intimidate or

frighten a suspect." Despite the prohibition on using canines for intimidation, DO 12.6.4.3.4 (Crowd Control) permits the use of canines "[o]n approval by the Chief of Police, when specifically requested at any event where very large crowds are anticipated" to serve as a "high visibility deterrent." We believe that the MPD's anti-intimidation policy and the crowd control policy as implemented in the above example are contradictory. We recommend that the MPD prohibit the use of canines as a deterrent to protect property only, and that the MPD authorize the use of canines for crowd control only during riots, potential riot conditions, or other large unauthorized assemblies where there is a reasonable likelihood that injury to officers or others could occur, and where crowds cannot be controlled by any other means.³

We found several instances where the canine SOPs contain important policy directives that we believe also belong in the general DOs. We also found instances where the policy stated in the canine SOPs was inconsistent with the statement of policy in the DOs. All officers, not just canine officers, should learn the MPD's policies governing the use of force with respect to canines, since patrol officers are almost always present when canines are deployed. In general, we recommend, for all units, that all important policies contained in the SOPs be included in the DOs as well, and that they be consistent with each other (see section VIII, Structure and organization of Departmental Orders, below).

As the first example, canine SOP 5 specifies that canines may be used, with permission of a commanding officer, to "search for an offender of any crime whereby the offender is armed or has armed himself with a weapon or firearm during the commission of a crime." However, the canine policy, DO 12.6, permits canines to be used "where an offender or offenders are believed to be a threat," and does not further limit the use of canines other than to prohibit them from being used to apprehend traffic violators and shoplifters. The DO fails to provide guidance to an officer about what constitutes a "threat," and therefore could lead to officers to use canines in situations where their use could constitute excessive force. We recommend that the MPD clearly

³ We learned that the MPD routinely used canines as crowd control at football stadiums as a means of deterring citizens from damaging the goal posts. We understand that Chief Martinez directed that canines no longer be used at football games. This change is consistent with our recommendation.

state the limits of when a canine can be used in the Departmental Orders as well as in the SOPs, and ensure that the policies conform with each other.

A second example concerns verbal warnings. The canine DO does not require verbal warnings before releasing a canine. However, canine SOP 5 requires an officer searching a building to give one warning identifying himself or herself as a police officer, announcing that police dogs are present and will be released, and demanding that the subject surrender. There is no requirement, in either the DO or the SOPs, that officers warn that the dog will bite. We recommend that the DO 12.6 require, absent exigent circumstances, a set number of announcements that a canine will be deployed, and a sufficient interval between announcement and deployment to allow for subject surrender, when a canine is used to search a building. We also recommend that the warnings be repeated on each floor of a building, and that patrol officers be trained and authorized to give warnings when they are responsible for maintaining perimeters. Finally, in all situations where a warning is given, the warnings should state clearly that the dog will bite.

Moreover, the SOP appears to require the full warning in English only, requiring only "Policia Salga" ("Police - come out") and "Police. Soti" (sic) ("Police - leave") as a warning in Spanish and Creole, respectively. Officers and command staff confirmed that the full warning was not given in Spanish or Creole. Failure to require multiple and complete warnings in a language that the subject can understand can result in excessive force being used, because it eliminates the opportunity for a subject to surrender before getting bitten. We recommended to Chief Martinez in September that the MPD give warnings in all three languages, and learned the next day that the MPD had already started developing these warnings. We commend the MPD for its quick response.

A third example concerns the MPD's policies governing recall of a canine. Canine DO 12.6 does not provide guidance on how and under what circumstances an officer must recall a dog after deployment, although we did learn from talking to officers that it is the MPD's practice to recall the dog as soon as the subject surrenders. The governing SOP, however, mandates recall if the officer loses sight of an off leash canine, but does not specifically require the officer to recall the dog once the subject has stopped resisting. This could lead to the use of

excessive force if the canine continues to bite once the subject has stopped resisting or trying to flee. We recommend the DO be rewritten to resolve the discrepancy between the SOP and the practice regarding recalls, and to include specific guidance on recalling the canine.

Fourth, DO 12.6 does not clearly define a canine apprehension. However, the SOP governing the duties and responsibilities of canine handlers appears to count as a canine apprehension any time a subject: (a) is physically captured or located by the canine team; (b) surrenders because of the canine deployment; or (c) is arrested because of the presence and deterrence of the canine. We believe the standards articulated under (b) and (c) are vague, and could allow canine officers to count as a canine apprehension situations where the canine had only a peripheral role. This, in turn, could artificially lower the canine bite ratio by comparing the number of bites to a larger number of "apprehensions" than can legitimately be counted as such. We recommend as a more appropriate standard that an apprehension be defined as any time the canine is deployed and plays a clear and well-documented role in the capture of a person. Similarly, DO 12.6 does not define a canine deployment. We recommend that a canine deployment be defined as an active search where the canine has an assigned task and is actually used in the search. The mere presence of the canine at the scene should not count toward either a deployment or an apprehension.

We understand that all supervisors do not receive formal standardized training in canine handling procedures. Such training should be provided not only to supervisors in the canine unit, but to all supervisors, because both the DOs and SOPs allow supervisors not assigned to the canine unit to supervise canine handlers in some situations. In addition, although neither the DOs nor the SOPs address the role of patrol officers in providing field support to canine handlers while on active deployment, we understand that patrol officers perform such duties. However, we learned that patrol officers are not adequately trained to assist the canine officers. We learned that patrol officers have broken the perimeter in which the canine is working, which can lead to the canine's confusing the officer's scent with the scent of the person he is tracking, and may also put the patrol officer at risk for bites if he or she follows the natural inclination to watch the canine instead of look for the subject. We recommend that patrol officers, as well as supervisors, be trained in back-up support for canine handlers.

Neither the MPD's canine policy nor its SOPs require supervisory review of incidents involving canine deployment or canine apprehensions, although presumably there is some supervisory review of apprehensions in order for the MPD to compile statistics for purposes of calculating its canine bite ratios. Canine bites are reviewed by a supervisor (not necessarily a canine supervisor), but there is no requirement that supervisors review canine deployments. We recommend that all canine deployments and apprehensions be reviewed by a supervisor.

We learned that the canine sergeant and the Commander of the Field Support Section review bite ratios, but only on officers with a bite ratio higher than 30%. We believe that a 30% bite ratio is a high standard, and that a threshold of 20% and above should begin to raise concerns. We recommend that officers whose bite ratios exceed 20% be subject to higher scrutiny. Many major police departments scrutinize bite ratios over 20% and the MPD should consider adopting lower thresholds. Moreover, the MPD's actual bite ratio may be higher than its numbers indicate given the possibility, as noted above, that the MPD may be using an over-inclusive definition of canine apprehensions.

Finally, the MPD does not appear to have a policy governing canine searches for known juveniles, such as in school buildings. For several reasons, including the fact that the damage resulting from a canine bite can be much more severe on a juvenile than on an adult, the fact that juveniles may not be able to follow the directions of the canine officers to avoid being bitten, and because of additional legal safeguards that may be involved in protecting the rights of minors, we recommend that the MPD develop such a policy.

C. Firearms

Although DO 2.7 (Firearms Procedures) requires officers to qualify every year with every kind of firearm the MPD allows them to use, we learned from command staff and officers that the MPD does not enforce this requirement. We learned that, in practice, officers can remain qualified for up to eighteen months to two years before having to requalify. We recommend that officers qualify to use each and every type of firearm the MPD allows them to carry at least once a year.

The Firearms Procedures policy permits officers to carry personal carbines at work, although it does caution that a carbine is a "secondary firearm to the Glock pistol and should not be routinely deployed in most situations," DO 2.7.5.3 (Approval of personally owned carbines for on-duty use). The MPD should reconsider authorizing the use of personal carbines. This recommendation is based on the fact that carbines, which are high-velocity military rifles, can be altered easily, and can also fire many different kinds of projectiles. Moreover, the City of Miami includes many densely-populated areas where highly-penetrating bullets may hit unintended targets. Prohibiting the use of carbines would allow the MPD more control over both the types of weapons, and the ammunition, that MPD officers use. At a minimum, we recommend that the MPD research and test carbines and all other weapons which make up its current arsenal to determine the risk levels associated with such weapons, and the appropriateness of their use given the City's urban characteristics. We recommend that the MPD revise its firearms policy to allow officers to carry only those specified weapons and cartridges that have been department-approved for urban community use.

Under DO 1.11.6.17 (Rules and Regulations, Disciplinary Action, General Offenses), "unjustified" or "careless" use of a firearm is listed as a general offense for disciplinary action. DO 1.11.6.17.29. However, the DO does not further define these terms. We recommend that this policy be clarified to include examples of "unjustified" or "careless" use of a firearm. The examples should include, among other things, unintentional discharges of the officer's weapon when engaged in inappropriate behavior, such as playing with one's weapon, and engaging in pranks involving the weapon.

D. Tasers

Following a six month feasibility study, the MPD has decided to add the M-26 Taser to its arsenal of weapons. We have given the MPD feedback on the Taser program during the consideration phase, and repeat here our concerns and recommendations for strengthening the Taser policy.⁴

⁴ We reviewed the MPD's Taser policy dated March 2002, and the revised policy dated December 2002.

The Taser temporarily incapacitates a subject by administering a low amperage, high voltage electric shock that causes an instant loss of neuromuscular control. The Taser should be regarded as an addition, not an alternative, to OC spray. The MPD currently requires that only those officers who are appropriately trained and certified in the use of the Taser be allowed to carry it. We recommend that the MPD continue this requirement.

The Taser policy does not refer to the Taser's position on a use of force continuum, although incapacitating techniques, which presumably would include the Taser, are included on the "Recommended Use of Force/Levels of Resistance Matrix" just below deadly force. As we noted earlier, we recommend that the MPD replace this matrix with an updated use of force continuum, and that the Taser be included on the continuum. In addition, we recommend that the MPD change the Taser policy as well to clearly indicate where the Taser falls on the new continuum.

The Taser policy classifies the Taser as a "less-than lethal weapon," DO 2.15.3. The manufacturer uses the description "less lethal." Given that there have been reports of deaths after Taser deployment that could not be readily explained by another cause, such as drug intoxication, changing the description to "less lethal" would emphasize to MPD officers that the Taser is a serious use of force. We therefore recommend that the MPD use the manufacturer's description of "less lethal."

The Taser policy specifies in DO 2.15.3.2 that "[e]xcessive or brutal use of the M-26 Taser in subduing a subject is forbidden." However, the policy does not define or give examples of these terms. The manufacturer lists situations in which the Taser should not be used because the potential danger of using it outweighs the potential benefits. Accordingly, we recommend that, at a minimum, the MPD not permit the Taser to be used in any situation where the manufacturer recommends against its use. For example, we recommend that the MPD adhere to the manufacturer's recommendation that Taser probes not be fired intentionally into a subject's face, by stating so in its policy.

Similarly, the manufacturer's written materials specify that the use of the Taser on a person who has been sprayed with Saber Red (the chemical irritant the MPD uses) could cause that person to catch on fire. Accordingly, the Taser policy should prohibit officers from using the Taser on subjects who have been recently

sprayed with Saber Red. We understand that the MPD is considering rewriting its policy to prohibit use of the Taser on a person who has been sprayed with Saber Red.

The Taser policy states that "the subject will...be forewarned that the Taser will be utilized for failure to comply with verbal commands." DO 2.15.4.6.1. However, more detailed multiple warnings that the Taser is about to be fired, and that an electrical shock will be administered unless the subject complies, may result in compliance without resorting to the actual use of the Taser. Absent exigent circumstances, we recommend that, before firing the Taser, the MPD issue warnings similar to those we have recommended be given before releasing canines.

In October 2002, Chief Martinez informed us that the MPD will allow officers who have been issued Tasers to carry them in their duty belts. We recommend that the MPD monitor this decision and make appropriate adjustments in the future if needed, such as requiring officers to carry Tasers in their cars, in light of the similarity in size and shape between Tasers and the service weapon.

We learned that the MPD does not photograph the Taser probes where they attach to a person's body after an officer deploys a Taser. A photographic record protects the officer in case a dispute arises later, and also tracks the accuracy of the Taser and the officers firing them. We recommend that, where practicable, the MPD photograph the location(s) where the probe(s) hit, both before and after the probes are removed. These photographs, along with the computer printouts from the fired Taser, should be part of the investigation done by a supervisor on every Taser discharge.

Although DO 2.15.4.3.5 requires Taser probes to be removed by Fire Rescue personnel, we understand the MPD is considering a change in policy to allow officers to remove the probes.⁵ We believe, to protect the officer both from liability in case the subject is injured by removal of the probes, and from possible infection from body fluids, that probes should be removed from a

⁵ Memorandum from Kathleen Schrank, MD, Miami Fire Rescue EMS Medical Director, to Sgt. Richard Gentry, dated July 28, 2002, recommending that the MPD train its officers to remove probes on scenes of most incidents.

person's body only by medical personnel.

The Taser policy in DO 2.15.4.5 also requires supervisors to periodically inspect each officer's Taser and determine the number of times it has been deployed since the last inspection. As a further safeguard, a fixed time period should be established for regular supervisor inspections of all Tasers. Additionally, consideration should be given to having the Inspections Unit conduct random inspections of the Taser and random audits of the supervisors' inspections.

Finally, the Taser policy does not require supervisors to investigate a Taser deployment as a use of force where the Taser is the only force used. We recommend that this policy be changed to require that supervisors be required to investigate all Taser deployments as uses of force.

II. Use of Force Reporting

The MPD uses a different form for reporting each type of force officers use (e.g., Taser, Canine, O.C. spray, and Control of Persons (use of physical force)). A single form for reporting all uses of force would aid the MPD in investigating and reviewing uses of force, and allow the MPD to track and evaluate uses of force more accurately and thoroughly. We recommend that the MPD develop a single uniform use of force report that identifies each type of force that was used, and requires the evaluation of each use of force. The MPD has given us a working draft of a uniform use of force reporting form. We look forward to seeing the completed product and renew our offer to review it before it is implemented.

We are also concerned that the MPD's policies on reporting use of force are likely to lead to an under-reporting of the use of force. For example, according to DO 2.6.4.7 (Drawing Firearms), the MPD does not require officers to report instances when they draw and point a firearm at, or in the direction of, another person, but do not shoot. This kind of use of a firearm, as opposed to merely unholstering a weapon, should be reported and evaluated as a means of obtaining important risk management information.

With respect to reporting firearms discharges, DO 1.11.6.21.3, Discharge of Firearms Restrictions, Report of Use, requires officers to make a verbal report "as soon as

circumstances will permit," and to file a written report "as soon as practical thereafter." We have learned from command staff and officers that, after a discharge of firearm event, officers sometimes avoid talking to any supervisor at all until days after the event. We believe that the lapses in time that DO 1.11.6.21.3 permits could seriously undermine investigators' efforts to gather facts and evidence about police-involved shootings fully and quickly, such as witness information, information about the geographical boundaries of the event, and available evidence. We recommend that the MPD require officers to notify their supervisors immediately after any gun discharge incident, and also require officers to complete a brief written report no later than the end of the officer's or supervisor's tour of duty.

We also discovered weaknesses in the policy governing the supervisor's role in investigating uses of force. As currently written, DO 2.6.4.4.5, which governs when a supervisor's narrative is required on a Control of Persons report, requires sergeants to investigate uses of force "under normal circumstances." We believe this standard does not give sergeants adequate guidance in determining when a report must be written. We recommend that the policy be rewritten to require that supervisors investigate each use of force, with the exception of those under review by Internal Affairs and Homicide. We recommend that the MPD amend its use of force reporting policy to require that all uses of force beyond verbal commands and "soft hands" be reported.

Finally, current MPD policy does not require injury to prisoner reports to be written in all circumstances, but only where an officer uses force and "there is a complaint of injury and the injury is visible," DO 2.6.4.3. This can lead to under-reporting of uses of force, and therefore we recommend that officers write reports whenever there is a complaint of an injury to a prisoner, whether incurred before or during the police encounter, and regardless of the severity of the injury or whether the injury is visible.

We have also learned of deficiencies in procedures governing the tracking of Control of Persons (use of force) reports. Internal Affairs is charged with investigating all Control of Persons reports. However, we learned that some Control of Persons reports were not getting forwarded to Internal Affairs. While supervisors were logging in Control of Persons incidents,

there was no follow-up to make sure that relevant reports were actually forwarded to Internal Affairs. We learned the MPD has instituted a new policy requiring sergeants to log the incident to maintain the chain of custody of the reports. Internal Affairs then collects the logs and tracks whether all relevant Control of Persons reports are being forwarded, and which ones they have not received. We support this change.

III. Vehicle Pursuit Driving Policy

The Vehicle Pursuit Driving policy in DO 11.7.4.6 permits roadblocks. Most cities do not allow roadblocks, but rather use tire-puncturing devices, because cars hitting roadblocks can and do result often in fatalities. We recommend that the MPD prohibit roadblocks for this reason.

The DO's language on limiting pursuits in bad weather is good, but should be expanded to include other factors that can effect the dangerousness of a pursuit, like time of day, proximity to a school zone, number of pedestrians, traffic volume, etc. Similarly, the requirement to cut off pursuit when an officer thinks there is clear and unreasonable danger is too vague and fails to provide adequate guidance about what constitutes a danger. We recommend that the MPD follow the trend in most police departments by setting a reasonable restriction on the speed for continuing a vehicle pursuit, and add this specific limitation to the DO.

The MPD does not have a foot pursuit policy. To protect the safety of officers and citizens, the MPD should develop and adopt a foot pursuit policy. The policy should require officers to consider particular factors in determining whether a foot pursuit is appropriate. These factors should include, inter alia, the alleged offense committed by the subject, whether the subject is armed, the location (i.e., lighting, officer familiarity), and the ability to apprehend the subject at a later date. The policy should also include alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements. A foot pursuit policy should be made a discrete and separate DO.

IV. Search and Seizure

We did not find, either in the DOs or the SOPs, a policy or procedure governing the permissible circumstances under which officers can detain a person on a street stop. Indeed, we

observed officers making coercive stops in crime suppression sweeps without it being clear to us that those stops were based on reasonable suspicion that a crime had been or was about to be committed. The absence of a clear policy limiting officers' discretion in effecting street stops increases the chances that officers will go beyond the legal bounds of reasonable suspicion. Accordingly, we recommend that the MPD create a policy on street stops.

The DOs currently do not require a supervisor to review officers' arrest reports. We recommend that supervisors review all arrest reports, with particular emphasis on charges of resisting arrest, interference with official duty, and assault on a police officer. This is a valuable tool to deter use of excessive force by officers, and to spot problems with sufficiency of probable cause.

V. External Complaints

According to MPD policy, the Internal Affairs Section has the primary authority for accepting, coordinating, and tracking the investigation of external complaints. The DO manual, however, does not specify whether there is any external entity that oversees Internal Affairs investigations. Based on our interviews, we have learned that the Office of Professional Compliance (OPC), currently a unit under the Office of the City Manager, reviews a limited number of closed Internal Affairs investigations involving excessive force, abusiveness, and discharges of firearms for purpose of reviewing the adequacy of the investigation. The OPC can make recommendations to Internal Affairs to reopen an investigation, but we learned from our interviews that that rarely happens. Internal Affairs has the final say on whether an investigation stays closed or is re-opened.

The Civilian Investigative Panel (CIP), approved by Miami voters in November 2001, will apparently have the authority to oversee Internal Affairs investigations and to subpoena witnesses under the direction of the State Attorney's Office.⁶ An adequate external complaint process is a crucial oversight mechanism and an important deterrent of misconduct.

⁶ We understand that, as of January 24, 2003, nine of the thirteen members of the CIP had been selected.

A. Publicity of the citizen complaint process

It is equally important that the public have access to information regarding the citizen complaint process, and that there be public trust in the integrity of the process. The policies do not address how the MPD provides information to citizens about its complaint process. In response to our document request, however, the MPD provided an information sheet titled "City of Miami Police Department: The Complaint Investigation Process." This sheet describes the complaint process, provides contact information, and outlines five possible complaint dispositions.

Our interviews with community group leaders revealed sentiments that the MPD's citizen complaint process is generally unknown or believed to be ineffective, and that materials describing the complaint process are not generally available. In particular, the City's Community Relations Board was unaware of materials that outlined the MPD's citizen complaint process.

We recommend that the MPD better disseminate information to the public about the citizen complaint process and ensure that effective communication with community groups takes place in order to foster greater confidence in the process. We recommend that each Neighborhood Enhancement Team (NET) station have information about the complaint process posted in a visible place in the public reception area. Each officer while on duty should also carry informative materials in their vehicles to be made available to members of the public that they come in contact with upon their request. In addition, this information should be readily available in City buildings, such as City Hall, and to various community groups throughout the City. Finally, the MPD should consider posting this information on-line in addition to the MPD Citizen Complaint telephone number that the City's website currently provides.

We understand the MPD plans to transfer the Internal Affairs Section to a location outside of Headquarters. We support this decision. We look forward to this and other improvements to the complaint process, including the efforts the MPD is currently making to solicit citizen feedback through the recently modified Satisfaction Survey it distributed.

B. Intake and tracking of external complaints

We have learned of several MPD policies and practices that appear to discourage the filing of complaints. For example, the Internal Affairs SOP governing the duties and responsibilities of the Unit Commander in reviewing Control of Persons reports requires an Internal Affairs investigation to be opened when, among other criteria, the "arrestee insists on filing a complaint" (emphasis added). This language suggests that an arrestee might expect to meet resistance from the MPD in filing a complaint. In addition, while DO 1.11.6.17.26 cites the refusal to give one's name, I.B.M. number, or to display one's identification card when requested as grounds for discipline, the MPD does not have a policy requiring officers to visibly display their name when interacting with the public. Difficulty in identifying the officer a person wishes to complain about could discourage the filing of complaints. In addition, some persons reported that they were not interviewed when they appeared in person to make a complaint, and others who were interviewed reported that the MPD reportedly engages in questioning techniques that are aimed more at discrediting the complainant rather than fact-finding. Finally, we understand that the MPD does not accept anonymous or third party complaints.

Under current MPD policy (Internal Affairs Section, Responsibilities, DO 2.1.3), Internal Affairs is responsible for accepting complaints against department employees regarding allegations of misconduct or unlawful activity. According to DO 2.2.4.3.1 (Internal Investigations, Procedures), Internal Affairs assigns complaints involving "harassment, improper demeanor, and minor infractions, such as discourtesy" to the unit commander or designee. According to Internal Affairs SOP 5, Internal Affairs retains for investigation all complaints involving corruption, criminal activity, misconduct, excessive force, abusive treatment, employee substance abuse, and sexual harassment. The policy requiring that certain types of complaints be handled by the unit commanders or designees also requires that unit commanders or their designee ensure that a "complete and expeditious investigation" takes place (DO 2.2.4.3.1). However, according to officers we have talked to, this process has resulted in delays in resolving complaints.

The policies are also unclear about the responsibility of all MPD employees to accept citizen complaints. While DO 2.2.3 (Internal Investigations, Responsibilities) states that "each member of the Department shall perform the duties and assume the obligations of their rank in the reporting and investigation of

complaints or allegations of misconduct against members of the Department," it does not describe what the role of each member is to accept and process citizen complaints.

With respect to tracking of complaints, we noticed in our review of the Internal Affairs SOP 6 that there is a category of findings after investigation of complaints called "Information," where "the complaint alleged has been filed but cannot proceed. Case can be reopened at a future date when new or additional information is received." We understand that complaints against officers where the complainant does not pursue the complaint fall into this category. Further, we understand that the OPC does not independently track the complaints it receives. Instead, when a citizen calls the OPC to make a complaint against a member of the MPD, the OPC takes the complainant's information and forwards it to the Internal Affairs Section.

We recommend that the MPD review its policies and procedures and rewrite those policies that could tend to discourage filing of citizen complaints. The MPD should change the aspects of its citizen complaint process that have the potential to discourage the filing of complaints or to limit the kinds of complaints accepted or the sources from which complaints will be accepted. The MPD should adopt a policy that explicitly prohibits any conduct that would tend to discourage a citizen from making a complaint, and discipline officers for violating the policy. We also recommend that the MPD write a specific Departmental Order clarifying all employees' roles in accepting and investigating complaints.

We further recommend that all complaints against officers be investigated to the extent possible, regardless of the source of the complaint or the reluctance of the complainant. We also recommend that the MPD accept and investigate to the extent possible anonymous and third party complaints to address those situations where complainant may have legitimate reasons for not wanting to come forward personally.

In our meeting with Internal Affairs in November 2002, we learned that the MPD was in the process of computerizing the complaint process so that complaints can be tracked and resolved more efficiently. We commend the MPD for this measure, look forward to seeing it implemented, and also recommend that the City ensure that adequate tracking of complaints received by

agencies outside the MPD occurs.

VI. Early Warning System (EWS)

Through our discussions with command staff and officers, it is clear that the MPD recognizes that its EWS needs to be improved, and we understand that significant changes to the EWS are contemplated. We learned that the MPD is considering a change in the combination of triggers to allow the EWS to identify an officer who has five incidents in any combination of the four categories over two years, and is also considering lowering the number of firearms discharges as well. We also learned that the MPD has hired an intelligence specialist to assist in the development of information management for the new EWS. We believe these are positive developments.

As we previously discussed with Chief Martinez in our exit interviews, we discovered several weaknesses in DO 2.8 governing the Early Warning System (EWS). According to DO 2.8 and the Internal Affairs SOPs as currently written, the EWS identifies officers when they have five complaints of the same type in two years⁷ in any one of four categories: substantiated or inconclusive complaints; Control of Persons incidents; reprimands; and firearms discharges. Accordingly, an officer could conceivably have four incidents in each category for the two-year period and not trigger the early warning system.

We believe that the types of incidents that trigger the MPD's EWS are too narrow, and that the time period is too short to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct actually develops. For this reason, we encourage the MPD to continue refining the EWS to include capturing all significant behavior issues, violations of policies and laws, and liability issues, and should also consider lengthening the two year time period. For example, in our meetings with MPD staff we have suggested including personnel information, civil lawsuits, vehicle pursuits, and arrest patterns, among other things, as examples of appropriate categories for an early warning systems. The MPD should also consider linking its databases, including the

⁷ The exception is canine bites, which trigger the EWS if an officer has five bites or more in one year, and firearms discharges, which trigger the EWS if an officer has three discharges within five years.

personnel and arrest databases, so that all information that could be useful to supervisors in detecting an early pattern of potentially problematic behavior is easily available.

We recommend that the MPD train all supervisors on the new EWS, including training on how to address trends spotted with officers, and create more informal ways of addressing the trends spotted than the list of options contained in DO 2.8.4.3.3 (Early Warning System, Recommendation), which could appear punitive to both officers and supervisors. Optimally, the information obtained through supervisory review of an officer's conduct should result, where appropriate and necessary, in non-disciplinary intervention, which could include discussion, counseling, training, and action plans designed to improve performance.

VII. Training

In general, training at the MPD is decentralized, with many of the units, such as Field Training Officers (FTOs), canine, marine patrol, and SWAT doing their own training without the input or oversight of the training division. There is also no link between academy training and FTO training. In addition, we learned that, often, roll-call training is done without the input of the training division, and that command staff does not audit training. According to DO 6.9.4.16, the Training Committee, the role of which is to assist in developing training for the MPD, meets only on an "as needed" basis, and includes only upper management and representatives from the law department and the FOP.

Centralized, coordinated training would allow for more consistency and allow officers' progress to be tracked more closely as they move through the ranks and through the different units. We recommend that training be approved by and coordinated through the training division. We recommend that the Training Committee be expanded to include representatives from all levels of the organization, and that command staff audit training periodically, with the monitoring effort being distributed throughout command levels. These measures will address concerns that MPD management is not sufficiently cognizant of what occurs in officer training.

While the officer survival training we attended in September

was for the most part very well done, we did have some specific concerns. First, as we mentioned previously, the use of force matrix the MPD uses is outdated and is not tailored to the specific types of force MPD officers are authorized to use. Officers should be taught de-escalation and regrouping techniques in addition to tactics, to encourage them to assess every situation to determine if continued action on their part is the most advisable course. In addition, we observed during survival training some deficiencies in how officers were being trained on the new deadly force policy. For example, we witnessed a situation in which officers suggested that they need not follow the new policy, and were not corrected by the training staff. We also observed that training staff emphasized that the decision to use deadly force was dependent on the officer's perception of an immediate threat, without concurrently emphasizing that the perception must be objectively reasonable. Our recommendations for improving survival training include: greater emphasis on the requirement that the decision to use deadly force must be objectively reasonable; more forceful response from trainers to inappropriate or inaccurate comments from training participants on the meaning of the new policy; and increased emphasis on the current state of the law on officers' use of deadly force.

Additionally, in our conversations with officers and supervisors, we learned of concerns about encounters with persons who have mental illness or are homeless. According to officers and supervisors we talked to, only about 70 officers have received crisis intervention training, and trained officers are not always available to respond when needed. We recommend that the MPD significantly increase the number of Crisis Intervention Team (CIT) officers.

Finally, we understand that a separate training for new sergeants, covering supervisory responsibilities, has been developed recently. Our recommendation is to include all current sergeants, in addition to new sergeants, in this training.

VIII. Structure and Organization of Departmental Orders

In general, we found that while the DOs cover a comprehensive range of topics, they are poorly organized. For example, policies governing the use of force are found in several different places throughout the DOs: the main policy is in DO 2.6 (Use of Force), but important parts of the policy are found

elsewhere, including in DO 1.11.6.21 (Firearms and Weapons), in DO 1.11.6.5.2 (Arrests-Unnecessary Force), in DO 1.11.6.21.6 (Less Lethal Weapons), in DO 1.11.6.37.2 (Prisoners), and in DO 2.3.4.3 (Code of Ethics). Requiring officers to look up important policies in several different areas of the manual makes it less likely that officers will identify and learn the entire policy. In addition, some policies are not contained within the most relevant subject matter area. For example, DO 2.5 (Arrest Procedures) and DO 2.7 (Firearms Procedures) are placed under DO 2 (Internal Affairs) which covers the investigative process, rather than under DO 11 (Patrol) which covers field operations and procedures.

A well-organized and clearly-written policies and procedures manual allows officers to quickly find the parameters by which the entire organization operates. The ability to find a complete policy quickly is especially important for those policies that officers would be expected to refer to often, including use of force, incident reporting, and arrest procedures. Currently, all of these policies are scattered throughout the DO manual. We recommend that the MPD reorganize the DOs so that an entire policy is found in one place.

In addition, the rules of conduct, which are the list of specific prohibitions that cannot be violated and the affirmative requirements that officers must follow, also are not contained within one area in the manual. We recommend that the MPD arrange the rules of conduct in a separate section of the DO manual, so that officers can quickly find and more easily familiarize themselves with the MPD's requirements for officer conduct.

A second area of concern with the DO manual is that use of force policies that appear to be no longer in effect remain in the manual. Currently, the Leg Restraint Policy, DO 2.13.5, states that "hogtying...is prohibited except as a last resort to restrain a subject." However, according to the officer survival training staff and other MPD personnel, hogtying is in fact no longer taught by the MPD, and training officers we talked to believe that the technique is no longer permitted. Increasingly, hogtying is being prohibited in police departments because it is a dangerous practice that puts prisoners at risk of death from positional asphyxia. Accordingly, we recommend that the MPD prohibit hogtying and remove references to hogtying from its policies. We make a similar recommendation with respect to the PR-24 baton, which is referred to in the DOs but which we

understand has been replaced by the ASP (expandable) baton. In general, we recommend that the MPD thoroughly review the DOs for content, and remove any DOs that are no longer in effect.

Third, the MPD needs to ensure that each officer receives, reads, and understands the policies and procedures. Despite a requirement that officers carry a copy of the DOs in their cruiser, which we discovered in a line inspection report provided to us by the Inspections Unit, several officers reported having never seen the DOs. There is no formal mechanism that we are aware of to ensure that officers receive the manual or learn the policies. We learned that the MPD does not supply officers with a copy of the Patrol SOPs, and were told that officers familiarize themselves with the DOs only when they are due for promotion. Accordingly, we recommend that the MPD supply each officer with a copy of the DOs, provide training on their content if this is not already being done at the police academy, and conduct inspections to make sure that officers understand the policies, procedures and rules of conduct, including all policy updates and revisions. We have learned that the MPD plans to increase access to the DOs and SOPs by placing them on the computer system hard-drive, where they will be accessible to officers in each NET office and substation.

Fourth, many of the MPD's policies are not contained in the DOs, but are contained in the SOPs for the individual units. This results in important departmental policies being accessible only to officers who work in a particular unit. For example, the canine SOPs contain important information about warnings that must be given to suspects before a canine is released. Failure to give these warnings implicates the Fourth Amendment. It is therefore important for all officers, not just canine officers, to know the constitutional standards for issuing warnings before a canine is released, especially since patrol officers are responsible for maintaining the outer perimeter at canine deployments.

General orders, those that all officers in all divisions must follow, should be in the DOs. Any general order that appears in the SOPs should also contain a reference to where in the DOs the policy can be found. We recommend that the MPD undertake a complete review of all SOPs, and make sure that all policy directives, especially those governing use of force, are placed in the DOs as well as in the SOPs.

IX. Other Concerns

From talking with command staff and officers, we learned that the Inspections Unit has focused almost exclusively in 2002 on the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) recertification. As a result, the Inspections Unit has not been performing the staff inspections it is required to perform pursuant to the Departmental Order 1.5. According to reports we received from the MPD staff, random drug testing of officers has not been done for at least six months, and possibly one year, due to problems with the vendor laboratory. Our consultants recommended to the Chief on September 27, 2002 that the practice should be reinstated. In addition, our consultants recommended that drug testing be made mandatory for officers entering the narcotics unit.

We are concerned about the handcuffing procedures for misdemeanants outlined in DO 1.11.6.25.2, which allows officers to decide on a case-by-case basis whether they should handcuff a misdemeanor suspect. We recommend that all misdemeanor arrestees who are going to be transported be handcuffed, as a matter of officer safety.

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Please do not hesitate to contact us if you have any questions about the recommendations contained in this letter. We appreciate the cooperation we have received from City and MPD officials and look forward to working with you and the MPD in the coming months as our investigation proceeds.

Sincerely,

/s/ Steven H. Rosenbaum

Steven H. Rosenbaum
Chief
Special Litigation Section

cc: Mr. George Wysong
Assistant City Attorney