

TENTH STATUS REPORT OF THE INDEPENDENT MONITOR
Delphine Allen, et al., v. City of Oakland, et al.

**In the
United States District Court
Northern District of California**

Independent Monitoring Team

**Division Chief Rachel Burgess (retired)
Kelli M. Evans, Esq.
Chief Charles A. Gruber
Christy E. Lopez, Esq.
Robin Busch-Wheaton, *Project Coordinator***

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I. INTRODUCTION

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement or NSA) resolving allegations of police misconduct raised by private plaintiffs in the civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* On August 28, 2003, Judge Thelton Henderson approved the appointment of Rachel Burgess, Kelli Evans, Charles Gruber, and Christy Lopez to serve as the Independent Monitoring Team (IMT). This is the tenth status report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from December 1, 2006, through July 31, 2007.

As with our previous reports, rather than detailing the minutiae of every policy review and technical assistance discussion, we have opted for a format that results in a relatively short but, we hope, clear and comprehensive account of OPD's compliance status and efforts. We are, of course, available to discuss with the Court, parties, and stakeholders to the Settlement Agreement any aspect of this report in greater detail.

II. EXTENSION OF THE NSA

The Oakland Police Department has made significant strides implementing the reforms that were mandated by the NSA in January 2003. It has created or revised all of the policies required by the NSA and trained its officers in these policies. In some areas this required a wholesale overhaul of decades-long practices. As discussed below, in many areas, OPD's actual practices comport with the new requirements; while in other areas, OPD is striving to implement the procedures required by the NSA. In both cases, whether maintaining or reaching for compliance, substantial continuous effort is required. The progress to date has been achieved through the hard work and dedication of many in OPD.

Notwithstanding these substantial achievements, as we near the end of the initial five-year term of the NSA, all parties recognize that OPD and the City had a slow start to the reforms and that there remains substantial work to be done. Given the work that remains, on March 19, 2007, Judge Thelton Henderson ordered that the NSA be extended in its entirety for an additional two years, until January 21, 2010. While extending the NSA, the Court expressed its optimism that OPD can attain compliance with the entire NSA by the end of the extension period. We share this optimism, provided that OPD and the City's effort and dedication are focused on attaining this achievable goal.

III. IMT MONITORING ACTIVITIES

The IMT conducted a variety of on- and off-site monitoring activities during this reporting period. The IMT, among other activities, attended OPD Management Assessment Program and Crime-Stop meetings; participated in ride-alongs with OPD officers; attended Executive Force Review Boards; observed OPD Field Training program focus groups; attended Internal Affairs Division weekly meetings; visited police

substations and city locations and approached officers on the street to request informational brochures and complaint forms; observed OPD's criminal and administrative investigations of critical incidents; reviewed and analyzed OPD documents and files, including draft policies, investigations, police reports, and use of force reports; attended line-ups; observed Academy and in-service training sessions of OPD officers; attended meetings of the Performance Assessment System (PAS) steering committee and working groups; and participated in the monthly meetings required by the Settlement Agreement. In addition, as discussed below, during this reporting period, the IMT spent considerable time revising its review protocols and processes for every NSA task and meeting with OIG and other OPD officials regarding these protocols and processes.

During this reporting period, the IMT met with officials in OPD's Office of Inspector General, Personnel Division, Bureau of Administration, Bureau of Field Operations, Bureau of Investigations, Bureau of Services, and Internal Affairs Division; OPD officers, supervisors, and commanders, including sergeants, lieutenants, and captains; the Discipline Officer; each of the three Deputy Chiefs and the Director of Administration; and Chief Wayne Tucker. In addition, the IMT met with a variety of other stakeholders, including: the Plaintiffs' Attorneys; Oakland community members and groups; the City Administrator; the Mayor's Office; the Office of the City Attorney; the District Attorney's Office; and the Public Defender's Office.

During this reporting period, the IMT also spent considerable time off-site devoted to monitoring tasks. As during previous reporting periods, much of this time was spent conducting audits and reviewing materials relevant to the Settlement Agreement including: draft publications; training data; Internal Affairs investigative files and disciplinary records; promotions materials; MLL reports; management reports; arrest reports; officer-involved shooting reports and investigative files; OPD Management Assessment Program documentation; and information provided by citizens and OPD officers. In addition to reviewing these documents off-site, the IMT also participated in regular meetings and teleconferences with Plaintiffs' Attorneys and OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

As discussed in this report, the IMT assessed OPD's progress on each of the 51 Settlement Agreement Tasks. As part of our assessment this reporting period, we conducted actual practice compliance reviews of six tasks: Methods for Receiving Citizen Complaints (Task 7); Approval of Field-Arrest by Supervisor (Task 18); OPD/DA Liaison Commander (Task 22); Use of Force – Investigation of Criminal Misconduct (Task 28); IAD Investigation Priority (Task 29); and Procedures for Transporting Detainees and Citizens (Task 36). Actual practice compliance reviews of additional tasks are presently underway, the results of which will be reported in our next status report.

These tasks were selected for audit based on several criteria, including OPD's having completed policies and staff training in place for a sufficient period of time to allow for adequate implementation of the new requirements. Additionally, as has been our practice during the last three reporting periods, we asked OPD to inform us of those tasks in which it believes it has attained compliance. To the extent possible, we adjusted our monitoring schedule to prioritize audits for such tasks. At the same time, to the extent possible, we delayed audits in those areas where the Department has acknowledged that it is not yet in compliance.

OPD has made notable progress in all of the areas audited. As discussed below, OPD attained actual practice compliance with Tasks 7.5, 18, and 22. It also attained actual practice compliance with portions of Task 36. While not yet in compliance with Tasks 28 or 29, it has made significant progress in these areas and, in our view, will soon attain compliance if it continues its efforts in these areas and adopts the recommendations made subsequent to our audit findings. As detailed below, OPD currently is in full or partial practice compliance with 31 Settlement Agreement requirements.

IV. REVISITING COMPLIANCE STANDARDS AND MONITORING PROCESSES

In addition to the monitoring work discussed above, a significant portion of this reporting period was devoted to revising, developing, and discussing the standards and methodologies the IMT has used or will use for measuring OPD's compliance with the substantive provisions of the NSA. This activity was undertaken at OPD's request and with the support of the Plaintiffs' Attorneys and the Court. To date the IMT has participated in eight months of recurrent in-depth discussions with OPD's Office of Inspector General (OIG) regarding compliance standards and auditing criteria, NSA requirements, and OPD policies and procedures. The Plaintiffs' Attorneys have participated in a number of these discussions. The Court ordered that the discussions be completed in a timely fashion and that they not interfere with OPD's compliance efforts.

This is the second time (in addition to ongoing discussions with the parties) we have engaged in detailed exchanges with OPD regarding the IMT's monitoring standards and criteria.¹ The first time was early in the monitoring process with former OIG staff and resulted in an agreed upon set of compliance standards that were consistent with national police monitoring standards. By and large, these standards required OPD to demonstrate compliance at a 95% competency level (e.g., 95% of arrests must have an adequate articulation of probable cause) in order to comply with the NSA. At the same time the compliance standards were established early in the monitoring process, we provided OPD with specific information regarding how compliance would be assessed for each NSA provision. While OPD expressed some concerns regarding whether it would be able to meet the 95% compliance standard for conducting timely administrative

¹ Our repeated discussions with OPD regarding monitoring standards and criteria have occurred with personnel from OPD's Office of Inspector General (OIG). Since the beginning of the NSA, there have been four Inspector Generals and frequent and continuing turnover in OIG staff.

investigations, the parties consented to the initial compliance standards and monitoring processes for all tasks. Consequently, for the first four years of the NSA, these were the standards and processes by which the IMT assessed OPD's compliance with the NSA.

Based on concerns raised by OPD about the IMT's compliance findings during the ninth reporting period (May 13, 2006, to November 30, 2006), we agreed to revisit both the compliance standards and monitoring processes. On January 25, 2007, the Court ordered the parties to meet and confer, with the involvement of the IMT, to address the concerns raised by OPD. During the tenth reporting period, OPD requested, among other things, formalizing certain communications and procedures as part of the monitoring process, and additional details regarding audit standards and findings. OPD also formalized its request, first raised during the ninth reporting period, to uniformly lower the compliance standard percentages below the national norm, in similar agreements, of 95%.

In response to the IMT's request for a specific proposal from OPD, OPD requested that the standards be lowered from the previously agreed upon 95% to, in most instances, 80% or 85%. OPD argued that these lower percentages were necessary to account for small data sets in some instances and properly allow for compliance even where there was incidental, insignificant noncompliance. In addition to expressing concern regarding its ability to reach or sustain compliance at the 95% level, OPD also expressed concerns with the level of documentation necessary to demonstrate compliance and with the analytical approach used by the IMT in some instances and insisted that the discussions regarding methodology address these issues as well.

The IMT carefully considered how OPD's requests would impact each of the NSA's requirements as well as compliance overall. Where it was possible to do so without undermining the underlying purposes of the NSA, notwithstanding the 95% national norm, the IMT agreed to lower the compliance standard. As discussed below in the individual task updates, in some areas the compliance standard was lowered to 85%, in other areas to 90%, and in other areas, the standard was changed from a percentage to a more subjective pass or fail assessment. In some areas, the 95% compliance standard was retained. Despite OPD's requests, in no area did we believe it was appropriate to lower the standard to less than 85%. In our view, the goals of the NSA would have been unacceptably undermined if the IMT deemed OPD in compliance with a required practice where it was not in compliance 20% of the time.

In addition to revisiting the compliance standards, OPD requested to formalize certain communications as part of the monitoring process, such as conducting formalized entrance and exit interviews, and requested additional details regarding audit standards and findings. The IMT agreed to OPD's requests and the parties are now operating under a new set of monitoring processes. The new standards and processes will be used to assess OPD's performance during the remainder of the IMT's monitoring of the NSA. During this ongoing process, we continued to monitor and conduct audits where possible, but did not audit any areas where the monitoring criteria had not been resolved.

Revisiting the compliance standards and monitoring processes is a time-consuming process that continues to divert time and energy away from more substantive monitoring of the NSA. While we regret this, we recognize that the process has ancillary benefits to the reform process. It has required OPD to focus more closely on individual NSA requirements and on its own policies and procedures and, as a result, should assist OPD's compliance efforts. As an offshoot of these discussions, as discussed in the individual task updates, OIG identified several areas of the NSA in need of modification in order to address various OPD operational concerns. As a result, the parties have entered into several stipulations in recent months to address such issues. OIG's greater level of engagement in the compliance process has the potential to increase OPD's ability to attain compliance with the NSA, if the City and Department choose to take advantage of it.

V. OPD ACCOMPLISHMENTS AND AREA OF CONCERN

A. OPD Accomplishments

As discussed throughout this report, OPD continued to make meaningful progress in implementing the reforms.

Making the Complaint System More Transparent and Accessible

Since the inception of the NSA, OPD has made significant strides in making its complaint system more transparent and accessible to individuals who live and work in Oakland. In addition to locating the Internal Affairs Division (IAD) offices off-site from the Police Department and setting up a complaint hotline, OPD now provides complaint information and posters at locations throughout the City; and, as of this reporting period, translates citizen complaint forms and information into Spanish, Chinese, and Vietnamese. In addition to accepting complaints from individuals who come into IAD, unlike in the past, OPD now accepts complaints made by phone, letter, or email, from third parties, and from anonymous and confidential sources.

One of OPD's most significant achievements in this area was highlighted by a review we conducted this reporting period: OPD officers appear to be responding far better than in the past to individuals seeking complaint forms and information. The NSA requires OPD members and employees to distribute complaint forms and informational brochures upon request to individuals wishing to file a complaint. To assess OPD's adherence to this requirement, the IMT recently retained and trained three civilian testers, who were selected based upon criteria that included their ability to record accurately their interactions with OPD members/employees; and their representation of the racial, ethnic, and gender diversity of Oakland.

The IMT's testers conducted a total of 17 tests. Thirteen were fixed-location tests in which the testers requested complaint forms and informational brochures during visits to the Police Administration Building; the Internal Affairs Division; the Eastmont Police Substation; and the Chinatown and Fruitvale Community Resource Centers. Four were

“approach” tests, in which testers approached officers on the street in different City neighborhoods to request complaint forms and informational brochures. While the IMT informed OIG of its testing protocol, each of the tests was conducted without prior announcement or notification by the IMT.

We found a striking improvement from the time that a similar study was conducted in 1996 by People United for a Better Oakland (PUEBLO) and the American Civil Liberties Union of Northern California (ACLU). That study concluded that, either officers were “simply ignorant” of OPD citizen complaint process policies, or officers “intentionally provided inaccurate information with the goal of obstructing the process.” In the IMT’s recent assessment this dynamic appears to have changed dramatically, the compliance rate for the fixed-location tests was 100% (13 of 13), and the compliance rate for the “approach” tests was 75% (three of four). A total of 17 tests were conducted and OPD passed all but one of them, a compliance rate of 94%.

Perhaps as important, in all but three of the tests, testers described the OPD member or employee’s demeanor in either positive or neutral terms, such as “extremely friendly,” “cordial,” “polite,” “helpful,” and “approachable, nice, and respectful.” An officer at the Fruitvale Resource Center identified himself and told the tester, “[I]f you need help completing the form...I can help you.” An officer at the Chinatown Resource Center informed the tester that, instead of completing the complaint form, the tester could “go to Internal Affairs or call it in if [he felt] more comfortable with those options.” As noted in our discussion of Task 7, our assessment was geographically limited, in part because our fixed-location testing was dictated by where the City has chosen to locate police resource centers and other police facilities and, in part, because officers appeared more visible in some areas than others during our testing period. Despite this limitation, we believe our findings reflect real and significant change within OPD, which previously did not provide complaint forms even to individuals seeking them from IAD or Police Headquarters.

OPD has made marked progress in creating a more transparent and accessible misconduct complaint system. We commend the Department because it has a fundamentally different and more appropriate attitude about accepting complaints of misconduct than in the past.

Internal Personnel Assessment System

The NSA requires that OPD develop and implement a computerized early identification and intervention system—the Internal Personnel Assessment System (IPAS). This system is intended to improve OPD’s ability to manage the risk of police misconduct and to better evaluate the performance of OPD members and employees throughout the Department. Use of such systems by police agencies is increasingly common and is believed to help enhance police accountability and integrity. When used as intended, these systems assist agencies in identifying both exemplary and at-risk behavior to allow agencies to model the exemplary behavior and to address any at-risk behavior before it escalates.

In the IMT's first status report, issued in December 2003, we discussed OPD's development of the required system as a significant area of concern due to delays in starting this important project and a lack of focus by the Department and City in moving it forward. OPD eventually entered into a contract with an outside vendor to construct the computerized system. Notwithstanding this arrangement, development of the system became bogged down in a series of lengthy delays. Because of these delays and other difficulties with the outside vendor, in 2006, the City's Information Technology Unit (ITU), working closely with OPD, formed a multi-disciplinary team of sworn, civilian, and technical staff members to construct this system in-house.

Showing exceptional creativity, focus, commitment, and skill, this team has developed an impressive IPAS system. This accomplishment is especially noteworthy because it was achieved under tight deadlines and despite an array of technological, data, and resource challenges. In just a few short months, the team managed to create a system that extracts data from OPD's disparate databases to report out on all but one of the elements listed in the NSA. This was a significant undertaking because of the different types of databases in use throughout OPD and the poor condition of much of the underlying data. In order to create IPAS, the team had to standardize and, in some instances, create entirely new databases within OPD. One of the unintended but extremely positive consequences of the project has been the clean-up of a variety of OPD data and data systems throughout the Department.

IPAS is available to OPD supervisors and commanders throughout the Department to assist them in managing their subordinates. Many supervisors and commanders have already remarked on how much they appreciate having ready access to more information about their subordinates. The system has been recognized as exemplary outside Oakland as well, having recently garnered an honorable mention in a national technology solutions competition held by the Public Technology Institute.

Now that OPD has this powerful tool at its disposal, the key will be to ensure that OPD provides supervisors and commanders throughout the agency with the training necessary to understand and use the system as intended, and that OPD hold them accountable for doing so. IPAS is capable of quickly and efficiently providing OPD supervisors and commanders with an array of information about personnel. This allows for more effective day-to-day supervision but only if supervisors take advantage of it. The success of the system will stand or fall on the Department's supervisors' and commanders' ability and willingness to identify employees who may be exhibiting at risk or exemplary behavior and to commend or intervene as appropriate.

B. Area of Concern

Training

OPD's NSA-related accomplishments in the past several years have been significant. OPD now has developed policies that are consistent with contemporary policing standards. These policies are the foundation of an operational system that

enables OPD officers to police more effectively, efficiently, and with integrity. OPD's internal investigations of misconduct and its use of force reporting are greatly improved over what was in place even two years ago. This improved investigation and reporting provides OPD managers a more accurate window into OPD policing, allowing for better understanding and analysis of officer activity. Once the systems for analyzing PAS and stop data are fully implemented, this picture will be even more complete.

The clearer picture of OPD policing provided by better reports, investigations, and our ever-increasing familiarity with the Department has allowed the IMT to see that many of our recent concerns appear to trace back to training. We have included training as an area of concern because the success of the reforms is dependent upon it. Improvements in training will assist OPD to maintain the gains it has already accomplished and to achieve compliance in outstanding areas. Our training concerns can be divided into the following areas: 1) responding in a timely fashion to training needs identified by use of force and misconduct investigations; 2) assessing whether the tactics taught by OPD trainers are consistent with each other and current OPD values; 3) sufficiently documenting and tracking training; and 4) ensuring consistently high-quality training.

Our concerns are somewhat tempered by the fact that OPD shares many of our concerns and is currently striving to improve training on a number of levels. The Training Division, which provides both in-service and Academy training, has gone through numerous improvements recently, and this process continues. OPD is completing an instructor development course and has hired an experienced individual to begin the important task of evaluating the performance of Academy instructors. In conjunction with its training consultant, OPD is working on new testing specifications for the Academy. The Training Division is updating its record-keeping system and requiring improved documentation regarding the content of training provided to its members. OPD is in the midst of training supervisors on how to conduct better use of force investigations and the IMT has agreed to assist in this. OPD's critical Field Training Program is a striking improvement over the previous system. OPD has assigned a Captain to oversee the Training Division who we have consistently found extremely competent and committed to helping OPD excel.

We also understand that OPD has had an extraordinary amount of work to do in this area. OPD has had to substantially increase, over a relatively short period of time, the amount and variety of training it provides to its members and employees. In addition to the training required for the NSA revisions of out-of-date policies, OPD also has restarted its Academy training after years of a hiring freeze; revised and restarted its Field Training Program; and continued to provide the in-service training mandated by state and federal law. These circumstances would create a training challenge for any agency.

Despite our recognition of the difficulty of this challenge, as well as the efforts OPD is making in this area, training remains an area of concern for the IMT because it serves as a foundation of the reforms. We are concerned because we continue to observe

a number of problems related to training and because it is not yet clear whether OPD will be able to make the hard decisions necessary to ensure that the positive changes OPD has undergone will be reinforced by training as the Department moves forward.

As noted above, some of our concerns about training have arisen as we have reviewed OPD's use of force reports and internal investigations. Problems we note during these reviews often seem training related, rather than, for example, related to the supervision the officer was receiving at the time of the incident. In reviewing internal investigations and use of force reports, we find that tactics used by officers in some instances are not those that would best bring about the desired result, i.e., effective detention of a suspect, minimizing the result of injury to all concerned. We have not assessed in any systematic fashion whether these tactics were in accordance with what those officers were taught by OPD, perhaps pre-NSA, or whether these tactics were inconsistent with what the officers had been trained to do and the officers need refresher or remedial training.

As noted above, OPD is currently conducting supplemental training for supervisors regarding how to investigate uses of force. It has also reported that it is beginning to adjust its in-service training for officers and supervisors to include trends observed by its use of force boards. These are positive and important steps in the right direction and are necessary to ensure that underlying use of force training issues are addressed in both individual cases and on a more comprehensive level. While OPD is providing more remedial training to officers than it has in the past, remedial training needs are still too often not identified or acted upon in a timely fashion. The unfortunate impact is that officers may continue to misapply policy or engage in improper tactics for months before an identified problem is addressed with retraining.

We also have found instances where officers take actions contrary to policy followed by disputes within OPD regarding what the policies are, or acknowledgment that some policies are little-known and have been widely disregarded. This, too, appears to reflect a lack of adequate training regarding certain requirements.

Several of the audits we have conducted also indicate problems with training. In some instances, OPD members and employees did not sufficiently understand the operative policies. In other instances, we observed a lack of timely responsive follow-up training to address problems discovered by the IMT or OIG. Nor has OPD sufficiently addressed the difficult issue of whether the tactics it teaches are consistent with each other and current OPD values. For example, the Department has long wrestled with concerns about the use of distraction blows to the head but has not yet resolved this matter. OPD informs us that it is assessing whether officers' use of this tactic is consistent with current training and that it intends to assess whether the training is consistent with OPD's values and professional policing standards. As noted above, although OPD is working towards it, OPD does not yet have in place a system that comprehensively or timely responds to training needs identified by use of force and misconduct investigations.

Documentation of training is also problematic. OPD does not routinely document or track all significant training provided to members and employees. This makes it virtually impossible to ensure, or even document, that all relevant staff have received training that may be critical for their positions, or to hold them accountable when they do not perform as required by the training. Our observations of OPD training indicate a system that is inconsistent in its application: Some training provided is excellent, while other training is sub par. We have noted above the efforts OPD is making to improve the documentation and quality of training and we encourage OPD to continue with these efforts.

Given the difficulty of this challenge, it is not entirely surprising that OPD's training is not yet where it needs to be. Now that OPD has a foundation of strong policies in place it should look to training as a basis for sustaining its new gains for the foreseeable future. We encourage OPD to conduct a more comprehensive assessment of whether its officer training is consistent with its values; to continue the training improvements underway; and to work towards ensuring that the need for remedial and refresher training is consistently identified and addressed.

VI. COMPLIANCE OVERVIEW

Our discussion of OPD's compliance efforts and status is organized around the 12 Settlement Agreement sections from which OPD derived 51 "tasks." At the start of the monitoring process, the IMT reviewed OPD's task designations, found the task division to be workable, and in the interests of clarity and consistency, adopted the same designations.²

The 12 Settlement Agreement areas around which we organize our report are: 1) Internal Affairs Division; 2) Supervisory Span of Control and Unity of Command; 3) Use of Force Reporting; 4) Reporting Procedures; 5) Personnel Assessment System (PAS); 6) Field Training Officer Program; 7) Academy and In-Service Training; 8) Personnel Practices; 9) Community Policing Plan; 10) Departmental Management and Annual Management Report; 11) Independent Monitoring; and 12) Compliance Unit.

As of the eighth reporting period, all 51 Settlement Agreement tasks became due. As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to achieve compliance with a Settlement Agreement requirement. The following chart lists the 51 tasks with their due dates and summarizes the current state of compliance:

² Section XV of the Settlement Agreement imposes additional obligations on the parties (e.g., semi-annual status reports to the Court and meet-and-confer obligations). Because the IMT agrees with OPD that there is no need to "task" these obligations, they are not included in the description of compliance efforts and status. Nevertheless, failure to abide by these provisions would of course constitute a violation of the Settlement Agreement.

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
1	IAD Staffing and Resources	8/13/2004	√	√		√ (11/06) *
2	Timeliness Standards and Compliance with IAD Investigations	6/15/2004	√	√	√	
3	IAD Integrity Tests	6/1/2005	√	√	√	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	√	√	√	
5	Complaint Procedures for IAD	6/15/2004	√	√		
6	Refusal to Accept or Refer Citizen Complaints	6/1/2005	√	√	<i>Under assessment</i>	
7	Methods for Receiving Citizen Complaints	6/15/2004	√	√	√	<i>Under assessment</i>
8	Classifications of Citizen Complaints	6/15/2004	√	√	√	
9	Contact of Citizen Complainants	8/13/2004	√	√		
10	Procedure Manual for Investigations of Citizen Complaints	8/13/2004	√	√		√ (11/06)

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
11	Summary of Citizen Complaints Provided to OPD Personnel	8/13/2004	√	√	√	
12	Disclosure of Possible Investigator Bias	6/15/2004	√	√		
13	Documentation of Pitchess Responses	7/1/2005	√	√		√ (04/06)
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	6/15/2004	√	√		√ (11/05)
15	Reviewing Findings and Disciplinary Recommendations	6/15/2004	√	√		√ (11/06) *
16	Supporting IAD Process-Supervisor/Managerial Accountability	6/15/2004	√	√	<i>Not yet assessed</i>	
17	Audit, Review and Evaluation of IAD Functions	4/15/2003	√	N/A		√ (12/05)
18	Approval of Field-Arrest by Supervisor	1/20/2004	√	√		√(c) (6/07) *
19	Unity of Command	1/20/2004	√	√(c)	<i>Not yet assessed</i>	

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
20	Span of Control	8/14/2003	√	√(c)		
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√	√(c)	√	
22	OPD/DA Liaison Commander	4/15/2003	√	√		√ (6/07)*
23	Command Staff Rotation	1/20/2004	√	N/A		√ (11/05)
24	Use of Force Reporting Policy	7/20/2004	√	√(c)	Not yet assessed	
25	Use of Force Investigations and Report Responsibility	7/20/2004	√	√(c)	Not yet assessed	
26	Use of Force Review Board (UFRB)	7/20/2004	√	√	Not yet assessed	
27	Oleoresin Capsicum Log and Checkout Procedures	7/20/2004	√	√	√	
28	Use of Force- Investigation of Criminal Misconduct	7/20/2004	√	√(c)		
29	IAD Investigation Priority	7/20/2004	√	√		

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
30	Firearms Discharge Board of Review	7/20/2004	√	√(c)	<i>Not yet assessed</i>	
31	Officer-Involved Shooting Investigation	7/20/2004	√	√	<i>Not yet assessed</i>	
32	Use of Camcorders	7/20/2004	√	N/A		√ (10/03)
33	Reporting Misconduct	8/25/2003	√	√	√	
34	Vehicle Stops, Field Investigation and Detentions	8/25/2003	√	√	√	
35	Use of Force Reports-Witness Identification	8/25/2003	√	√	<i>Not yet assessed</i>	
36	Procedures for Transporting Detainees and Citizens	8/25/2003	√	√	√	
37	Internal Investigations-Retaliation Against Witnesses	8/25/2003	√	√		
38	Citizens Signing Police Forms	8/25/2003	√	√		√ (04/06)
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√	√		

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
40	Personnel Assessment System (PAS) – Purpose	6/28/2005	√	√*(c)	<i>Not yet assessed</i>	
41	Use of Personnel Assessment System (PAS)	6/28/2005	√	√*(c)	<i>Not yet assessed</i>	
42	Field Training Program	4/16/2004	√	√	√	
43	Academy and In-Service Training	2/15/2005	√	√(c)	<i>Under assessment</i>	
44	Performance Appraisal Policy	7/7/2004	√	√(c)	√	
45	Consistency of Discipline Policy	6/15/2004	√	√	√	
46	Promotional Consideration	7/8/2003	√*	N/A	√	
47	Community Policing Plan	8/1/2003	√	√	√	
48	Departmental Management and Annual Management Report	7/02/2003	√	√(c)	√	

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
49	Monitor Selection and Compensation	4/15/2003	√	N/A		√ (8/03)
50	Compliance Unit Liaison Policy	3/4/2003	√	N/A		√ (8/03)
51	Compliance Audits and Integrity Tests	9/1/2005	√	N/A		√ (10/05, 11/06)

* Indicates that compliance was achieved during this reporting period.

(c) Indicates conditional policy or training compliance. Conditional policy compliance indicates that primary policies incorporating the requirements of the task have been completed, but subsidiary policies are pending completion. Conditional training compliance indicates that OPD has reported that it has trained at least 95% of required personnel in the policy but that either: 1) the IMT has not yet completed verification of the training; 2) verification did not disclose sufficient documentation of the training and/or understanding by personnel of the requirements of the task; or 3) training has been substantially completed and the remaining training is underway. Conditional actual practice compliance indicates that OPD has fulfilled the requirements of the task pending verification of outstanding documentation or completion of a discrete portion of the task that was not assessed.

A. Policy Compliance³

At the end of the last reporting period, OPD had completed the first step (policy compliance) on all but one of the NSA tasks requiring completion of a new policy. During this reporting period, OPD achieved full policy compliance with the NSA by completing a policy for the outstanding task—Promotional Consideration (Task 46).

³ In order to attain policy compliance, OPD must publish a policy or other appropriate directive (e.g., General Order, Training Bulletin, Manual, etc.) that accurately reflects the requirements of the Settlement Agreement task.

This has been a time-consuming and difficult process for OPD and represents a significant accomplishment. Attaining policy compliance has created a strong foundation for OPD's efforts to fully implement contemporary professional policing practices.

The IMT is currently working with OPD to revise a significant number of NSA-related policies that the IMT had previously found in compliance. OPD's review and revision of policies once it has had the opportunity to assess their impact on actual practice is a normal and positive aspect of this process. The IMT will continue to review revised NSA-related policies to ensure that OPD remains in policy compliance with each task.

B. Training Compliance⁴

As discussed above, OPD has achieved policy compliance with all of the Settlement Agreement tasks. Forty-four of these tasks require training prior to implementation. As illustrated in the above chart, OPD has achieved training compliance on all of these tasks. As OPD revises NSA policies or creates supplemental policies, it may need to provide updated training to personnel, depending on the policies and the nature and extent of the revisions or additions. The IMT will continue to review OPD's training on revised NSA-related policies to ensure that OPD remains in training compliance with each task.

C. Actual Practice Compliance

During this reporting period, the IMT conducted reviews of OPD's actual practices in the following six areas: Methods for Receiving Citizen Complaints/Providing Complaint Forms and Brochures Upon Request (Task 7.5); Approval of Field-Arrest by Supervisor (Task 18); OPD/DA Liaison Commander (Task 22); Use of Force – Investigation of Criminal Misconduct (Task 28); IAD Investigation Priority (Task 29); and Procedures for Transporting Detainees and Citizens (Task 36).

OPD has made notable progress in all of these areas. As discussed below, OPD attained actual practice compliance with Tasks 7.5, 18, and 22.

OPD currently is in full or partial actual practice compliance with 31 Settlement Agreement requirements. OPD is in full compliance with the following 14 tasks: IAD Staffing and Resources (Task 1); Procedure Manual for Investigations of Citizen Complaints (Task 10); Documentation of Pitchess Responses (Task 13); Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Reviewing Findings and Disciplinary Recommendations (Task 15); Audit, Review and Evaluation of IAD Functions (Task 17); Approval of Field-Arrest by Supervisor (Task 18); OPD/DA Liaison Commander (Task 22); Command Staff Rotation (Task 23); Use of

⁴ In order to obtain training compliance, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy related to the task.

Camcorders (Task 32); Citizens Signing Police Forms (Task 38); Monitor Selection (Task 49); Compliance Unit Liaison Policy (Task 50); and Compliance Audits and Integrity Tests (Task 51).

OPD is in partial compliance with the following 17 tasks: Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Members', Employees' and Supervisors' Performance Reviews (Task 21); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigation and Detentions (Task 34); Procedures for Transporting Detainees and Citizens (Task 36); Field Training Program (Task 42); Performance Appraisal Policy (Task 44); Consistency of Discipline Policy (Task 45); Promotional Consideration (Task 46); Community Policing Plan (Task 47); and Departmental Management and Annual Management Reports (Task 48).

VII. DETAILED COMPLIANCE REPORT⁵

In the interest of completeness, we discuss below the requirements for each section of the Settlement Agreement and provide a brief statement of OPD's progress thus far. Each task update also includes information regarding any changes in the compliance standards as a result of the discussions that occurred during this reporting period.

A. Internal Affairs Division (IAD) (Task 1–16; S.A. III)

Section III of the Settlement Agreement, Tasks 1–16, concerns OPD's Internal Affairs Division. The Settlement Agreement requires broad reform in the receipt and investigation of complaints of officer misconduct. This section also institutes mechanisms to ensure that commanders and first line supervisors are held accountable for misconduct by OPD officers under their command.

During the seventh and eighth reporting periods, OPD completed and trained its personnel on several critical internal investigations-related directives, most notably General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T) and Discipline Matrix. During this reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. These changes were reviewed and approved by the parties and IMT. Notwithstanding the relative newness of the policies, OPD has also proposed a series of

⁵ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT conducted an extensive assessment of OPD's internal investigations process and the Internal Affairs Division. This review included the assessment of hundreds of internal investigation files; interviews with complainants; listening to tapes of IAD investigator conversations with complainants; observing IAD operations; on-site testing of whether officers had complaint forms in their cars or on their persons; visits to locations throughout the city to see whether complaint forms and brochures were available to the public; and numerous interviews and conversations with IAD investigators, command staff, and other OPD personnel.

Our observations and analysis revealed that OPD's system for investigating complaints of misconduct has vastly improved. As we noted in our ninth status report, however, work remains to be done and OPD is not yet in compliance with most of the NSA's tasks related to internal investigations.

During this reporting period, the IMT met with IAD and OIG to discuss in more detail the IMT's positive observations regarding more recent internal investigations as well as some of the ongoing problems the IMT has observed in its continuing review of internal investigations.

As outlined in our ninth status report, the IMT commended IAD in several areas, including: significant improvement in management oversight of the IAD process; improved clarity and organization of IAD files, including the use of chronological logs and checklists; on-scene investigations by supervisors; improved and speedier contact of and follow-up with complainants, as well as improved interviewing and canvassing for witnesses; and improved timeliness and tracking of deadlines. The IMT is especially impressed with IAD's growing ability to identify and respond to problems as they arise.

Challenges to OPD's internal investigations process remain. Some of the trends the IMT has discussed with OPD include: failure to interview officers, as well as identified witnesses and observers in some cases; investigators' explaining or justifying officers' behavior rather than obtaining and objectively assessing facts in the course of the investigation; and too many cases being assigned as Division-level investigations, some of which involve serious allegations of misconduct, and some of which are then conducted by subject officers' direct supervisors which may pose a conflict of interest. Through its internal review process, OPD is attempting to identify and address these issues as they arise.

To further assist OPD's efforts at improving its misconduct investigations and attaining compliance with the NSA, the IMT increased its monitoring of these areas. The IMT continued routinely to attend IAD's weekly meetings (whose existence is a notable achievement in itself), offering assistance and insight regarding specific investigations

and emerging trends. The IMT now conducts ad hoc reviews of OPD completed investigations and communicates any significant problems or trends to OPD. We have worked closely not only with OIG but also with IAD regarding development of review protocols and revision of IAD-related policies with the aim of ensuring that there is clarity regarding exactly what the NSA requires for compliance and whether OPD is on the right track to achieve compliance.

During this reporting period we also reviewed Task 7.5, the requirement that OPD members/employees distribute complaint forms and informational brochures when a citizen wishes to make a complaint, and upon request. As described in our discussion of Task 7 below, OPD did well on this task, a marked improvement over a similar test done by a community group before implementation of the NSA.

OPD has made a number of significant improvements in the receipt and investigation of officer misconduct allegations. It is important for investigation quality and community confidence, however, that OPD continue to strive to ensure that remaining necessary changes are implemented and achievements already made are sustained.

1. IAD Staffing and Resources (Task 1; S.A. III.A.)

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.

b. Status of Compliance and Assessment

The revised compliance deadline for this task was in August 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T).

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. We found OPD in conditional compliance with Task 1, pending completion of scheduled training courses for several members. During this reporting period, OPD completed training for these members. Accordingly, we have moved OPD from conditional compliance to full compliance for Task 1.

During this reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. In addition, OPD has also proposed a series of changes to General Order M-3 and to its internal investigations policies and procedures. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

Also during this reporting period, OPD published IAD Policy & Procedure 07-07, *Office Security*. This policy sets out procedures that facilitate the integrity of the investigative process by requiring that IAD offices and investigative files are maintained in a secure and confidential manner. During this reporting period, the IMT confirmed that the Department has trained at least 95% of relevant personnel on this new policy.

Finally, during this reporting period, the compliance standards for Task 1 were lowered from 95% to between 85% and 90% depending on the particular provision.

2. Timeliness Standards and Compliance with IAD Investigations (Task 2; S.A. III.B.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop and, by July 1, 2004, implement, timeliness standards for the completion of Internal Affairs investigations, administrative findings, and recommended discipline.
- IAD command and the Department's command staff must regularly monitor compliance with these timeliness standards.

- If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing must be increased to maintain timeliness standards.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in July 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, the Internal Affairs Policy and Procedure Manual and the Departmental Discipline Policy. As discussed above, during this reporting period, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The changes proposed to General Order M-3 include increasing the time allowed for completing internal investigations. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. Our assessment determined that while OPD had made significant improvements in conducting timely internal investigations, it was not yet in compliance with its own timeliness requirements. Although OPD disputed the methodology employed by the IMT in reaching this finding, it did not disagree that it was not able to complete investigations in accordance with its own time requirements 95% of the time. In OPD's view, the time requirements and required level of compliance were unrealistic. A complete discussion of our audit findings is included in our ninth status report.

During this reporting period, the compliance standards for this task were lowered from 95% to 85% and the IMT revised its methodology for assessing investigation timeliness.

3. IAD Integrity Tests (Task 3; S.A. III.C.)

a. Settlement Agreement Requirements

- By June 1, 2005, IAD must conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.
- By June 1, 2005, IAD must set frequency standards, among other parameters, for such integrity tests.

b. Status of Compliance and Assessment

The compliance deadline for Task 3 occurred in June 2005. During the seventh and eighth reporting periods, OPD completed and trained relevant personnel on the Internal Affairs Policy and Procedure Manual, which incorporates Task 3. On January 25, 2007, the Department published Internal Affairs Policy & Procedure 07-01, *Integrity Testing*. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on this revised policy.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. Although OPD is not yet in full compliance with Task 3, the IMT was impressed by the commitment of IAD staff and by its decision to conduct particular tests for the express purpose of detecting retaliatory conduct. In conducting its integrity tests, IAD identified a number of resource deficiencies that prevent it from developing successful integrity testing. Based on our review of the tests conducted, we agree with IAD's assessment. For example, IAD did not have access to its own surveillance equipment, covert currency, covert vehicles, or a secure communications channel. As a result, whenever IAD undertook an integrity test requiring such resources, it had to obtain them from other Departmental units. This severely compromised the security of the integrity testing process and made it virtually impossible for IAD to conduct any tests of those units in the Department who control these resources. Additionally, given the relatively small size of the Department, IAD may, from time to time, need the assistance of law enforcement officials from other agencies in order to conduct successful tests. They have not, however, been provided the funds to pay for such assistance.

In our audit, we encouraged the City to provide the necessary support and included a series of recommendations aimed at improving OPD's integrity testing. These recommendations include: completing criteria for identifying members/employees who are the subject of repeated allegations of misconduct; improving the documentation and review process associated with the tests; and providing additional training to staff conducting integrity tests. A complete discussion of our audit findings is included in our ninth status report.

During this reporting period, OPD worked to address some of the resource constraints. As a result of its efforts, it was able to obtain some of its own surveillance equipment and has worked with Department and City sources to identify funding for covert vehicles, telephone equipment, and other needs as they may arise. In addition, during this reporting period, OPD proposed additional criteria for identifying members/employees who are the subject of repeated allegations. The IMT is working with IAD to finalize these criteria.

During this reporting period, the compliance standards for this task were lowered from 95% to 90% and modified to include a more subjective pass/fail assessment.

4. Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4; S.A. III.D.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop a policy regarding an informal complaint resolution process to be used by supervisors and IAD to resolve eligible complaints. The Settlement Agreement sets forth certain criteria that must be included in this informal complaint resolution process.
- By October 1, 2004, OPD must implement this informal complaint resolution process.
- By June 15, 2004, OPD must develop a policy establishing a central control system for complaints and Departmental requests to open investigations. The Settlement Agreement sets forth certain criteria that must be included in this central control system.
- By October 1, 2004, OPD must implement this central control system.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. These policies are General Order M-3.1, *Informal Complaint Resolution Process*; General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; and Policy C-2, *Communications Division Policy and Procedure Manual*. As discussed above, during this reporting period, OPD has proposed a series of changes to General Order M-3 and to the Internal Affairs Policy and Procedure Manual.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. We found that the Department has made important progress with this task and is in compliance with a number of its provisions, but is not yet in full compliance with Task 4.

Many of the instances of non-compliance with these requirements occurred because OPD was not interviewing the subject officer or other relevant persons prior to completing an investigation as required by the Settlement Agreement. This often happened when investigations were resolved via "Summary Finding." This term is used by OPD to indicate cases that are completed by IAD's intake unit rather than its

investigative unit. They do not include investigative reports and often do not include interviews of the subject officer. The Settlement Agreement requires that the subject officer be interviewed, and our review indicates that this interview is often necessary to adequately investigate a complaint. OPD recognized that cases resolved via “Summary Finding,” did not comply with all NSA requirements and during this reporting period obtained a stipulation to the NSA permitting them. OPD worked with the IMT and the Plaintiffs’ Attorneys in this process to help ensure that cases resolved via Summary Finding are still thorough investigations even as they reduce IAD workload and provide quicker resolution to investigations, a benefit to both officers and complainants.

During this reporting period, several of the compliance standards for this task were lowered from 95% to 85% or 90% and modified to include a more subjective pass/fail assessment.

5. Complaint Procedures for IAD (Task 5; S.A. III.E.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop a policy to provide immediate access to a supervisor to all citizens seeking to file a complaint. The Settlement Agreement sets forth certain criteria to be followed if there is delay greater than three hours in providing access to a supervisor or if the complainant refuses to travel to or wait for a supervisor.
- By June 15, 2004, OPD must develop a policy to provide Oakland City Jail inmates the opportunity to file a complaint against OPD officers/employees. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By June 15, 2004, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints, including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the “preponderance of evidence” standard; and permanently retain all notes related to the investigation. This provision also defines six case dispositions (unfounded; sustained; exonerated; not sustained; filed; and administrative closure).
- By October 1, 2004, OPD must implement the above referenced policies.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. OPD had previously drafted and published *Manual of Rules* insert 398.76, incorporating one part of this task (complainant access to a supervisor). The IMT determined this policy complies with the Settlement Agreement and, during the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy.

The remainder of this task is incorporated into General Order M-3.1, *Informal Complaint Resolution Process*; General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; and Policy C-2, *Communications Division Policy and Procedure Manual*. During the seventh and eighth reporting periods, OPD completed these policies and trained its personnel on them.

As reported previously, although OPD has closed its City Jail, it has published Special Order 8270 to ensure that OPD complaints made at the Alameda County Jail are handled properly.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. We found that while OPD has made extraordinary gains in nearly every aspect of this task, it is not yet where it needs to be and is not yet in compliance with this task.

Tasks 5.1 through 5.5 involve procedures related to OPD's response to complaints in the field. During this reporting period, OPD developed a system to document compliance with these tasks. The IMT agreed to refrain from auditing these provisions of this task while that system was being developed. Tasks 5.6 through 5.14 relate to complaints by Oakland City Jail inmates. Because the jail has been closed, OPD's remaining responsibilities under these tasks require that an on-duty supervisor respond to the Alameda County Jail if there are complaints from inmates arrested by OPD, and that the complaints be processed in accordance with OPD policies. As above, during this reporting period, OPD developed a system to document compliance with this aspect of this task. The IMT agreed to refrain from auditing these provisions of this task while that system was being developed. The new systems are incorporated in two new policies developed this reporting period: revised Policy C-2, *Communications Division Policy and Procedure Manual (Receiving and Logging Complaints Against Personnel and Use of Force Incidents)*; and Special Order 8565 (*Update of General Order M-3*). As of August 15, 2007, the Department had not yet trained 95% of relevant personnel on these two policies. In upcoming reporting periods, the IMT will review training data to determine whether OPD has trained at least 95% of relevant personnel on these policies.

Despite the obvious and significant improvements in OPD's investigations revealed by our assessment, we found that its compliance with these requirements remained relatively low. During this reporting period, we worked with OPD to explore

ways to improve compliance with this task and to maintain the significant gains it has made in this area. In particular, as discussed above, the IMT met with IAD and OIG to discuss in more detail the IMT's positive observations regarding more recent internal investigations as well as some of the ongoing problems the IMT has observed in its continuing review of internal investigations. Also, as noted above, we continue to meet regularly with IAD to discuss cases and review cases on an ad hoc basis to further assist IAD's efforts.

During this reporting period, all but one of the compliance standards for this task were lowered from 95% to 85% or 90%.

6. Refusal to Accept or Refer Citizen Complaints (Task 6; S.A. III.F.)

a. Settlement Agreement Requirements

- By June 1, 2005, OPD must develop and implement a policy that refusing to accept a citizen complaint; failing to refer a citizen to IAD where appropriate; discouraging a person from filing a complaint; and/or knowingly providing false, inaccurate, or incomplete information about IAD shall be grounds for discipline.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in June 2005. OPD has completed and trained its staff on *Manual of Rules* insert 398.76, incorporating the requirements of this task. As part of our current assessment of this task, the IMT is reviewing cases to determine whether OPD identified and investigated any instances where an OPD member/employee refused to accept a complaint; failed to refer a complainant to IAD; discouraged a person from filing a complaint; or knowingly provided false, inaccurate, or incomplete information about IAD. In our next status report, the IMT will report the results of this review. The compliance standard for this task remains at the 95% level.

7. Methods for Receiving Citizen Complaints (Task 7; S.A. III.G.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy strengthening its procedures for receiving citizen complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy, including that OPD establish a staffed complaint hotline; make complaint forms, brochures and

guidelines easily and widely available, including in OPD vehicles; translate those forms; and accept anonymous complaints.

- By October 1, 2004, OPD must implement the above referenced policy.
- By June 1, 2004, IAD must be located in a dedicated facility removed from the Police Administration Building.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. As previously noted, OPD is in compliance with the requirement that IAD offices be located off-site. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); and the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04). As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with portions of this task. A complete discussion of our audit findings is included in our ninth status report. We found that OPD has made its complaint system more transparent and accessible to individuals who live and work in Oakland. In addition to locating IAD offices off-site from the Police Department, these efforts include setting up a recordable, toll-free complaint hotline; providing complaint information and posters at locations throughout the City; and translating informational brochures regarding the complaint system, and, as of this reporting period, citizen complaint forms, into Spanish, Chinese, and Vietnamese.

During this reporting period, the IMT found OPD to be in compliance with Task 7.5, the requirement that OPD members/employees distribute complaint forms and informational brochures when a citizen wishes to make a complaint, and upon request. To complete our assessment, the IMT retained and trained three testers, who were selected based upon criteria that included their ability to record accurately their interactions with OPD members/employees; and their representation of the racial, ethnic, and gender diversity of Oakland.

The IMT's testers conducted a total of 17 tests. Thirteen were fixed-location tests in which the testers requested complaint forms and informational brochures during visits to the Police Administration Building, the Internal Affairs Division, the Eastmont Police Substation, and the Chinatown and Fruitvale Community Resource Centers. Four were "approach" tests, in which testers approached officers on the street in different City neighborhoods to request complaint forms and informational brochures.⁶ While the IMT informed OIG of its testing protocol, each of the tests was conducted without prior announcement or notification by the IMT.

The IMT's findings showed a striking improvement over the results of a similar study conducted in 1996 by People United for a Better Oakland and the American Civil Liberties Union of Northern California, which concluded that, either officers were "simply ignorant" of OPD citizen complaint process policies, or officers "intentionally provided inaccurate information with the goal of obstructing the process." In the IMT's assessment, the compliance rate for the fixed-location tests was 100% (13 of 13), and the compliance rate for the "approach" tests was 75% (three of four). A total of 17 tests were conducted and OPD passed 16, a Task 7.5 compliance percentage of 94%.

The Task 7.5 testers were trained by the IMT to follow a script that anticipated and was designed for various possible responses by OPD members and employees. For this reason, the testers were persistent in their requests for complaint forms and informational brochures, even when they described an officer's demeanor in negative terms. However, real complainants might feel intimidated, dissuaded, or discouraged by an OPD member or employee's negative demeanor.

While OPD is in compliance with Task 7.5, of special concern to the IMT is that two of the three tests in which the testers described the officers' tones in negative terms were conducted at the PAB, which is one of the most likely locations for individuals to

⁶ Our review of the data indicated that our testers' "approach" tests were conducted in neighborhoods where walking officers appeared to have a more visible presence during the testing period (e.g., downtown, Lakeshore, and Piedmont business districts). This was, in part, because testers were instructed that they should not flag down police vehicles but instead approach officers who were standing, walking, or sitting in parked vehicles. Thus, the testers would be less likely to be able to conduct "approach tests" in neighborhoods where officers did not leave their cars except in response to calls for service. For example, a tester attempted to find such a "walking" officer in East Oakland but after attempts on three separate occasions was unable to find an officer. In addition to the Police Administration Building, the Eastmont Police Substation, and the Internal Affairs Division, our "fixed-location" tests were conducted where Community Resource Centers were located. This also limited the areas in which tests were conducted as there are no Community Resource Centers in many parts of Oakland including, for example, West Oakland, and the East Oakland Community Resource Center was closed before the testing began. We were able to conduct both an "approach" test and a fixed-location test in the Fruitvale neighborhood, but recognize that other neighborhoods that generate a relatively high number of misconduct complaints were not tested. We will address this issue during future tests of this task. Additionally, we have recommended that OPD explore the feasibility of reopening and/or establishing Community Resource Centers in East or West Oakland. Among the many other benefits these centers serve, they may increase opportunities for people throughout the City to directly request and provide information to OPD members and employees in their own communities. Despite these limitations, we believe our findings reflect real and significant change within OPD, which, as noted above, previously did not provide complaint forms even to individuals seeking them from IAD or Police Headquarters.

request a citizen complaint form and information about the citizen complaint process. In many respects, the PAB is the “face” of the Police Department. We recommended that OPD inform officers of the Department’s achievement in this area. We also recommended that officers working at PAB be specifically instructed to interact with the community professionally and courteously. OPD now reports that it will provide such training to all of its front desk officers. In addition, OPD may wish to conduct its own periodic tests of the complaint system to ensure that it is working as intended.

We also recommend that OPD explore the feasibility of reopening and/or establishing Community Resource Centers or other fixed locations in East and West Oakland. Among the many other benefits these centers serve, they may increase opportunities for people throughout the City to directly request and provide information to OPD members and employees in their own communities.

Task 7 also requires OPD to accept and investigate anonymous complaints to the extent reasonably practicable. We will report on OPD’s handling of anonymous complaints in our next status report.

During this reporting period, several of the compliance standards for this task were lowered from 95% to 85% or 90% and modified to include a more subjective pass/fail assessment.

8. Classifications of Citizen Complaints (Task 8; S.A. III.H.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy establishing a classification system for citizen complaints. The Settlement Agreement calls for complaints to be divided into two categories (Class I and Class II) according to the severity of the offense.
- By October 1, 2004, OPD must implement this classification system.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies that comply with this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal

Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

This task was modified by stipulation in December 2005, to permit supervisors discovering Class II violations during the normal course of supervision (i.e., not as the result of a citizen complaint) to address the misconduct through non-disciplinary corrective action, provided there is no pattern of misconduct.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. OPD is in partial compliance with this task and near compliance with almost every component of this task. A complete discussion of our audit findings is included in our ninth status report.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

9. Contact of Citizen Complainants (Task 9; S.A. III.I.)

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that IAD, or the investigator assigned to an investigation, contact citizens who have made complaints as soon as possible, in order to determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Task 9 requires that complainants be contacted as quickly as possible by IAD or other OPD staff to begin gathering information regarding the complaint. One of the most striking and beneficial improvements we observed in the ninth reporting

period is how quickly IAD contacts complainants to learn the details of their complaint and to begin the investigative process. IAD was diligent in its efforts to contact complainants; it was not uncommon for an investigative file to record repeated attempts to make initial investigative contact with complainants. The greatly improved quality of OPD internal investigations is in large part due to the quick contact of complainants by the IAD intake unit. Complainants in 74% of the cases we reviewed were contacted as soon as possible by IAD in accordance with this requirement. As OPD continues to improve in this area, we expect it will shortly attain compliance with this task.

During this reporting period, the compliance standard for this task was lowered from 95% to 90%.

10. Procedure Manual for Investigations of Citizen Complaints
(Task 10; S.A. III.)

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16.)
- By August 13, 2004, OPD must train all personnel to ensure that they have received, understand, and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16.)

b. Status of Compliance and Assessment

With the publication during the seventh reporting period of OPD's IAD procedural manual for conducting complaint investigations, including the provisions articulated in Tasks 1–9 and 11–16, and the IMT's confirmation in the eighth reporting period that OPD had trained 95% or more of relevant personnel on this task, this task has been completed.

11. Summary of Citizen Complaints Provided to OPD Personnel
(Task 11; S.A. III.J.)

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must, based on contemporary police standards and best practices, develop a policy requiring that complaint investigators:

- provide the member/employee with a brief synopsis of any complaint alleged against them, but not allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee's interview;
 - notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
 - upon completion of the investigation and issuance of a final report, provide subject members/employees with access to the underlying data upon which an IAD report is based, including all tape-recorded interviews, transcripts and investigator's notes.
- By October 1, 2004, OPD must implement this policy.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its staff on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Generally, we found insufficient documentation to verify compliance with this task. During this reporting period, OPD has improved documentation that, for example, members and employees are notified when a complaint is filed against them. At the beginning of this reporting period, OPD asserted that it is not required to notify its members/employees of pending complaints unless it interviews the employee. OPD now notifies all members/employees of pending complaints regardless of whether it plans to interview the member/employee. In our audit, we found OPD in compliance with the final requirement of Task 11, which requires it to provide subject member/employees access to the underlying data on which the complaint investigation reports are based upon conclusion of the investigation. During this reporting period, after questions about this

practice were raised, OPD confirmed that it provides this access to all members/employees, although only members/employees in sustained cases are provided a copy of the investigative file.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or modified to include a more subjective pass/fail assessment.

12. Disclosure of Possible Investigator Bias (Task 12; S.A. III.K.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that investigators (IAD and field) disclose relationships that might lead to a perception of bias regarding the subject(s) of any investigation, including family relationships, outside business relationships, romantic relationships and close work or personal friendships. The Settlement Agreement sets forth certain criteria regarding when and how investigators and their supervisors must act on these disclosures.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Task 12 requires OPD complaint investigators to disclose relationships that might lead to bias or a perception of bias. OPD is not yet in compliance with this task. OPD should be able to attain compliance with this task as the use of its disclosure forms becomes more routine.

During this reporting period, all but one of the compliance standards for this task were lowered from 95% to 90%.

13. Documentation of Pitchess Responses (Task 13; S.A. III.L.)

a. Settlement Agreement Requirements

- By June 1, 2005, OPD must implement an additional check on Pitchess discovery motion responses.

b. Status of Compliance and Assessment

The compliance deadline for Task 13 occurred in June 2005. During the seventh and eighth reporting periods, OPD published the policies which incorporate the requirements of Task 13 and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and IAD Policy & Procedures 05-03. On May 3, 2007, the Department published Internal Affairs Policy & Procedure 07-02, *Pitchess Motion Process Manual*. During this reporting period, the IMT confirmed that the Department has trained 95% of relevant personnel on Internal Affairs Policy & Procedure 07-02.

In addition, as discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the eighth reporting period, the IMT conducted an actual practice audit of this task. A complete discussion of our audit findings is included in our eighth status report. The IMT found OPD in compliance with this task. The Department has implemented additional checks to facilitate complete and accurate responses to Pitchess discovery motions. The IMT has been impressed by OPD's efforts to improve its handling of Pitchess responses.

During this reporting period, the compliance standard for this task was modified to include a more subjective pass/fail assessment.

14. Investigation of Allegations of Manual of Rules Violations Resulting from Lawsuits and Legal Claims (Task 14; S.A. III.M.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that it investigate allegations of *Manual of Rules* violations resulting from certain lawsuits and legal claims, treating them in the same manner as other citizens' complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and trained its personnel on the policy. This policy incorporates the requirements of this task. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the seventh reporting period, the IMT conducted an audit of OPD's compliance with Task 14 in actual practice and found that OPD is in actual practice compliance with this task. OPD now routinely investigates misconduct allegations contained in lawsuits and legal claims. We also found that OPD was not delaying these investigations because they involved matters in litigation. A complete discussion of our audit findings is included in our seventh status report.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 90%.

15. Reviewing Findings and Disciplinary Recommendations (Task 15; S.A. III.N.)

a. Settlement Agreement Requirements

- By June 15, 2005, OPD shall develop a policy to ensure that, except upon written authorization from the Chief of Police, the appropriate chain of review, from the first-level commander up, reviews recommended findings, and the Discipline Officer makes disciplinary recommendations in sustained internal investigations.

b. Status of Compliance and Assessment

During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. This task was modified by stipulation in January 2007, to read as noted above. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Task 15 contains two distinct requirements. The first requires that the appropriate chain of review reviews recommended findings. We found OPD in conditional compliance with this portion of Task 15 pending the completion of a stipulation to modify the NSA to reflect the review process set out in OPD's policies. As noted above, during this reporting period, OPD completed an appropriate stipulation.

As discussed below in our Task 45 audit summary, OPD is in compliance with the second requirement of Task 15 which requires that the Discipline Officer make disciplinary recommendations in sustained internal investigations.

During this reporting period, the compliance standard for this task was lowered from 95% to 90%.

16. Supporting IAD Process-Supervisor/Managerial Accountability (Task 16; S.A. III.O.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy that holds supervisors and commanders, as well as other managers in the chain of command, accountable for supporting the IAD process. Where an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed a Class I offense, that supervisor or manager must be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review and/or failure to intervene.
- By October 1, 2004, OPD must implement this policy.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, OPD has proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During the ninth reporting period, the IMT began a compliance review of Task 16 and assessed several cases that had been identified by IAD as responsive to this task. We also reviewed additional cases we identified as responsive to this task during the course of our broader case review. It became apparent during the course of our review that there was not a mechanism to ensure that all cases responsive to Task 16 could be identified, absent extraordinary effort by IAD staff. In response, during this reporting period, IAD developed a method for identifying Task 16 cases and OPD added a new Class I *Manual of Rules* provision specifically addressing support for the IAD process. The IMT elected to postpone its formal compliance review with this task to provide OPD the opportunity to ensure all Task 16 cases are identified. In the interim, the IMT met with IAD to discuss the Task 16 cases we did review to ensure that IAD and the IMT have a common understanding regarding how these cases will be assessed and to allow OPD to address any problems prior to the IMT's formal compliance assessment of this task. The IMT also worked with OIG and IAD to develop monitoring criteria that would minimize the problems identifying cases responsive to this task.

During this reporting period, both of the compliance standards for this task were lowered from 95% to 90%.

17. Audit, Review and Evaluation of IAD Functions (Task 17; S.A. III.P.)

a. Settlement Agreement Requirements

- OPD and the Monitor shall conduct audits, reviews and evaluations of IAD functions, as specified in the Settlement Agreement.

b. Status of Compliance and Assessment

Task 17 has no separate requirements. Task 17 reiterates Task 51, which requires OPD to conduct several annual audits, including audits of IAD functions, and the duties of the Monitor, reflected elsewhere in the Settlement Agreement. As discussed in our task update for Task 51, OPD remains in compliance with this Settlement Agreement task. It has conducted ongoing reviews and evaluations of IAD's complaint intake and investigation functions, including providing feedback to IAD regarding complaint quality and timeliness.

B. Supervisory Span of Control and Unity of Command (Tasks 18–23; S.A. IV.)

Section IV of the Settlement Agreement, Tasks 18–23, covers a number of changes required to improve supervision of OPD officers and employees, particularly field supervision of OPD's patrol officers. In addition to the key requirement of a 1:8 supervisor to patrol officer ratio, this section promotes more consistent supervision by requiring the assignment of a single supervisor to each OPD member and employee. This

section also requires mechanisms to improve the detection and communication of problems or potential problems, including regular performance review meetings and assignment of a liaison to the District Attorney's and Public Defender's Offices.

Two of these tasks, Span of Control for Supervisors (Task 20) and OPD/DA Liaison Commander (Task 22), were due during the first reporting period. During the third reporting period, three additional tasks became due: Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). During the fourth and fifth reporting period, the final task in this section, Members', Employees', and Supervisors' Performance Reviews (Task 21), became due.

OPD has achieved policy compliance for all six of the tasks in this area. Additionally, during the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel for all but two of the tasks in this section requiring training. During the ninth reporting period, OPD reported that it completed training of its personnel for the final two tasks. The IMT has verified that the Department has trained 95% of relevant personnel on DGO A-19, *Span of Control*; and DGO B-6, *Performance Appraisals*.

1. Approval of Field-Arrest by Supervisor (Task 18; S.A. IV.A.)

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must develop and implement a policy requiring the approval of field-arrests by a supervisor in most cases. This policy necessitates that OPD develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates. The Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field-arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in January 2004. OPD drafted a policy, General Order M-18, *Arrest Approval and Report Review in the Field*. The IMT determined that the policy complied with the Settlement Agreement. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy. On

August 12, 2005, OPD published Special Order 8287 to assist it in tracking those instances in which sergeants disapprove arrests at the scene. The policy establishes a unique code to be provided to Communications by sergeants upon any arrest disapproval.

During this reporting period, on December 29, 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*, which clarified that Task 18.2.2, the witness identification provision, requires identification of witnesses to the criminal offense. During this reporting period, the IMT confirmed that the Department has trained at least 95% of relevant personnel on Special Order 8536.

During the sixth reporting period, the IMT audited OPD's compliance in actual practice with Task 18 and found that OPD's practice was not in compliance with the requirements of this task. Based on the documentation we were provided, OPD was not in compliance with the requirement that supervisors respond to the scene of designated arrests. In September 2005, OIG conducted an internal audit of Task 18 that, although it found improvement, resulted in similar findings.

During this reporting period, the IMT conducted its second audit of OPD's compliance in actual practice with Task 18. Since our last review of Task 18, OPD has made significant progress in ensuring that its supervisors respond to the scene of designated arrests and that required elements are reviewed and documented sufficiently. As a result, OPD is in compliance with each requirement of Task 18 that was assessed (one provision was not assessed because the data was not reliable). Since OPD is in compliance with each of the remaining provisions of Task 18, we find OPD in conditional compliance with the task. OPD will achieve full compliance with Task 18 upon satisfactory implementation and assessment of the outstanding provision.

Task 18.1 requires supervisors to respond to the scene to approve certain categories of arrests. We found that the average rate of supervisory response to the scene for the required categories of arrests was 94%, a marked improvement over the average supervisory response rate of 71% found in our last review of Task 18.

Task 18.2 requires supervisors to review the arrest documentation in order to: 1) determine whether probable cause for the arrest and reasonable suspicion for the stop is articulated; 2) ensure available witnesses are identified; and 3) approve or disapprove the arrest in the field. Based on our review of several hundred arrests, we found that OPD complied with the probable cause/reasonable suspicion requirements and the approval/disapproval requirement. The average rate at which probable cause for the arrest and reasonable suspicion for the stop were sufficiently documented was 97%. Supervisors approved or disapproved arrests in the field at an average rate of 95%, substantially higher than the 71% rate during our last review.

The IMT did not assess OPD's compliance with the requirement that available witnesses be identified due to concerns raised by OPD, which we share, regarding the reliability of the data. OPD reported widespread confusion regarding whether this provision required officers to document witnesses to the arrest or witnesses to the

underlying criminal offense. As noted above, on December 29, 2006, OPD published Special Order 8536 clarifying that the witness identification provision requires identification of witnesses to the criminal offense. We will assess OPD's compliance with this requirement in a subsequent audit.

In addition to the above, Task 18 requires supervisors to log the time of their contact with the arresting officers. The average rate at which there was some form of documentation regarding the time the supervisor was in contact with the arresting officer(s) was 94%, substantially higher than the 77% rate during our last review.

Based on our review, we recommended that OPD conduct an internal audit of compliance with the witness identification requirement to ensure that officers and supervisors are documenting adequately the presence and absence of witnesses as clarified by Special Order 8536. We also recommended that OPD require all officers to use the updated Consolidated Arrest Report and corresponding updated juvenile arrest forms because these forms have a designated box for the approving supervisor to indicate on-scene presence and the time of contact, thereby facilitating OPD's compliance and oversight in this area.

During this reporting period, both of the compliance standards for this task were lowered from 95% to 90%.

2. Unity of Command (Task 19; S.A. IV.B.)

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must develop and implement a policy requiring that, with rare exceptions justified on a case-by-case basis, each OPD member or employee have a single, clearly identified supervisor or manager, working the same schedule and having the same days off as the individuals whom they supervise.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in January 2004. As previously reported, OPD achieved policy compliance with this task by publishing and distributing the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; and BOI Policy 04-02, *Supervisory Span of Control*. During the sixth reporting period, OPD attained training compliance on General Order A-3 and BFO Policy 03-02. However, OPD never completed training on BOI Policy 04-02.

During the ninth reporting period, OPD replaced BFO 03-02 and BOI 04-02 by publishing General Order A-19, *Supervisory Span of Control*. The IMT determined that General Order A-19 incorporates the requirements of Task 19. Accordingly, OPD remains in policy compliance with this task, and the IMT has verified that OPD has trained its personnel on this policy.

During the ninth reporting period, the IMT initiated an audit of OPD's actual practice compliance with this task. We were unable to complete this audit due to significant delays in OPD's production of the core documentation necessary to assess compliance with this task and recent changes in the Department's Personnel records system. Despite the basic operational nature of the data requested for this task (identification of member and employee schedules and assignments), OPD's Personnel Division struggled to produce reliable data responsive to our requests. Following lengthy delays, the Personnel Division produced some information. However, based on our own knowledge of staff schedules, assignments, and personnel moves, we were able to quickly discern that much of the data provided was inaccurate and/or simply outdated. We have spent a considerable amount of time working with Personnel, OIG, and other OPD units to assist them in compiling accurate staffing rosters. The Department has acknowledged the deficiencies in its management of basic personnel data and has undertaken efforts to improve and modernize its personnel recordkeeping systems. We are hopeful that these efforts will assist OPD in its day-to-day management of personnel and also improve its ability to produce timely and accurate information suitable for auditing this task, the results of which will be reported in our next status report.

During this reporting period, both of the compliance standards for this task were lowered from 95% to 85%.

3. Span of Control for Supervisors (Task 20; S.A. IV.C.)

a. Settlement Agreement Requirements

- By August 14, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The Settlement Agreement sets forth certain provisions that must be included in the policy. Most notably, the Settlement Agreement requires that, under normal conditions, OPD assign one primary sergeant to each Area Command Field Team. Additionally, a supervisor's span of control cannot exceed eight members.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. As previously reported, OPD achieved policy compliance with this task by publishing and distributing the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; and BOI Policy 04-02, *Supervisory Span of Control*. During the sixth reporting period, OPD attained training compliance on General Order A-3 and BFO Policy 03-02. OPD, however, never completed training on BOI Policy 04-02.

During the ninth reporting period, OPD replaced BFO 03-02 and BOI 04-02 by publishing General Order A-19, *Supervisory Span of Control*. It also published Special Order 8435, *Acting Sergeant Selection Process*, establishing procedures for ensuring that those individuals who serve as acting sergeants have the necessary skills and training to function effectively as acting supervisors. The IMT determined that these policies comply with the NSA. Accordingly, OPD remains in policy compliance with this task. The IMT has verified that OPD has trained more than 95% of its personnel on these policies.

The IMT conducted an actual practices review of Task 20 in September 2004. A complete discussion of our audit findings is included in our combined fourth and fifth quarterly report. As of that review, OPD had not yet reached actual practice compliance with Task 20 and appears to have remained out of compliance in part because of its continuing use of uncertified acting sergeants (who may not be adequately trained to supervise patrol squads). However, during this reporting period, OPD began the acting sergeant selection and training process and reports that with assignment of several additional sergeants to patrol it soon should be able to meet the requirements of this task. In addition, OPD reports that pending completion of the acting sergeant selection and training process, it has tried to limit the use of acting sergeants and, when they are used, to assign only experienced officers, including using Field Training Officers when possible.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or 90% or modified to include a more subjective pass/fail assessment.

4. Members', Employees' and Supervisors' Performance Reviews (Task 21; S.A. IV.D.)

a. Settlement Agreement Requirements

- By July 7, 2004, every OPD commander/manager must meet at least twice per year with each of his/her subordinates to coach them regarding their strengths and weaknesses.

- By July 7, 2004, supervisors must meet individually with members/employees in certain units at least twice per month for informal performance reviews.
- By July 7, 2004, OPD must hold its supervisors and commanders/managers responsible for identifying patterns of improper behavior of their subordinates. Failure to identify patterns and instances of misconduct when the supervisors or commanders/managers knew or reasonably should have known of the misconduct shall constitute grounds for discipline.
- By July 7, 2004, Bureau of Field Operations sergeants and lieutenants must scrutinize arrests and uses of force that have been historically associated with police misconduct.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. As previously reported, OPD developed and published a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, well ahead of this deadline. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During the ninth reporting period, OPD published a revised version of General Order B-6 to provide additional guidance to supervisors and managers. The IMT determined that the revisions comply with the Settlement Agreement. The IMT verified that OPD has trained more than 95% of its personnel on the revised policy. During this reporting period, on May 23, 2007, OPD published Special Order 8650, *Performance Appraisal*. In upcoming reporting periods, the IMT will confirm if OPD has trained more than 95% of its personnel on this new policy.

The IMT audited OPD's performance appraisals in October 2004 and found that it was not in actual practice compliance with Task 21. A complete discussion of our audit findings is included in our combined fourth and fifth quarterly report. In a September 30, 2005, audit, OIG found that 41% of supervisory and management staff still were unable to produce documentation that semimonthly and biannual performance review meetings were occurring between management/supervisors and their subordinates as required.

During the eighth reporting period, the IMT again audited OPD's actual practice compliance with this task. We requested documentation of the required meetings for a random sample of members and employees for a three month period following implementation of the new reporting forms. Despite several weeks of diligent efforts by OIG staff to locate the documentation necessary to demonstrate compliance with this task, OPD was unable to locate sufficient documentation of required meetings. Based on the information produced, OPD was only able to document that between 58% to 65% of

meetings occurred. While more meetings may have occurred, OPD was unable to provide sufficient documentation. Accordingly, OPD remained out of compliance with Task 21.

During this reporting period, the parties reached a stipulation changing the semi-monthly meeting requirement so that it only applies to members and employees working in certain units or positions. While this change reduces the overall number of meetings that OPD supervisors must conduct, it does not relieve OPD of the responsibility of documenting these meetings. OPD's inadequate documentation in this area has impeded its ability to attain compliance with Task 21. In addition to informal performance review meetings, Task 21 requires commanders to meet with subordinates who exhibit a performance problem. During this reporting period, the IMT worked with OPD to clarify this process, determining that the review processes required by OPD's new Personnel Assessment System (PAS) should be used.

This task's remaining provisions require supervisors and commanders/managers to identify patterns of improper behavior by subordinates and for OPD to hold them accountable if they fail to do so.⁷ During the eighth reporting period, we found that supervisors' review of their subordinates' conduct for patterns of potential misconduct has much improved. However, we found that OPD was not yet in compliance with the requirement that it hold supervisory personnel accountable if they do not identify patterns of improper behavior by their subordinates. A complete discussion of our audit findings is included in our eighth status report.

During this reporting period, many of the compliance standards for this task were lowered from 95% to 85% or 90%.

5. OPD/DA Liaison Commander (Task 22; S.A. IV.E.)

a. Settlement Agreement Requirements

- By April 15, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office. This unit or person is to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.
- The MLL is required to meet and cooperate with the Monitor. The District Attorney and Public Defender offices may attend these meetings.

⁷ In the future, we will assess these requirements in conjunction with Tasks 41 and 44.

b. Status of Compliance and Assessment

As previously reported, OPD developed and published a compliant policy incorporating this provision, General Order A-18, *Management Level Liaison*. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. Accordingly, OPD attained training compliance with this task.

During this reporting period, the IMT conducted an audit of OPD's actual practice compliance with this task. We found that OPD is, once again, in actual practice compliance with the requirements of Task 22. OPD continues to maintain a functioning Management-Level Liaison (the Criminal Investigations Division Commander) who interacts regularly with the courts, the District Attorney's Office, and the Public Defender's Office to identify cases that may indicate performance problems or potential misconduct, including cases that are lost or dropped due to bad reports, defective search warrants, granted motions to suppress, or contradictory evidence or testimony.

Based upon his own identification of potentially problematic conduct and upon information provided to him from cooperating agencies, the MLL continues to refer cases for internal investigation and to identify Department-wide training issues. During our last audit of this task, we found that OPD was not adequately tracking MLL cases to ensure their timely and appropriate resolution. Since then, OPD has improved significantly the manner in which it tracks MLL cases. These measures have resulted in improved investigation timeliness and helped to ensure that MLL cases do not languish.

During the past year, the MLL has worked with the Internal Affairs Division to improve the Department's tracking of MLL cases. Perhaps in large part due to the improved tracking during the period under review, *none* of the cases were completed after the one-year deadline established by Government Code 3304. This marks significant improvement over the previous period when five of seventeen completed cases exceeded the statutory deadline, three of which included sustained findings of misconduct. The gains we observed in OPD's handling of MLL cases are not only the result of its increased attention to this task specifically, but to other improvements we have observed in OPD's internal investigation management.

The MLL or his designee continues to attend Inter-Agency Judicial Council meetings on a monthly basis and regularly communicate with the offices of the District Attorney and Public Defender in an effort to identify cases that are lost or dropped due to performance problems or misconduct. The MLL continues to obtain and review daily "No Complaint" lists from the District Attorney of in-custody cases that the District Attorney has decided not to prosecute. The MLL reviews these lists in order to identify any indicia of performance problems or misconduct. When a case is brought to his attention by a cooperating agency or he identifies a case through the "No Complaint" lists, the MLL attempts to locate relevant documents and determine whether the matter appears to rise to the level of an MOR violation. If it does, he notifies Internal Affairs to initiate an internal investigation.

Previously, the MLL relied upon his monthly memoranda as the vehicle for notifying IAD of new cases. In some cases, this resulted in an investigative delay and the miscalculation by IAD of the correct 3304 date. Now, the MLL does not wait until distribution of his monthly report to notify IAD of new referrals. Instead, upon receipt, the MLL forwards to IAD any referral that appears to rise to the level of an MOR violation. If the matter does not rise to the level of an MOR violation, the MLL addresses as appropriate. Past actions have included, for example, explaining OPD policies and procedures to outside agencies; working with the Coliseum, Airport, Jail, and District Attorney's Office to ensure proper routing of arrest reports; including training reminders in daily bulletins distributed to officers; and counseling supervisors regarding report review responsibilities.

We reviewed all of the "No Complaint" lists between January 1, 2006 and January 30, 2007, that the Department had reviewed to identify "T3" cases, those that are not charged due to questions regarding stop/detection, probable cause for the arrest, search or seizure of contraband or corpus, knock and notice procedures, search warrant execution, and consent. We reviewed the MLL's assessment and handling of the T3 cases identified and found it to be reasonable.

We found, however, that the "No Complaint" lists were missing for 55 days during this period. OPD was unaware of the scope of the missing information until the IMT informed it. According to OPD, it had never received or reviewed these lists and was unable to determine with certainty why the lists had not been received. Upon learning of this deficiency, the Department contacted the District Attorney's Office and obtained and reviewed the missing lists. There were no T3 cases in any of the 55 previously un-reviewed lists. In order to help ensure that he receives and reviews all "No Complaint" lists in the future, the MLL has reported that he will count the number of lists reviewed each month and report this in his monthly memorandum, enabling him to identify and obtain missing lists promptly.

Our review of the "No Complaint" lists showed that the MLL had identified four of the six T3 cases appearing on the lists during the period being reviewed. After researching the cases and conferring with the District Attorney's Office, the MLL determined that all four of the cases identified by the MLL involved officers from other law enforcement agencies. The two additional cases identified by the IMT (and also by OIG) also involved officers from other law enforcement agencies. The MLL did not know why the two additional cases had not been identified, speculating that they may have been overlooked inadvertently or, the forms may have been filed without having been reviewed. OPD's review of the "No Complaint" lists is an important means of identifying cases that may indicate problems. However, since the "No Complaint" lists are not the sole or primary means the Department uses to identify such cases, the additional T3 cases did not involve OPD officers, and the MLL has devised a method of improving his review process, the deficiencies discussed above do not change our compliance assessment for purposes of this audit.

General Order A-18 requires the MLL to prepare monthly memoranda detailing his activities and whether any relevant cases have been identified. During the thirteen-month period under review, the MLL continued to prepare these memoranda and, with two exceptions, to do so on a monthly basis. The memoranda include information regarding new referrals and any other information that has been brought to the attention of the MLL, along with the MLL's response to the information.

Representatives from both the District Attorney's Office and the Public Defender's Office report that the MLL is extremely responsive to any inquiries or referrals they may make and that the MLL contacts the agencies on a monthly basis to inquire whether they have any cases to refer or other concerns to discuss. By improving the manner in which it handles MLL referrals, the Department is ensuring and increasing its credibility with the court and other agencies with whom it must work on a continuing basis. Our audit included several recommendations aimed at further improving this important program.

During this reporting period, all of the compliance standards for this task were modified to include a more subjective pass/fail assessment.

6. Command Staff Rotation (Task 23; S.A. IV.F.)

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a regular rotation of Departmental command staff, consistent with the Department's immediate needs and best interests.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in January 2004. As previously reported, well in advance of this deadline, OPD published a Chief of Police Memorandum on command staff rotation policy that incorporated this Settlement Agreement requirement. On November 15, 2005, Chief Tucker reissued the Memorandum under his signature.

The IMT conducted an audit of Task 23 during the seventh reporting period and found OPD in compliance with Task 23 in actual practice. A complete discussion of our audit findings is included in our seventh status report. Our review revealed no policy obstacles to the implementation of Task 23 and an interview with the Chief confirmed that he is not constrained by OPD policy from fully complying with this requirement.

During this reporting period, the compliance standard for this task was modified to include a more subjective pass/fail assessment.

C. Use of Force Reporting (Tasks 24–32; S.A. V.)

Section V of the Settlement Agreement, Tasks 24–32, requires OPD to make a number of significant changes in the way it reports and investigates uses of force. This section requires changes in reporting uses of force ranging from Oleoresin Capsicum (OC) spray to officer-involved shootings, and enhances the requirements for OPD's Use of Force Review Board (UFRB) and Firearms Discharge Board of Review. The Settlement Agreement also requires significant changes to use of force investigations, including mandating training in this area for supervisors.

All of these requirements became due in July 2004. As previously reported, OPD achieved compliance with Task 32, which requires OPD to explore the use of camcorders in patrol vehicles, by that date. OPD had also achieved policy and training compliance with Task 27, which requires changes in OPD's OC spray control mechanisms. With the completion in the eighth reporting period of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, General Order M-4.1 *Criminal Investigation of Member or Employee*, and its Internal Investigation Procedure Manual, OPD achieved policy compliance with Task 29, which requires that OPD coordinate with the District Attorney when conducting administrative investigations of personnel if a criminal proceeding is potentially viable.

During the eighth reporting period, the Court ordered that OPD complete its primary use of force policies: General Order K-3, *Use of Force*; General Order K-4, *Reporting and Investigating the Use of Force*; and General Order K-4.1, *Force Review Boards*; by February 17, 2006, and complete training on those policies by May 18, 2006. OPD committed substantial time and energy to this project. It completed both the policies and training on time. During this reporting period, the IMT confirmed that the Department trained at least 95% of relevant personnel on General Order K-3, General Order K-4, and General Order K-4.1.

During the ninth reporting period, OPD completed several critical subsidiary use of force policies associated with these primary policies. During the current reporting period, OPD and the Plaintiffs' Attorneys agreed to a series of stipulations revising several of the NSA's use of force sections in order to streamline the requirements. As a result, during this reporting period, on June 15, 2007, OPD revised General Order K-3, General Order K-4, and General Order K-4.1. In upcoming reporting periods, the IMT will review training rosters to confirm whether the Department has trained at least 95% of relevant personnel on these revised policies.

The IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure that these revisions addressed OPD's operational and efficiency concerns while continuing to facilitate the proper reporting and investigation of force. The revised use of force policies developed by OPD embody contemporary, professional law enforcement standards designed to promote effective law enforcement while protecting civilians and police officers alike.

In addition to the revised K-series policies, during the current reporting period, OPD published Training Bulletin V-K, *Excited Delirium*; and General Order B-12, *Firearms Range Program*. The Department also published Training Bulletin III-S, *In-Custody Ingestion of Narcotics* but has not yet conducted training on the policy. Though this policy is not directly required by the NSA, it provides critical instruction to officers regarding a frequently encountered high risk activity.

The IMT has verified that the Department has trained at least 95% of relevant personnel on: Training Bulletin V-G, *Use of Police Canine*; Training Bulletin III-H-1, *Use of Taser*; Training Bulletin III-H-2, *Handheld Impact Weapons*; Training Bulletin V F-2, *Chemical Agents*; Training Bulletin III B-4, *Handcuffing Techniques*; General Order K-9, *Use of Canines*; Training Bulletin V-G, *Use of Police Canines*; Training Bulletin III-X, *Lethal Force and Vehicles*; General Order C-4, *Safety Equipment*; Training Bulletin III-N, *Recognizing and Handling Mentally Disturbed People*; and Training Bulletin III-H, *Specialty Impact Munitions*.

The Department also has trained at least 95% of relevant personnel on Training Bulletin III B.1, *Wrap Restraint Device*, a policy that is not directly required by the NSA. According to the Training Division, the Department has not begun training on Training Bulletin V-K, *Excited Delirium*. As of August 15, 2007, the Department reported that it had trained 85.2% of relevant personnel on General Order B-12, *Firearms Range Program*.

Updating and drafting the new use of force policies was a significant undertaking by OPD. In addition to updating or drafting the policies required by the Settlement Agreement, OPD also reviewed and updated its other use of force policies to ensure that they are consistent with and reinforce one another, and that they represent contemporary policing practices. The IMT and the Court have commended the Department for completing this important work.

1. Use of Force Reporting Policy (Task 24; S.A. V.A.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy for reporting use of force that requires:
 - all members/employees to notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force;
 - all members/employees at the scene to report all investigated uses of force on the appropriate form in every investigated use of force incident, unless otherwise directed by the investigating supervisor;

- OPD personnel to document any use of force and/or the drawing and intentional pointing of a firearm at another person;
- a supervisor to respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable;
- OPD to notify the Alameda County District Attorney's Office, the City Attorney's Office and Departmental investigators in certain use of force incidents; and
- OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS).

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. OPD's commitment to this project enabled it to complete both the policies and training by the court-ordered deadlines. General Order K-3, *Use of Force*, and General Order K-4, *Reporting and Investigating the Use of Force*, incorporate the Settlement Agreement's requirements for this task.

During the ninth reporting period, OPD completed and the IMT approved the following critical subsidiary use of force policies: General Order C-4, *Safety Equipment*; General Order K-9, *Department Canine Program*; Training Bulletin III-B.4, *Handcuffing Techniques*; Training Bulletin V-G, *Use of Police Canines*; Training Bulletin III-H.1, *Use of Taser*; Training Bulletin III-H.2, *Use of Handheld Impact Weapons*; Training Bulletin V-F.2, *Use of Chemical Agents*; Training Bulletin III-X, *Deadly Force and Vehicles*; and Training Bulletin III-N, *Recognizing and Handling Mentally Disturbed People*. The Court ordered completion of the majority of the subsidiary policies by August 1, 2006, and the remaining policies by October 1, 2006, with training on all policies to be completed no later than December 30, 2006. OPD met the policy publication deadlines and reported that it also met the training deadlines. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on these policies. The IMT has also verified that the Department has trained at least 95% of relevant personnel on Training Bulletin III B.1, *Wrap Restraint Device*, a policy that is not directly required by the NSA

During the current reporting period, OPD and the Plaintiffs' Attorneys agreed to a series of stipulations revising several of the NSA's use of force tasks in order to streamline the requirements. The IMT worked closely with OPD and Plaintiffs' Attorneys on these revisions to ensure they continue to meet the language and intent of the NSA. In conjunction with these stipulations, OPD revised General Order K-3, General Order K-4, and General Order K-4.1. During this reporting period, OPD also published Training Bulletin V-K, *Excited Delirium*; General Order B-12, *Firearms Range Program*; and Training Bulletin III-S, *In-Custody Ingestion of Narcotics*, though these policies are not directly required by the NSA. According to the Training Division, the Department has not begun training on Training Bulletin V-K, *Excited Delirium* or Training Bulletin III-S, *In-Custody Ingestion of Narcotics*. Although these policies are not directly required by the NSA, they involve high risk activities. As of August 15, 2007, the Department reported that it had trained 85.2% of relevant personnel on General Order B-12.

The new use of force reporting policies represent a significant improvement over prior policy which did not require officers to report most use of force. Consistent with contemporary law enforcement practices, the new policies require OPD officers to report all significant levels of force, including hand strikes, use of tasers or OC spray, pointing firearms at an individual, as well as most other types of force. The new policies also require officers to summon their supervisors to the scene whenever force is used or there is an allegation that force was used.

The IMT has refrained from conducting a formal audit of OPD's compliance with the new use of force reporting and investigation provisions in order to provide it an opportunity to adjust to the new policies and procedures. During this learning period, OPD identified a number of ways to improve the policies and procedures. As a result, as discussed above, it negotiated several changes to the NSA's use of force provisions and further revised its use of force reporting and investigation policies. We will continue to work with OPD to fully implement its new use of force reporting and investigative process and plan to formally assess OPD's compliance with these new policies during the next reporting period.

During this reporting period, one of the compliance standards for this task was lowered from 95% to 90%.

2. Use of Force Investigations and Report Responsibility (Task 25; S.A. V.B.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy for conducting use of force investigations.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. OPD's commitment to this project enabled it to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force*, and General Order K-4.1, *Force Review Boards* incorporate the Settlement Agreement's requirements for this task. OPD had previously published a compliant policy, Special Order 8066, *Use of Force Reports-Witness Identification*, relating to one discrete component of this task. OPD has incorporated the provisions of this Special Order into the new use of force policies. During this reporting period, OPD negotiated several changes to the NSA's use of force provisions and revised the K-series policies to reflect these changes and streamline its use of force reporting and investigation process. As noted above, the IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure that these revisions addressed OPD's operational and efficiency concerns while continuing to facilitate the proper reporting and investigation of use of force.

Like the new use of force reporting policies, the new use of force investigation policies also represent a significant improvement over prior policy. Consistent with contemporary law enforcement standards, the new policies require OPD supervisors to respond to the field when officers use certain types of force and to review these incidents for consistency with the law and OPD policies, procedures, and training. Supervisors are also required to assess whether officers used proper tactics; reasonable verbal means to attempt to resolve incidents without force where possible; and whether the force was de-escalated or stopped when appropriate.

During this reporting period, the IMT worked closely with OPD to assist its implementation of its new use of force investigation processes. The IMT responded to the field and observed supervisors' on-scene handling of incidents and provided OPD with feedback regarding the same. We observed training sessions of commanders regarding the new policies and procedures. We have attended a number of Force Review Boards and Executive Force Review Boards and routinely talk with presenters, FRB/EFRB members, and commanders overseeing the use of force reporting and investigation process to learn their perspectives and offer any insights. In conjunction with OIG and OPD commanders overseeing the use of force investigation process, we informally reviewed use of force investigations and provided our assessment. We are scheduled to work with OPD to train OPD commanders and supervisors to enhance their ability to effectively review officers' uses of force.

The IMT will continue to work closely with OPD in this area. As noted above, the IMT has refrained from conducting a formal audit of OPD's compliance with the new use of force reporting and investigation provisions in order to provide it an opportunity to adjust to the new policies and procedures. We plan to formally assess OPD's compliance with these new policies during the next reporting period.

During this reporting period, some of the compliance standards for this task were lowered from 95% to 90%.

3. Use of Force Review Board (UFRB) (Task 26; S.A. V.C.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy to enhance the Use of Force Review Board. The Settlement Agreement sets forth certain criteria that must be included in this policy.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. OPD also trained over 95% of relevant personnel on this policy. OPD's commitments to this project enabled it to complete both the policy and training by the court-ordered deadlines. During the current reporting period, OPD revised General Order K-4.1 to reflect stipulations it reached with the Plaintiffs' Attorneys modifying several of the NSA's use of force provisions.

As noted above, the IMT's work assisting OPD to implement its new use of force processes has included attending Force Review Boards and Executive Force Review Boards and routine discussions with presenters, Board members, and commanders overseeing this process to learn their perspectives and provide any insights about how to enhance the FRB/EFRB functions. We will continue to work with OPD in this area and plan to formally assess OPD's compliance with this task during the next reporting period.

During this reporting period, some of the compliance standards for this task were modified to include a more subjective pass/fail assessment.

4. Oleoresin Capsicum Log and Checkout Procedures (Task 27; S.A. V.D.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy for logging the checking out and use of Oleoresin Capsicum (OC) spray canisters by any member or authorized employee.
- By July 22, 2004, this log must be computerized and electronically accessible and OPD must regularly prepare and distribute usage reports.

b. Status of Compliance and Assessment

The compliance deadlines for this task occurred in July 2004. As previously reported, OPD published Special Order 8061, *Control of Oleoresin Capsicum*, well in advance of the due date. Special Order 8061 makes OPD's Property and Evidence Unit (PEU) responsible for issuing OC canisters to OPD officers and tracking their use. The IMT reviewed this policy and determined it to be in compliance with the Settlement Agreement. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy. During this reporting period, on December 29, 2006, OPD published Department General Order C-8, *Oleoresin Capsicum*. As of August 15, 2007, OPD had not trained at least 95% of relevant personnel on this policy.

During the seventh reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 27's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During the seventh reporting period, the IMT also audited OPD's compliance with Task 27 in actual practice. The IMT found that OPD was in compliance with the requirement that it maintain a log of all OC canisters checked out by OPD personnel. The IMT also found OPD in compliance with the requirement that it maintain the log in an electronic format. The IMT found that OPD was not in compliance with the requirement to regularly prepare and distribute accurate reports regarding OC control and tracking. A full description of this audit and our findings is contained in our seventh status report. During the eighth reporting period, OIG conducted an audit of Task 27 and reported that OPD has implemented several improvements to help ensure that the OC reports the Department prepares are accurate. During this reporting period, OPD published revised General Order C-8, *Oleoresin Capsicum*, addressing the Department's purchase, receipt, distribution, and destruction of OC spray, and delineating the responsibilities of OPD officers, units, supervisors, and commanders. In addition, during this reporting period, OPD continued to report officers' compliance with the OC check-out requirements at its Management Assessment Meetings.

During this reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

5. Use of Force-Investigation of Criminal Misconduct (Task 28; S.A. V.E.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy to report, as soon as possible, any use of force situation, citizen complaint, or other

member/employee-involved action in which there is apparent evidence of criminal misconduct by a member/employee to the Alameda County District Attorney's Office.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. OPD initially revised General Order M-4, *Coordination of Criminal Investigations*, to incorporate the requirements of this task. The IMT reviewed M-4 and determined that the draft did not comply with the Settlement Agreement because it did not provide for the required reporting to the District Attorney's Office. In response, OPD drafted a separate policy, General Order M-4.1, *Criminal Investigations Involving Active Law Enforcement, or a Member or Employee of the Department*, focusing on the handling of criminal misconduct investigations. During the eighth reporting period, the IMT determined that General Order M-4.1 adequately incorporates this Settlement Agreement Requirement. OPD published this policy on April 21, 2006. The IMT has verified that OPD has trained its personnel on this policy.

During this reporting period, the IMT conducted an audit of actual practice compliance with this task. While OPD's practices are improving in this area, OPD is not yet in compliance with Task 28.

Task 28 requires that OPD report to the Alameda County District Attorney's office (or, if the apparent criminal misconduct occurred outside of Alameda County, the relevant jurisdiction) all uses of force; citizen complaints; and other member/employee-involved actions in which there is apparent evidence of criminal misconduct by a member/employee. The IMT's review of cases in which there was apparent criminal misconduct indicated that notification of the District Attorney's Office and other law enforcement agencies of apparent criminal misconduct by OPD members and employees is improving. However, as of the time of our review, notifications were not occurring in a timely manner, and OPD is still developing a system to ensure that timely notifications occur routinely. In four of the eight relevant cases reviewed, notification of the District Attorney or other relevant law enforcement agency did not occur within two hours of OPD's determination of reasonable suspicion of criminal misconduct as required by OPD policy. In three of the eight cases, we were unable to determine whether notification occurred as required (although the available information indicates that it likely did not). In only one case, were we able to confirm that the District Attorney or other relevant law enforcement agency was notified within two hours of the determination of reasonable suspicion. In many instances, it appears that notification occurred eventually, but often not until weeks or months after OPD had learned of the apparent criminal activity.

The lack of timely notification appeared related to a misunderstanding of the purpose of notification and the requirements of applicable policies. We expect that OPD's compliance in this area will improve dramatically going forward. First, it appears that OPD personnel responsible for compliance with this task are now fully aware of

OPD's own policy requirements regarding these tasks as a result of our audit of this task. Second, OPD is now taking steps to more closely track these cases to ensure they are coordinated properly. OPD's Bureau of Investigations has created a simple spreadsheet to assist them in this. In our audit, we recommended that IAD also review its practice in this area to ensure they are sufficient for flagging cases that involve apparent criminal misconduct so that the proper notifications can occur. Third, we have notified OIG, BOI, and IAD of an inconsistency in policies regarding the reporting process and recommended that OIG closely review applicable policies with OPD personnel responsible for compliance to ensure that personnel understand the requirements of relevant OPD policy.

The compliance standard for this task remains at the 95% level.

6. IAD Investigation Priority (Task 29; S.A. V.F.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy to coordinate its administrative investigation of a member/employee with the Alameda County District Attorney's Office if a criminal proceeding is potentially viable.
- By July 20, 2004, when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogation must be preceded by a Lybarger warning.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the seventh reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*; and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During the eighth reporting period OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During this reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. The IMT has provided OPD with detailed feedback regarding the proposed changes and will report in our next status report on any approved policies.

During this reporting period, the IMT conducted an audit of actual practice compliance with this task. OPD's handling of criminal misconduct allegations is evolving and improving. OPD, however, is not yet in compliance with Task 29.

Task 29.1 requires that OPD coordinates its administrative investigation of members/ employees with the Alameda County District Attorney's Office, or relevant criminal investigators, if a criminal proceeding is potentially viable. Compliance requires that IAD coordinate with the criminal agency conducting the investigation (whether CID or outside agency) including, where applicable, the ALCO DA. Coordination may be in compliance whether it is extensive or minimal; the key is whether it was sufficient coordination considering the facts of the case.

Our review found that coordination between administrative and criminal investigators is vastly improved over what we had previously observed. At the time of our review, however, this system was still developing and coordination was still somewhat haphazard and inconsistent. For example, OPD policy says that information obtained during any administrative investigation interview cannot be shared with the criminal investigators but IMT case review and conversations with OPD officials confirmed that, in fact, some information from some interviews can be and is shared. Moreover, some interviews in cases we reviewed were conducted jointly by CID and IAD investigators. Although there have been problems in coordinating the criminal and administrative interviews of the subjects of criminal misconduct investigations, there are still no protocols in writing regarding this area, and IMT interviews of CID and IAD officials indicated differing understandings of how such coordination should occur. OPD officials stated variously that CID investigators understand that they are not to begin an interview in these cases until IAD is present; that CID investigators have been instructed that IAD is to take the lead on the interviews instead of CID; and that CID should conduct the interviews, but only after notifying IAD and ensuring they are given time to respond.

Of the twelve cases we formally assessed for Task 28 compliance, we found that OPD determined that a criminal proceeding was potentially viable in eleven cases. Of these eleven cases, we were able to determine that OPD sufficiently coordinated its administrative investigation with the criminal investigation in seven cases. In many cases, coordination between criminal and administrative investigators was minimal, but nonetheless sufficient. For example, coordination could require no more than IAD calling the agency that had arrested an officer for DUI to confirm the arrest and obtain documentation of it. In three cases, we were either unable to determine whether coordination was sufficient or we determined that coordination was insufficient. In the two cases in which we were unable to determine whether there was coordination, the investigative files did not indicate communication between administrative and criminal investigators until the investigation was nearly completed, if at all. We requested that IAD and CID provide any additional information regarding criminal/administrative coordination in these cases and no such additional information was provided. In the case where we found a lack of coordination, a failure to sufficiently coordinate administrative and criminal misconduct interviews of the subject officer may have severely

compromised the case. OPD has taken steps designed to prevent reoccurrence of this but these steps have not yet been memorialized and they should be to ensure all relevant parties have the same understanding going forward.

Task 29.2 requires that when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogations are preceded by a Lybarger warning.

A Lybarger warning, named for *Lybarger v. Los Angeles* 40 Cal. 3d 822 (1985), generally requires that the subject officer in a criminal investigation be ordered to provide an administrative statement; told that s/he may be disciplined if s/he refuses to do so; and be advised that the statement will not be used against the officer in any criminal proceeding. Seven of the twelve cases in our review required Lybarger warnings. One of these seven cases required two Lybarger warnings.

For the most part, OPD provided proper Lybarger warnings to personnel suspected of criminal misconduct. However, in two of the eight instances in our review in which OPD should have “Lybargered” OPD personnel prior to interview, it apparently did not, requiring us to find OPD out of compliance with this task. In at least one of these instances, the officer signed an AB 301 Acknowledgement of Rights and Obligations form prior to search of his belongings, but not prior to his interview, and he was not provided a Lybarger warning prior to either. It should be noted that this interview was conducted by an OPD commander who was apparently attempting to properly and quickly initiate an investigation of an allegation of serious misconduct. OPD should clarify whether the Acknowledgement of Rights and Obligations form can ever be a valid substitute for a specific Lybarger warning and should assess whether to provide training to commanders outside IAD regarding when Lybarger warnings must be given. In the second instance, it was discovered during the course of an investigation of criminal misconduct by one officer that the complaining officer may have committed a Penal Code violation. Upon discovery of this potential Penal Code violation, the complaining officer was re-interviewed regarding this apparent criminal misconduct. It appears he was not given a Lybarger warning prior to this second interview.

Following our review of Tasks 28 and 29, we made a series of recommendations aimed at improving OPD’s handling of criminal misconduct allegations, including that BOI, IAD, and ALCO DA come to a common understanding regarding what types of apparent criminal misconduct occurring outside their respective jurisdictions should be reported to them, and a routine notification and coordination process. We also recommended that OPD clarify its policies and protocols regarding coordination between criminal and administrative investigations; and that OPD clarify whether/when OPD’s Acknowledgement of Rights and Obligations form can be substituted for a Lybarger warning; and assess whether to provide training to commanders not familiar with the IAD process regarding when Lybarger warnings must be given.

During this reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

7. Firearms Discharge Board of Review (Task 30; S.A. V.G.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy requiring that it convene a Firearms Discharge Board of Review for every officer-involved firearms discharge. The Settlement Agreement sets forth criteria that must be included in this policy.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. The IMT has verified that OPD has trained over 95% of relevant personnel on this policy. OPD's commitment to this project enabled it to complete both the policy and training by the court-ordered deadlines. During the current reporting period, OPD revised General Order K-4.1 to reflect stipulations it reached with the Plaintiffs' Attorneys modifying several of the NSA's use of force provisions. As with the other use of policies modified during this reporting period, the IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure the language and intent of the NSA was reflected in the revisions.

During this reporting period, the IMT continued to attend OPD's Firearms Discharge Boards of Review. OPD now refers to this Board as Executive Force Review Boards (EFRB). Executive Force Review Boards are convened to evaluate officer-involved shootings, in-custody deaths, and other serious incidents, including police pursuits resulting in death or serious injuries.

As previously reported, even before the new policy was published, the Board began using many of the standards and guidelines set forth in General Order K-4.1, *Force Review Boards*, to shape deliberations. OPD reviews under the new policy have resulted in more focused and complete incident assessments. As discussed above, the IMT has refrained from formally assessing OPD's compliance with the new use of force reporting and investigation provisions in order to provide it an opportunity to adjust to the new policies and procedures. We will continue to work with OPD in this area and plan to formally assess OPD's compliance with this task during the next reporting period.

During this reporting period, one of the three compliance standards for this task was modified to include a more subjective pass/fail assessment.

8. Officer-Involved Shooting Investigation (Task 31; S.A. V.H.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement an officer-involved shooting (OIS) investigation policy that requires that in every OIS in which a person is struck:
- Homicide and Internal Affairs investigators respond to the scene;
- the investigation be conducted in partnership with, and in some cases by, the Alameda County District Attorney's office;
- subject officers be interviewed jointly by Homicide and District Attorney investigators;
- the District Attorney and City Attorney be notified in accordance with the Settlement Agreement; and
- all evidentiary material be duplicated and provided to the District Attorney's office, IAD and the City Attorney's office.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. OPD's commitment to this project enabled it to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force*, incorporates some of the Settlement Agreement's requirements for this task. As discussed above, OPD also trained relevant personnel on this policy. During this reporting period, OPD revised General Order K-4 to reflect stipulations it reached with the Plaintiffs' Attorneys modifying several of the NSA's use of force provisions. The IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure the language and intent of the NSA was reflected in the revisions.

OPD addressed most of the other provisions in Internal Affairs Policy & Procedure 05-04, *Level 1 Force Investigations/In-Custody Death Investigations*; Homicide Policy & Procedure 01, *Lethal Force/In-Custody Death Investigations*; and *Lethal Force Investigations* Information Bulletin. Additionally, both Internal Affairs and Homicide have created detailed investigative checklists used for conducting officer-involved shooting investigations. These policies were completed and approved during the ninth reporting period. The IMT has verified that OPD trained at least 95% of

relevant personnel on Internal Affairs Policy & Procedure 05-04 and Homicide Policy & Procedure 01, *Lethal Force/In-Custody Death Investigations*. The IMT is currently reviewing the status of training of the *Lethal Force Investigations* Information Bulletin.

During the ninth reporting period, OPD attained policy compliance with the final outstanding provision of this task. OPD and the District Attorney's Office reached an agreement requiring that, when appropriate, the District Attorney's office or another appropriate outside agency will conduct the criminal investigation of officer-involved shootings in lieu of OPD.

During the eighth reporting period, the IMT completed a comprehensive review of OPD's officer-involved shooting (OIS) investigations. We conducted this review pursuant to Section XIII.H of the Settlement Agreement which requires us to assess the quality and timeliness of the investigation of use of force incidents and to review and evaluate the actions of the force review boards. We provided OPD with an 85-page report detailing our findings, including an analysis of each shooting, along with global observations and recommendations.

During the course of our review, we shared with OPD a number of our observations and recommendations regarding the Department's handling of officer-involved shootings. Our recommendations were based on our review of the files provided and on the IMT's on-scene observation of several investigative scenes, subject and witness interviews, and Executive Force Review Board deliberations. The Department was extremely receptive to our investigative recommendations and implemented or is in the process of implementing a number of these recommendations. A detailed summary of our review and findings is contained in our eighth status report.

In addition to assessing the quality and timeliness of every officer-involved shooting investigation that had occurred since the inception of the NSA, our report offered a number of global observations and recommendations regarding officer tactics and other risk management issues. Many of our observations and recommendations arose in the context of shootings that may have been avoidable had proper tactics and/or alternative measures been taken.

As discussed above, the IMT has refrained from conducting a formal audit of OPD's compliance with the new use of force reporting and investigation provisions in order to provide it an opportunity to adjust to the new policies and procedures. We will continue to work with OPD in this area and plan to formally assess OPD's compliance with this task during the next reporting period. We will also continue to assess the timeliness and quality of the Department's officer-involved shooting investigations.

During this reporting period, some of the compliance standards for this task were lowered from 95% to 90%.

9. Use of Camcorders (Task 32; S.A. V.I.)

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must explore the use and cost-effectiveness of camcorders in Patrol vehicles.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. OPD achieved compliance with this task ahead of schedule by producing research reports regarding the use and cost-effectiveness of camcorders in patrol vehicles.

Following a successful demonstration project that placed in-car cameras in several OPD patrol vehicles for 90 days, the City of Oakland pursued efforts to equip OPD patrol vehicles with cameras to allow officers to capture video of traffic stops and criminal activity in progress. On July 25, 2005, it issued a Request for Proposal (RFP) for an In-Car Video Management System (ICVMS). The RFP process concluded in February 2006, and the Department identified a vendor to install cameras into approximately 80 police vehicles. During the ninth reporting period, the City authorized OPD to enter into contract negotiations with the selected vendor.

In July 2007 the Department issued Department General Order I-15, *In-Car Video Management System*, and as of the release of this report, the Department is currently beta-testing the ICVMS.

We commend OPD and the City for their efforts in this area.

D. Reporting Procedures (Tasks 33–39; S.A. VI.)

Section VI of the Settlement Agreement, Tasks 33–39, requires OPD to change or enhance reporting procedures in a variety of areas in order to bolster officer accountability. The Settlement Agreement imposes new requirements for how misconduct, uses of force, and detainee transports are reported. The Settlement Agreement makes it clear that retaliation for reporting misconduct cannot be tolerated, making dismissal the presumptive disciplinary penalty for even subtle retaliation. In addition, the Settlement Agreement spells out when an officer must report being arrested, sued, or otherwise involved in litigation. This section of the Settlement Agreement also requires OPD to begin recording data about every individual and vehicle stopped by OPD officers, permitting tracking of trends in stops, discriminatory or otherwise.

Each of the seven tasks in this section was due during the first reporting period. During the first reporting period, OPD developed compliant policies for two of the tasks: Task 34, Vehicle Stops, Field Investigation, and Detentions; and Task 38, Citizens Signing Police Forms.

During the second reporting period, OPD developed a compliant policy for one additional task: Task 36, Procedures for Transporting Detainees and Citizens. During the third reporting period, OPD developed compliant policies for the four remaining tasks: Task 33, Reporting Misconduct; Task 35, Use of Force Reports-Witness Identification; Task 37, Retaliation Against Witnesses; and Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process.

During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on each of the tasks in this section.

1. Reporting Misconduct (Task 33; S.A. VI.A.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD must require its personnel to report misconduct to their supervisor and/or IAD, including, but not limited to, uses of force that appear inappropriate and arrests that appear improper.
- The Settlement Agreement requires that OPD have a procedure for officers to report misconduct confidentially, and sets forth particular criteria for this confidential reporting process.
- The Settlement Agreement further requires that OPD assess corrective action and/or discipline for failure to report misconduct.

b. Status of Compliance and Assessment

OPD developed several policies that, in concert, incorporate the requirements of this task: *Manual of Rules (MOR) Section 314.48, Reporting Violations of Laws, Ordinances, Rules or Orders*; *MOR Section 314.49, Confidential Reporting of Police Misconduct*; *Departmental General Order D-16, Check-In and Orientation*; *MOR Section 370.18, Arrests*; and *MOR Section 370.27, Use of Physical Force*.

During the sixth reporting period, the IMT confirmed that OPD had trained 95% or more of relevant personnel on this task. During the seventh reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 33's requirements. Based on our interviews, officers did not possess a sufficient understanding of this task. While officers appeared to understand Task 33's requirement to report misconduct and the consequences for failing to report it, they did not appear to understand the difference between confidential and anonymous reporting.

Commendably, OPD developed a “refresher” lesson plan including instruction on the requirements of this task. According to OPD, during the ninth reporting period, it completed training of over 95% of personnel on this lesson plan.

During the sixth reporting period, the IMT conducted an audit of OPD’s compliance with Task 33 in actual practice. A complete discussion of our audit findings is included in our sixth status report. The IMT determined that OPD is informing members/employees of its confidential reporting procedures. OPD training logs confirmed that OPD informed at least 95% of current employees and 100% of new recruits and lateral hires about OPD’s confidential reporting procedures during the period covered by this review.

The IMT was also able to confirm that OPD is committed to a confidential reporting system that includes the components required by the Settlement Agreement. The IMT was unable to determine whether this confidential reporting system functions properly or whether cases reported confidentially are maintained confidentially because no cases were reported confidentially during the period covered by this review.

Our review indicated that OPD personnel frequently were not reporting misconduct and that OPD only rarely assessed whether misconduct was properly reported. In addition, we found that, with rare exceptions, OPD did not hold members/employees accountable for failing to report misconduct even where the internal investigation clearly established that the member/employee encountered apparent misconduct and failed to report it.

Our audit made several recommendations for improving Task 33 compliance, including: clarifying OPD’s misconduct reporting requirements; clarifying for officers how OPD’s confidential reporting system works; requiring that all sustained cases be reviewed within IAD to ensure that all potential reporting violations were addressed and resolved; and including the consideration of misconduct reporting issues in the investigation checklist. OPD has begun moving forward on many of these recommendations and others they have developed, including retraining officers about their reporting obligations and the consequences for failing to meet them. During the ninth reporting period, OPD published Training Bulletin V-T.3, *Reporting Misconduct*, designed to give personnel concrete examples of their reporting responsibilities. The training bulletin appropriately discusses reporting misconduct as an act of integrity, not betrayal. Additionally, during the ninth reporting period, OPD published an informational bulletin instructing personnel on the differences between anonymous and confidential reporting. The bulletin was accompanied by a quiz that was administered to IAD staff to test their understanding.

While we have to yet conduct a formal re-assessment of this task, during routine monitoring reviews, we have noticed fewer instances in which officers who were in a position to observe alleged misconduct claim that they did not see or hear anything.

During this reporting period, one of the compliance standards for this task was modified to include a more subjective pass/fail assessment.

2. Vehicle Stops, Field Investigation and Detentions (Task 34; S.A. VI.B.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD members must complete a basic report on every vehicle stop, field investigation and detention. The Settlement Agreement sets forth particular information that must be included in this report.
- OPD must enter this report data into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD published a policy, Special Order 8012, *Racial Profiling Stop-Data Collection Form*, that complied with the Settlement Agreement. On November 15, 2004, OPD replaced this Special Order with General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. As previously reported, General Order M-19 is in many respects a model policy. It provides a clear definition of prohibited conduct, straightforwardly sets forth the responsibilities of various Departmental subunits, and provides guidance in the form of examples of prohibited conduct. If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

During the fourth and fifth reporting period, OPD also published a technical guide, *Promoting Cooperative Strategies to Reduce Racial Profiling*. The technical guide was the culmination of months of work by a coalition of community/advocacy groups, corporations, the Oakland Police Officers Association and OPD. Together with M-19, the technical guide is an important contribution to nationwide efforts to reduce unjustified racial profiling.

During this reporting period, OPD published three report-writing manual inserts related to Task 34, RWM N-1, *Misdemeanor Citation*; RWM N-2, *Traffic Citations*; and RWM R-2, *Stop Data Collection Form*. As of August 15, 2007, the Department had not yet trained 95% of relevant personnel on these policies. In upcoming reporting periods, the IMT will verify whether OPD has trained at least 95% of relevant personnel on these new policies.

We reported in the combined fourth and fifth quarterly report that officers were failing to complete the stop data forms required by this task for more than 60% of applicable stops. In response, OPD initiated internal audits and closer oversight of officers' compliance with this task. OPD reported during the sixth reporting period that it had achieved actual practice compliance with this task, but subsequently reported that it could not verify officers' compliance with Task 34.

During the seventh reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 34's requirements. The IMT found that officers did not possess a sufficient understanding of this task. Contrary to OPD policy and the Settlement Agreement, a number of officers reported that they did not have to complete stop data forms unless they were making a self-initiated stop. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reports that it has provided the refresher training to over 95% of relevant personnel.

During the eighth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our eighth status report. The IMT found that, although OPD has made tremendous progress in this area, it was not in actual practice compliance with the requirement that officers complete a stop data form for at least 95% of field stops, field investigations, and detentions, as required by the Settlement Agreement. We found OPD in conditional compliance with the requirement that stop data forms be completed fully and accurately. We identified ambiguities in the SDFs that were likely the cause of substantial confusion among OPD officers about how to accurately complete them. We informed OPD of the deficiencies in the SDF form and notified it that we will not employ these conditional criteria during our next review and instead expect that by that time OPD will have corrected the SDF and trained its officers on its proper completion. Our audit also discussed the problems with SDF data entry and analysis. OPD recognized these problems and contracted with a third-party vendor to input SDF information into an appropriate database. We have encouraged OPD to ensure that this information is accurately and completely entered for all SDFs in a manner that permits the IMT and OPD to assess compliance with the Settlement Agreement and OPD policies. A complete summary of our audit can be found in our eighth status report.

During the ninth reporting period, OPD drafted new stop data forms. It remains to be seen whether these forms will decrease confusion because OPD has opted to create two new forms, containing somewhat different fields. The Department intends for one form to be used for those stops that result in a citation and for another form to be used for stops not involving citations. As of the date of this report, however, the new forms are not yet being used in the field by all officers. Also during the ninth reporting period, OPD started rolling out field based computerized reporting. Unfortunately, it did not include the stop data forms among the computerized forms which officers can complete electronically from their vehicles. We continue to recommend that OPD add stop data forms to the list of forms as soon as possible.

During this reporting period, OPD assigned a new manager to oversee the Department's SDFs. According to the manager, she is undertaking a number of quality assurance activities to help the OPD better manage the SDFs. We look forward to learning the results of her reviews.

While OPD is working to correct this problem, OPD cannot yet effectively use the SDF data its officers painstakingly gather to analyze, and perhaps improve, the efficiency and effectiveness of detentions and searches by OPD officers. Although such analysis is not directly required by the NSA, this is the purpose of the data collection requirements of this task. Once OPD begins to adequately analyze stop data and act upon information regarding "hit rates," etc., more officers will likely see the value in collecting stop data, and the effectiveness of OPD policing may well increase, benefiting officers and the community alike.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or 90% or modified to include a more subjective pass/fail assessment.

3. Use of Force Reports-Witness Identification (Task 35; S.A. VI.C.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD officers must identify and document certain information about witnesses to uses of force, including other OPD officers, in every use of force report. The Settlement Agreement sets forth the particular information that must be included, and procedures OPD must follow in the event that there are no known witnesses or where the author of the report is unable to obtain identifying information from witnesses.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance by publishing Special Order 8066, *Use of Force-Witness Identification*, on April 12, 2004. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. The IMT interviewed officers on all three patrol shifts regarding their understanding of Task 35's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding. During the eighth reporting period, OPD incorporated the provisions of the witness identification special order into General Order K-4.

During this reporting period, OPD negotiated several changes to the NSA's use of force provisions and revised General Order K-4. We will continue to work with OPD in this area and plan to formally assess OPD's compliance with this task during the next reporting period.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or 90%.

4. Procedures for Transporting Detainees and Citizens (Task 36; S.A. VI.D.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD members/employees must log in and log out on the radio when transporting a detainee or any other civilian (except with regard to the use of "wagons" engaged exclusively in the transport of prisoners). The Settlement Agreement specifies particular information that must be included in this radio report.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance by publishing Special Order 8055, *Transportation of Persons in Police Vehicles*, on November 25, 2003. As discussed below, this special order has been replaced by Special Order 8262. OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on Special Order 8055. During this reporting period, the IMT confirmed that the Department has trained at least 95% of relevant personnel on Special Order 8262.

During the seventh reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 36's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During the seventh reporting period, the IMT determined that OPD is not complying with this task in actual practice, and made several recommendations for improvement including: establishing a communications protocol prompting dispatchers to elicit the information required by this task; providing officers with refresher training regarding what information they are required to provide when performing transports; and holding officers accountable where they do not comply with this OPD policy. On September 12, 2005, OPD published Special Order 8262, *Transportation of Persons in*

Police Vehicles, incorporating the IMT's recommendations. In addition, OPD has conducted some internal audits and training to ensure compliance with Special Order 8262 and this Settlement Agreement provision.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. While OPD is not yet in compliance with Task 36.1, which requires that officers log in and out on the radio when transporting a detainee or any other civilian (unless the transport is done by wagon), it has made significant progress since our last audit of this task when the overall rate at which members and employees logged both in and out as required was 63.0%. Based on the documentation we were provided for this audit, members and employees logged both in and out as required in 83% of the transports reviewed.

Task 36.2 requires that radio reports regarding applicable transports include the following information: time (beginning and ending), mileage (beginning and ending), location (beginning and ending), purpose of transport(s), gender of individual(s) being transported, and identification of the member or employee involved in the transport(s). As with Task 36.1, OPD has shown significant improvement in Task 36.2. It is now in compliance with Task 36.2. During our last audit, only 60.4% of the transports complied with the requirements of Task 36.2. Based on the documentation we were provided for this audit, the overall rate at which required elements were included in radio reports was 84.8%.

The significant improvement observed in Task 36 can be attributed to the Department's success in updating its transport policy and providing refresher training to personnel on the requirements. Following its review, the IMT recommended that OPD reinforce this training with additional line-up training and training for dispatchers that stresses the importance of logging the requirement information, and that any refresher training stress the format for providing/entering the data. The IMT also recommended that supervisors be encouraged to counsel personnel immediately whenever they hear incomplete transport information being provided.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or 90%.

5. Internal Investigations-Retaliation Against Witnesses (Task 37; S.A. V.I.E.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD must establish a policy prohibiting retaliation against any member or employee of the Department who reports misconduct by any other member or employee, or serves as a witness in any proceeding against a member or employee. The Settlement Agreement requires that the policy

acknowledge that retaliation may be informal and subtle. The Settlement Agreement further requires that dismissal be the presumptive disciplinary penalty for retaliation.

- By August 25, 2003, OPD must hold supervisors, commanders and managers accountable for retaliation committed by their subordinates. If supervisors, commanders, or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, OPD must subject them to the investigative and disciplinary process.

b. Status of Compliance and Assessment

On November 23, 2003, OPD published Special Order 8092 consisting of two *Manual of Rules* revisions: MOR Section 398.73, *Retaliation Against Witnesses*, and MOR Section 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions incorporate the requirements of Task 37. OPD's Disciplinary Matrix underscores that termination is the presumptive penalty for retaliation. Accordingly, OPD is in policy compliance with Task 37.

During the sixth reporting period, the IMT confirmed that OPD trained 95% or more of relevant personnel on this task. During the seventh reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 37's requirements. Based on our interviews, officers did not yet possess a sufficient understanding of this task. While officers appeared to understand what constitutes retaliation under Task 37, many officers were unaware that the presumptive penalty for engaging in retaliation is termination. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reported that, during the ninth period, it completed the refresher training for over 95% of relevant personnel. During the eighth reporting period, OPD also provided in-depth training to many of its supervisors, commanders, and managers regarding retaliation.

During the seventh reporting period, the IMT audited OPD's compliance in actual practice with Task 37. A complete discussion of our audit findings is included in our seventh status report. The IMT determined that OPD was not in compliance with Task 37 because its investigations of retaliation were inadequate to provide sufficient confidence that officers who have engaged in retaliation, or supervisors who knew or should have known of such retaliation, are held accountable. A detailed discussion of this audit is provided in our seventh status report.

In response to our audit, OPD has made a number of significant changes in its approach to complaints of retaliation. The Court has ordered OPD to consult with the City Attorney's Office any time it receives an allegation of retaliation and to report the results of its investigations to the Court. OPD has implemented integrity tests aimed at

identifying possible retaliatory conduct. During the ninth reporting period, the City Attorney's Office developed additional training, including a new policy, regarding retaliation. This policy, however, was never issued. According to OPD, the policy was not suitable for distribution as drafted but that it intends to work with the City Attorney's Office to find an appropriate way to provide OPD personnel additional training regarding retaliation. We have reiterated the concern discussed in our audit report that there appears to be a lack of clarity within OPD regarding what constitutes retaliation and asked OPD and the City to take the steps necessary to resolve this matter to improve OPD's response to allegations of retaliation and facilitate compliance with this task. Following the conclusion of this reporting period, OPD distributed a draft policy regarding retaliation. The IMT will review this policy and report on its implementation in our next status report.

The compliance standards for this task remain at the 95% level.

6. Citizens Signing Police Forms (Task 38; S.A. VI.F.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD personnel must ensure that citizens who sign written statements on Statement Forms draw a diagonal stripe from the end of the written narrative to the bottom of the page and sign along the stripe. Citizen statements on offense reports must be signed by the citizen immediately following the statement.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance by publishing an *Information Bulletin on Citizens Signing Police Forms* on October 22, 2003. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During the seventh reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 38's requirements. Based on our interviews, we found that OPD officers have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During an audit conducted during the second quarter reporting period, the IMT determined that OPD's actual practices in this area were not in compliance with the Settlement Agreement and made several recommendations to OPD to help achieve compliance. These recommendations included providing refresher training; explaining to

officers the intent and importance of this Settlement Agreement provision; exploring the use of a single, uniform method for obtaining citizen statements; and improving supervisory review of citizen statements.

During the seventh reporting period, OIG conducted an internal audit of Task 38 and found OPD's current practices in compliance with the Settlement Agreement's requirement that citizens who sign written statements on Statement Forms draw a diagonal stripe from the end of the written narrative to the bottom of the page and sign along the stripe. OPD did not audit whether citizen statements on offense reports were signed by the citizen immediately following the statement because the Department no longer allows officers to take citizen statements directly on offense reports.

During the eighth reporting period, the IMT conducted a second actual practice audit of this task and found OPD in compliance with this task in actual practice. A complete discussion of our audit findings is included in our eighth status report. Ninety-seven percent of the statements reviewed complied with the requirements of the Settlement Agreement. Accordingly, OPD is in compliance in actual practice with the requirements of Task 38.

During this reporting period, the compliance standards for this task were lowered from 95% to 85%.

7. **Personnel Arrested, Sued and/or Served with Civil or Administrative Process** (Task 39; S.A. VI.G.)

a. **Settlement Agreement Requirements**

- By August 25, 2003, OPD must establish a policy and procedure requiring OPD personnel to report within seventy-two hours any occurrence in which s/he has been arrested, sued and/or served with civil or administrative process related to his/her employment or containing allegations which rise to the level of a *Manual of Rules* violation.
- In addition, by August 25, 2003, OPD personnel transferring to, or serving in, certain units or assignments (e.g., gang units; vice/narcotics section; IAD) must report within seventy-two hours if s/he has been served with civil or administrative process, including tort claims or financial claims.

b. **Status of Compliance and Assessment**

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance by publishing Special Order 8064, *Reporting Civil Actions Served*, on

April 13, 2004, and *Manual of Rules* Section 314.28, *Notification*, on November 23, 2003. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

During the sixth reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 39's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

The draft General Order covering the requirements of this task (General Order B-4, *Personnel Transfers and Loan Transfer Waiver Procedures*) continues to be "on hold" while discussions with the Oakland Police Officers' Association (OPOA) regarding transfer policies ensue. These discussions have been pending for well over a year. OPD reports that arbitration sessions including this issue are scheduled to occur in January and February 2008. Until the revised General Order is published and implemented, OPD will continue to refer to Special Order 8064, the stop-gap measure drafted to cover this task.

During the sixth reporting period, the IMT conducted a review of OPD's actual practice of Task 39 and found OPD to be out of compliance. A complete discussion of our audit findings is included in our sixth status report. As mentioned in our last report, our review indicated that OPD was taking few proactive steps to ensure that non-reporting members/employees are detected, and seemed to have given little thought to how it would ensure that its members/employees comply with this requirement. We made several compliance recommendations that we encouraged OPD to consider.

During the eighth reporting period, OIG conducted an audit of Task 39. According to OIG, OPD is not yet in compliance with this task, but has made progress. OPD reports that it has begun to implement some of the proactive measures that we recommended. OPD notes further, however, that there are several steps it could be, but is not yet, taking to detect and track arrests and lawsuits of its officers. During this reporting period, OPD drafted General Order E-3.1, *Department Notification Compliance Verification*, to address these issues. The IMT has reviewed the draft and provided OPD with detailed comments. We will report on the implementation of any new policy in our next status report.

The IMT intended to audit this task during the ninth reporting period, but OPD acknowledged that it had not yet implemented sufficient measures to attain compliance with this task.

During this reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

E. Personnel Assessment System (PAS) (Tasks 40–41; S.A.VII.)

Section VII of the Settlement Agreement, Tasks 40–41, requires OPD to develop a computerized relational database that will permit it to record, track and retrieve data necessary for OPD to appropriately supervise and manage members and employees.

Use of such systems is becoming increasingly common as police departments seek to effectively gather and organize data traditionally recorded in a variety of formats and locations. It is widely believed that better tracking of this information facilitates consistency in performance evaluations, corrective actions, and other management decisions.

OPD's system, which OPD is now referring to as the Personnel Assessment System (PAS), was due for completion in June 2005. Working closely with OPD, during this reporting period, the City's information technology staff completed development of a computerized early identification and intervention system (IPAS) that includes all but one of the data fields required by the NSA. IPAS is available to OPD supervisors and commanders throughout the Department to assist them in managing their subordinates. The system is an impressive accomplishment and recently garnered an honorable mention in a national technology solutions competition held by the Public Technology Institute. Now that OPD has this powerful tool at its disposal, the key will be to ensure that it provides supervisors and commanders throughout the agency with the training necessary to understand and use the system as intended, and that OPD hold them accountable for doing so. While IPAS is capable of quickly and efficiently providing OPD supervisors and commanders with an array of information about personnel, it is not a substitute for day-to-day supervision. The success of these NSA requirements will stand or fall on the Department's supervisors' and commanders' ability and willingness to identify employees who may be exhibiting at risk or exemplary behavior and to intervene as appropriate.

1. Personnel Assessment System (PAS)-Purpose (Task 40; S.A. VII.A.)

a. Settlement Agreement Requirements

- By June 28, 2005, OPD must develop and implement a Personnel Assessment System. This system must include a computerized relational database to maintain, integrate and retrieve data necessary for supervision and management of OPD and its personnel. Specifically, this data must be used by OPD to promote professional police practices; manage the risk of police misconduct; and evaluate and audit the performance of OPD members of all ranks, employees and OPD units,

subunits and shifts. The Settlement Agreement sets forth particular information that must be captured by the system.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in June 2005. During the ninth reporting period, OPD completed a policy for PAS (formerly PIMS). The IMT found this policy in conditional compliance with the Settlement Agreement.

OPD did not meet the Court's deadlines for installing system software and hardware, in part, due to delays from its vendor. However, during the ninth reporting period, OPD personnel and City information technology staff devoted significant time and energy in developing an interim computerized PAS system which was completed and made available to OPD supervisors and commanders throughout the Department this reporting period.

During this reporting period, on January 8, 2007, OPD published Department General Order D-17, *PAS and IPAS – Supervisors, Commanders, and Managers*. In upcoming reporting periods, the IMT will verify whether the Department has trained at least 95% of relevant personnel on this new policy. While OPD has trained at least 95% of its supervisors, managers, and commanders on these policies, it has not provided any training to the rank and file regarding the new Personnel Assessment System. The IMT holds a view shared by the OIG that members and employees throughout the Department will be more likely to understand, value, and trust the PAS system if they are provided training regarding how it works and its intended purpose.

Given the importance of the system and its enormous potential, we have discussed with OPD that it should provide basic information about the system to all personnel to dispel the many myths and rumors we have heard expressed during ride-alongs and discussions with officers. While members and employees do not need the level of information about the policy or system that supervisors and commanders need, they should be informed, at a minimum, what the system does and does not do; how it will and will not be used, including the facts that they have a right to view their own information and to correct any erroneous information that may be in the system. OPD has committed to providing such training, recognizing that it is critical to the program's success.

During the ninth reporting period, with the assistance of a licensed therapist with extensive experience working with OPD and other law enforcement agencies, OPD provided training to supervisors regarding identifying and addressing at-risk behavior. The IMT was impressed with the training which already has resulted in a number of supervisors identifying employees who may be in need of counseling, remedial training, or other specialized assistance. During this reporting period, OPD continued to work with the therapist to review its personnel data.

During the last three reporting periods, OPD generated PAS threshold reports based on absolute numerical thresholds contained in the Settlement Agreement. These thresholds did not include peer group analyses and resulted in a large group of individuals to be assessed for patterns of at-risk behavior. During the current reporting period, OPD produced the first threshold report using the peer group methodology agreed upon by the parties during the ninth reporting period. Essentially, the approach focuses assessment for intervention on members and employees with the most incidents of at-risk behavior within their peer group, regardless of the number of incidents. This allows OPD to focus its resources on those that are likely to be most in need of intervention. Supervisors of individuals appearing on the threshold reports are responsible for conducting an in-depth evaluation of individuals appearing on the reports to determine whether they may be engaging in any at-risk or exemplary behavior. The supervisors are required to submit their assessments, including any recommendations for remediation (training, counseling, etc.) to the PAS Unit by a pre-determined deadline. OPD experienced extremely poor compliance by supervisors with these deadlines and, to our knowledge, did not hold anyone accountable for missing deadlines. Since the PAS threshold reporting process is required to occur on a quarterly basis, these sorts of delays will jeopardize OPD's ability to conduct the program as required. Of greater concern is that the delays could result in the late identification of members or employees in need of some sort of immediate assistance or intervention. OPD contends that these delays were due to past communication problems and will not be repeated.

During this reporting period, the IMT and its consultant, Dr. Samuel Walker, met with the PAS Administration Unit, PAS Activity Review Panel members, OPD commanders, and the City Attorney's Office to discuss the status of PAS and ways to ensure its maximum effectiveness. While Dr. Walker did not conduct a compliance assessment of PAS, he was favorably impressed by the initial efforts of the PAS Administration Unit and PAS Activity Review Panel based upon his familiarity with similar systems nationwide.

During this reporting period, the compliance standards for this task were modified to include a more subjective pass/fail assessment.

2. Use of Personnel Assessment System (PAS) (Task 41; S.A. VII.B.)

a. Settlement Agreement Requirements

- By June 28, 2005, OPD must develop a policy for the use of PAS, including supervising and auditing the performance of specific members, employees, supervisors, managers and OPD units, as well as OPD as a whole. The Settlement Agreement sets forth extensive requirements regarding how PAS must be used.

b. Status of Compliance and Assessment

This task is being completed in conjunction with the PAS database. See “Status of Compliance and Assessment” under Task 40, Personnel Assessment System (PAS)-Purpose, for Task 41’s status of compliance.

During this reporting period, many of the compliance standards for this task were lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

F. Field Training Program (Task 42; S.A. VIII.)

Section VIII of the Settlement Agreement, Task 42, requires OPD to make significant changes in the manner in which its Field Training Officers are selected, certified, trained, supervised, rotated, and evaluated. These enhancements are designed to ensure that rookie officers receive field training from seasoned officers who have demonstrated their leadership abilities, professionalism and commitment to OPD values. In order to ensure that the training is effective, the Settlement Agreement also requires OPD to conduct daily audits and regular evaluations of all Field Training Officers. The compliance deadline for this section of the Settlement Agreement occurred during the sixth reporting period.

1, Field Training Program (Task 42; S.A. VIII.)

a. Settlement Agreement Requirements

- By April 16, 2004, OPD must develop and implement a plan to enhance its Field Training Program. This plan must address: the criteria and method for selecting Field Training Officers (“FTOs”); the training provided to FTOs to perform their duty; the supervision and evaluation of FTOs; the length of time that trainee officers spend in the program; and the methods by which FTOs assess and evaluate trainee officers in field training. The Settlement Agreement sets forth extensive requirements that must be part of this new Field Training Program.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in April 2004. OPD published General Order B-8, *Field Training Program*, at the beginning of the seventh reporting period. The IMT reviewed the policy and found that it complies with the Settlement Agreement. During the seventh reporting period, OPD also provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy.

During the seventh reporting period, the IMT evaluated whether OPD's actual practices comply with Task 42. We determined that although OPD had not yet fully complied with the requirements of Task 42, it had made substantial and impressive progress. Moreover, throughout the course of our first review of Task 42, as shortcomings were identified OPD took immediate steps to remediate deficiencies. Based on our review, we made several additional recommendations to OPD focusing on improving the FTO selection process; ensuring anonymity for trainee evaluations; and improving supervisory review of FTO evaluations. A fuller description of this audit is included in our seventh status report.

During the ninth reporting period, we conducted a second audit of the Field Training Program. A complete discussion of our audit findings is included in our ninth status report. We found that OPD had continued to make progress and was in compliance with nearly all of the task's requirements. As we reported in our last audit of this task, the officer acting as the Field Training Program Coordinator (FTPC) is a talented, well-respected officer who is conscientious, organized, and thoughtful. During this reporting period we continued to attend FTP focus groups and interact with the FTPC and continue to be impressed by his strong leadership skills and the steps he has continued to take to modernize, standardize, and improve OPD's Field Training Program.

Our audit contained several recommendations to assist OPD in achieving full compliance with Task 42. A summary of this audit is contained in our ninth status report.

We believe that OPD is capable of achieving full compliance with Task 42 in the very near future. In our last status report, we expressed concern about the Field Training Unit being provided the resources it needs to keep up with the significantly larger number of trainees and FTOs entering the program. During this reporting period, OPD has consistently staffed a position in the Unit that previously had been staffed on a sporadic basis. This is an encouraging development and one that will likely assist the Department to maintain and improve upon the progress it has made in its Field Training Program.

During this reporting period, some of the compliance standards for this task were lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

G. Academy and In-Service Training (Task 43; S.A. IX.)

Section IX of the Settlement Agreement, Task 43, requires OPD to ensure that both new recruits and experienced officers receive adequate and regular training. In particular, the Settlement Agreement requires OPD to develop and implement a training plan that includes curriculum enhancements in professionalism and ethics, critical thinking and problem solving, conflict resolution, and relationships with the community.

The compliance deadline for this task occurred during the sixth reporting period. On September 2, 2005, OPD graduated its 154th Basic Academy class. The class was the Department's first Academy class in several years. During the seventh reporting period, OPD also graduated seven officers from its Sixth Lateral Academy. During the eighth

reporting period, OPD's 155th Basic Academy class graduated. During the ninth reporting period, the 156th, 157th, and 158th Basic Academies graduated, along with the Seventh Lateral Academy. During this reporting period, the 159th and 160th Basic Academies graduated.

1. Academy and In-Service Training (Task 43; S.A. IX.)

a. Settlement Agreement Requirements

- By February 15, 2005, OPD must develop and implement a plan to enhance its Academy and in-service training to ensure that OPD personnel at all levels are adequately trained for their positions, and are aware of and able to implement the most contemporary developments in police training. The Settlement Agreement sets forth criteria that must be contained in this enhanced Academy and in-service training plan and parameters for the frequency and documentation of in-service training. In addition, this provision sets new training criteria for sergeants and command staff.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in February 2005. OPD published General Order B-20, *Departmental Training Program*, which the IMT reviewed and found compliant with the Settlement Agreement. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

As required by the Settlement Agreement, General Order B-20 establishes enhanced criteria for instructor selection and training. These criteria include factors such as disciplinary history, citizen complaints, awards and commendations, educational background, sick leave usage, and general professionalism. According to OPD, all instructor files were reviewed for compliance during the 154th Academy and three instructors who did not meet the requirements of the General Order were removed from their teaching assignments.

In addition to Task 43's requirements related to Academy training, Task 43 requires that OPD provide all supervisors and commanders/managers with mandatory 40-hour in-service supervisory and leadership training. The Settlement Agreement stipulates specific areas that must be covered in this training including instruction in supervisory and command accountability, ethics and professionalism, and supervisory and management functions and situations. Pursuant to this task, all supervisors must receive the mandatory leadership training prior to their promotion while all commanders must attend this training within six months of their promotion.

During the seventh reporting period, the IMT confirmed OPD's report that all but one of the then current supervisors had attended the mandatory training prior to promotion and that all the then current commanders had attended the mandatory leadership training, although only one had done so within six months of promotion as required by the Settlement Agreement. OPD was unable to provide the IMT with detailed documentation of what material was taught in its 2004 in-service supervisory training, and the IMT was therefore unable to confirm that the leadership and supervisory course content included the areas required by the Settlement Agreement.

Though OPD offers the mandatory 40-hour supervisory and leadership training to supervisors and commanders, OPD should ensure that the officers and commanders attend the training within the required timeframe. Since it was unclear whether the training provided included the content required by the Settlement Agreement, we recommended that the Training Division require and retain detailed lesson plans of all in-service training. According to OPD, it is now maintaining better documentation of course content to enable the necessary verification.

During the ninth reporting period, the IMT intended to audit Task 43; however, OPD reported that it was not yet complying with the requirements of Task 43. OIG conducted an assessment of the Training Division during the ninth reporting period and found that OPD was not complying with the instructor selection, in-service training, or promotional training requirements. Consistent with the IMT's review, OIG found poor record-keeping, including documentation and tracking of training. OIG made a series of recommendations to address these deficiencies and the Department retained a law enforcement training expert to assist it in modernizing and enhancing its training programs. The IMT has met with the Department's expert and has shared our observations of the Training Division, including the inconsistent and unreliable methods in which training is documented. For example, unless the training being provided is required by the NSA, OPD does not routinely document or track the training. This makes it virtually impossible to ensure, or even document, that all relevant staff have received training that may be critical for their positions, or to hold them accountable when they do not perform as required by the training.

As a result of its self-assessment efforts, OPD reported that it is taking a number of remedial measures to improve its performance in this area. For example, according to OPD, it has identified individuals who have not received required training and provided the training to them or scheduled them to attend training. OPD also reported that it is completing an instructor development course and that it has hired an experienced individual to begin the important task of evaluating the performance of academy instructors. Additionally, in conjunction with its training consultant, OPD is working on new testing specifications for the Academy. The Training Division also is updating its filing system and requiring improved documentation regarding the content of training provided to its members.

During this reporting period, many of the compliance standards for this task were lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

H. Personnel Practices (Tasks 44–46; S.A. X.)

Section X of the Settlement Agreement, Tasks 44–46, requires OPD to reform its personnel practices in three areas: Performance Appraisals; Consistency of Discipline; and Promotional Consideration. These provisions of the Settlement Agreement are particularly important because they are the underpinning of a system that treats OPD officers fairly and equitably while holding them accountable for their actions.

The Settlement Agreement’s Performance Appraisal section, Task 44, requires OPD to write performance appraisals for each officer, documenting the officer’s conduct and performance in a variety of areas. Such appraisals had not occurred with regularity in the years preceding the NSA. If done consistently and fairly, performance appraisals can be a valuable management tool for identifying both excellent and substandard police work, and for holding supervisors accountable for the performance of their subordinates. OPD achieved policy compliance with this task ahead of schedule. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. As discussed below, OPD is making progress in this area, but as of the last audit, its actual practices did not yet comply fully with the Settlement Agreement.

The Settlement Agreement’s Consistency of Discipline section, Task 45, requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The timely and fair imposition of discipline is essential to ensure accountability. The compliance deadline for this task occurred during the combined fourth and fifth reporting period. With the publication during the seventh reporting period of the Departmental Discipline Policy (Training Bulletin V-T), OPD attained policy compliance with this task. During this reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. These changes were reviewed and approved by the parties and IMT. As of August 15, 2007, the Department had not yet trained 95% of relevant personnel on the revised Discipline Policy and Discipline Matrix. In upcoming reporting periods, the IMT will review training data to determine whether OPD has trained at least 95% of relevant personnel on the revised Discipline Policy and Discipline Matrix.

The Settlement Agreement’s Promotional Consideration section, Task 46, requires the Department to consider a variety of factors when making promotional decisions, including sustained misconduct cases, quality of citizen contacts, and support for Departmental integrity measures. The compliance deadline for this task occurred during the first reporting period. During this reporting period, OPD completed a memorandum incorporating the requirements of this task.

1. Performance Appraisal Policy (Task 44; S.A. X.A.)

a. Settlement Agreement Requirements (see also Task 21)

- By July 7, 2004, OPD must write individual annual performance appraisals for each member/employee being evaluated. These performance appraisals must accurately reflect the quality of the member/employee's performance. The Settlement Agreement sets forth criteria for these performance appraisals, including documentation of complaints and patterns of conduct, and accountability of PSA lieutenants for the quality of community contacts by their beat officers. The Settlement Agreement further designates the supervisor responsible for completing the performance appraisal and requires OPD to conduct regular audits of the performance appraisal system to ensure compliance with the Settlement Agreement.

b. Status of Compliance and Assessment

The due date for this task occurred in July 2004. OPD developed a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, in advance of the due date. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During the ninth reporting period, OPD published a revised version General Order B-6 to provide additional guidance to supervisors and managers. The IMT determined that the revisions comply with the Settlement Agreement, and verified that OPD has trained more than 95% of its personnel on the revised policy. As reported above, during this reporting period, OPD published Special Order 8650, *Performance Appraisals*. As of August 15, 2007, the Department had not yet trained 95% of relevant personnel on this policy. In upcoming reporting periods, the IMT will review training data to determine whether OPD has trained at least 95% of relevant personnel on Special Order 8650.

During this reporting period, OPD entered into a stipulation with the Plaintiffs' Attorneys to modify the NSA so that it does not require that information be included in performance appraisals in conflict with state law.

We reported in our combined fourth and fifth quarterly report that OPD was not complying with the requirements of this task. We found that too few personnel files contained current performance appraisals and that the quality of the performance appraisals was deficient as well. In October 2005, OIG initiated an audit of the Department's performance appraisals and also found that OPD's actual practices did not comply with Task 44. OIG's audit found that current performance appraisals did not contain sufficient documentation of the criteria required by the Settlement Agreement.

OIG further reported that OPD could not demonstrate that managers and supervisors were held accountable for writing poor quality performance appraisals. Consistent with the IMT's recommendations made as a result of its 2004 audit, OIG made several recommendations for improving the Department's compliance with this task.

During the eighth reporting period, the IMT conducted a second audit of OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our eighth status report. We found that OPD had made some progress with regard to timeliness of appraisals, but was not yet in compliance with the Settlement Agreement. In our first audit, we found that 64% of the files reviewed contained current performance appraisals. During the second review, we found that 73% of the files reviewed contained a current performance appraisal.

OPD, made more impressive improvements in the content of performance appraisals completed. Task 44 requires OPD's performance appraisals to include sufficient documentation and consideration of the following six elements: 1) nature and progress of complaints and investigations; 2) uses of force; 3) sick and injured leave; 4) arrests for certain narcotics offenses; 5) Penal Code Section 69, 148, and/or 243 (b)(c) arrests; and 6) vehicle accidents. Based on our review, we found OPD in compliance with this requirement. The Department's average compliance rate across all six categories was 96.6%. This is in stark contrast to our first audit where inclusion of the required content was sporadic and more often than not missing than present. We also found that ninety-six percent of the appraisals reviewed included required signatures from supervisors, managers, and commanders. This was a marked departure from our last review where signatures were largely illegible and/or simply absent from the appraisals.

Pursuant to Task 44, when appropriate, supervisors and commanders must be accountable for identifying and acting upon patterns by their subordinates involving uses of force, sick leave, line-of-duty injuries, narcotics offenses, and on-duty vehicle accidents. Accordingly, the performance appraisals of supervisors and commanders must include an assessment of how/whether they identify and act upon any such patterns. OPD was not yet in compliance with this requirement. A fuller discussion of our audit is included in our eighth status report.

During this reporting period, OPD continued to report the status of completed and delinquent performance appraisals at management meetings. During these meetings, personnel are encouraged to complete outstanding appraisals. As we have reported previously, it remains to be seen whether or how quickly the Department will continue to improve in this area because despite repeated admonitions that personnel will be held accountable for delinquent appraisals, to our knowledge, such accountability rarely, if ever, occurs.

During this reporting period, many of the compliance standards for this task were lowered from 95% to 90% or modified to include a more subjective pass/fail assessment.

2. Consistency of Discipline Policy (Task 45; S.A. X.B.)

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The updated disciplinary policy must describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate, and establish a centralized system for documenting and tracking all forms of discipline and corrective action. The Settlement Agreement also sets forth general criteria for OPD's response to sustained findings in Class I and Class II investigations.

b. Status of Compliance and Assessment

The requirements of this task were modified by stipulation in June 2005. The task now requires that a Disciplinary Officer recommend discipline for sustained findings after consultation with the Deputy Chief (or designee) in the affected chain-of-command. The requirements of this provision are incorporated into General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; the Departmental Discipline Policy; and General Order B-6, *Performance Appraisals*. OPD completed General Order B-6 ahead of schedule and, during the seventh reporting period, completed the remaining policies incorporating this Settlement Agreement task. During the eighth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

Task 45 requires the Department to implement discipline that is both fair and consistent. In response to this Settlement Agreement requirement, OPD created and implemented a progressive discipline system, including a new disciplinary policy and a Discipline Matrix. The Department developed this policy and matrix after consultation with other agencies and months of internal deliberations regarding a variety of issues, including appropriate penalty ranges. Before the matrix was finalized, Chief Tucker reviewed, adjusted, and approved it. The Chief has expressed his commitment to implementing a disciplinary system that is fair and consistent and that uses a variety of means to correct behavior.

During this reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally revised and approved by the Department, it was overly punitive. These changes were reviewed and approved by the parties and IMT.

The matrix, properly implemented, helps ensure that the discipline system is transparent and objectively applied. The matrix lists rule violations contained in the Department's *Manual of Rules* and sets out specific criteria for calculating discipline recommendations. For each rule violation, the matrix provides a specific, progressively higher penalty range for first, second, and third offenses. Many of the ranges include a lower limit, midpoint, and upper limit penalty. The Department's Discipline Officer is required by policy to determine the appropriate penalty by reviewing disciplinary histories and obtaining mitigating and aggravating information from supervisors, and make a disciplinary recommendation to the Chief. According to OPD's discipline policy, the Discipline Matrix is to be "administered in a systematic and equitable manner to all personnel," in order to "ensure fair and consistent implementation of discipline within the Oakland Police Department." The policy expressly preserves the Chief's discretion to impose any level of discipline he deems appropriate to achieve these goals.

During the ninth reporting period, we evaluated OPD's implementation of the new disciplinary system by reviewing the discipline recommendations and decisions in every sustained case involving conduct occurring on or after December 6, 2005, the date the policy was implemented. A complete discussion of our audit findings is included in our ninth status report. In reviewing these cases we observed a number of practices that in our judgment undermined the Department's efforts to establish a disciplinary system that is fair and consistent. Many of these practices occurred because the Department decided that a number of the penalties and formulas, if applied, would result in unduly harsh discipline. As discussed above, during this reporting period, OPD revised its matrix to address these concerns.

During this reporting period, two of the compliance standards for this task were modified to include a more subjective pass/fail assessment.

3. Promotional Consideration (Task 46; S.A. X.C.1.)

a. Settlement Agreement Requirements

- By July 8, 2003, OPD's promotion policy must be modified so that sustained misconduct cases against a member/employee are an important factor in determining promotability, including presumptive ineligibility for promotion for twelve months following the sustained finding of a Class I violation.
- The Settlement Agreement further requires the Chief of Police to consider the following criteria, in addition to other factors, in making promotional determinations:

- Commitment to community policing;
- Quality of citizen contacts;
- Number of citizen complaints;
- Instances of unnecessary use of force; and
- Support for Departmental integrity measures.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2003. As we previously reported, OPD drafted a memorandum from the Office of the Chief of Police addressing these Settlement Agreement requirements. The IMT reviewed the memorandum and found that it was too vague to facilitate compliance with the Settlement Agreement. OPD subsequently decided not to publish the memorandum until the OPD policy defining Class I and Class II offenses was published in M-3, *Complaints Against Departmental Personnel or Procedures*. OPD completed M-3 during the seventh reporting period, and in our last status report, we reported that OPD was in policy compliance with this task based on information provided by OPD regarding the status of the Chief of Police memorandum. While auditing this task during the ninth reporting period, we learned that OPD never finalized or published the Chief of Police memorandum or any other policy incorporating the requirements of this task.

During this reporting period, the Department published the Chief of Police memorandum on promotional consideration. In addition, according to OPD, its Personnel Department is operating pursuant to a draft policy and procedure that memorializes required practices in this area. In order to ensure continuity and consistency, we have encouraged OPD to complete this draft as soon as possible. Following the conclusion of this reporting period, OPD distributed a draft policy. The IMT will review this policy and report on its implementation in our next status report.

During the sixth reporting period, the IMT assessed OPD's compliance with this task. Though the IMT determined that most of the Settlement Agreement's required factors were considered when making the promotions, *none* of the promotions included consideration of the task's first element: commitment to community policing. Thus, OPD was found to be out of compliance with this task in actual practice. A complete discussion of our audit findings is included in our sixth status report.

During the seventh reporting period, OPD reported that the Department had implemented a number of measures designed to strengthen the promotions process including structured recorded oral interviews that include questions relating to Settlement Agreement topics. We support such measures and believe that they will likely assist the Department to achieve compliance on this task.

During the eighth reporting period, OIG conducted a follow-up audit of this task. OIG reviewed the promotions made by OPD from February 1, 2005—January 30, 2006, and reported that the Department’s actual practices comply with the Settlement Agreement.

During the ninth reporting period, the IMT assessed OPD’s actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. We observed significant improvement in OPD’s promotional practices but found that OPD was not yet in compliance with the NSA. Despite the steady improvement we saw during the period under review, the lack of accurate and complete information regarding promotional candidates compromised OPD’s compliance efforts and OPD was not in compliance with this task.

Our audit included several recommendations for assisting OPD to attain full compliance with this task, including: completing the promotions policy as soon as possible; designating each MOR provision as Class I or Class II and ensuring that this information is included in internal investigations from the outset and provided to the decision makers; ensuring that promotions documents are accurate and complete and do not contain inappropriate information; and providing the Chief and City Administrator with copies of investigative files of relevant sustained cases.

During this reporting period, one of the three compliance standards for this task was modified to include a more subjective pass/fail assessment.

I. Community Policing (Task 47; S.A. XI.)

Section XI of the Settlement Agreement, Task 47, requires OPD to develop and implement a community policing plan to strengthen its relationships with communities in Oakland. This section requires a number of changes designed to provide officers with the opportunity to hear directly community groups’ concerns. This section also requires OPD to develop mechanisms to measure community policing activities so that officers are fully recognized for this work. The compliance deadline for the Community Policing section of the Settlement Agreement occurred during the first reporting period.

1. Community Policing Plan (Task 47; S.A. XI.)

a. Settlement Agreement Requirements

- By August 1, 2003, OPD must develop and implement a plan to strengthen its commitment to local communities. The Settlement Agreement sets forth particular requirements the plan must include: OPD must host at least one community meeting per quarter in each Patrol Service Area; each patrol supervisor and officer assigned to a regular beat or geographic area of the City must attend a minimum of one community

meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in “Crime-Stop” meetings, along with information on citizen complaints and use of force incidents; and OPD must arrange a meeting within sixty days unless not feasible with representatives of an organization active within Oakland, if the organization communicates a concern regarding specific police personnel or practices.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance with this task in April 2004, by publishing the following policies: General Order B-7, *Requests for Meetings and Public Appearances*; Bureau of Field Operations Policy 03-03, *Community Meetings*; and Training Bulletin III-A.5, *Community-Oriented Policing and the 2003 Reorganization of the Patrol Division*. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

During the seventh reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 47’s requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During the seventh reporting period, the IMT audited OPD’s compliance in actual practice with Task 47 and found that OPD had made impressive progress on this task with respect to its attendance at community meetings. The IMT’s audit found OPD in compliance with this element of Task 47, but not with many other requirements. A fuller discussion of our audit is included in our seventh status report.

While OPD had made great strides in its effort to comply with Task 47, we encouraged OPD to continue its efforts to incorporate assessments of its community policing and problem solving efforts into Crime-Stop meetings. These assessments should be an integral part of the meetings in order to ensure that community-policing efforts and concerns are fully integrated into OPD operations, and regularly discussed by high-level command staff as the Settlement Agreement requires. During this reporting period, OPD continued to more regularly include information regarding some of its problem solving efforts into its Crime-Stop meetings.

During the ninth reporting period, OIG audited Task 47. According to OIG, OPD had fallen out of compliance with the community meeting requirement and is not yet in compliance with other requirements of this task. During this reporting period, OPD pledged to identify its community policing and problem solving methods and the mechanisms it uses for measuring them as required by the NSA. To date, this information has not been provided. However, it will be necessary in order to assess fully OPD's compliance with Task 47.

As we previously reported, according to the Settlement Agreement, the purpose of the specific requirements in Task 47 is to "develop and implement a plan to strengthen [OPD's] commitment to relationships with local communities." The Department's continuing efforts to inject greater levels of transparency into the Department and its outreach and meetings with youth organizations and community groups, including vocal critics of the Police Department, are encouraging signs of progress in this regard. The IMT continues to commend OPD for these efforts and encourages the Department to continue to foster these ties and to build additional relationships throughout Oakland's diverse communities.

As discussed above, during this reporting period, we recommended that OPD explore the feasibility of reopening and/or establishing Community Resource Centers or other fixed locations in East and West Oakland. Among the many other benefits these centers serve, they may increase opportunities for people throughout the City to directly request and provide information to OPD members and employees in their own communities.

During this reporting period, all but one of the compliance standards for this task were lowered from 95% to 85% or modified to include a more subjective pass/fail assessment.

J. Departmental Management and Annual Management Report (Task 48; S.A. XII.)

Section XII of the Settlement Agreement, Task 48, requires OPD to develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve months. The compliance deadline for the Departmental Management and Annual Management Report section of the Settlement Agreement occurred during the first reporting period.

1. Departmental Management and Annual Management Report (Task 48; S.A. XII.)

a. Settlement Agreement Requirements

- By September 5, 2003, OPD must develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve

months. The report must include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. The Settlement Agreement further requires that Division commanders meet individually with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management reports of that Division.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in September 2003. OPD achieved policy compliance with this task when it published Departmental General Order A-7, *Annual Management and Departmental Reports*, on November 24, 2003. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

During the sixth reporting period, the IMT found that OPD was in compliance with Task 48's requirement that each functional unit submit an annual management report. However, we found that OPD was not in compliance with Task 48's requirement that each annual management report include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments; nor was OPD in compliance with Task 48's requirement that each Division Commander meet with the Chief of Police to discuss the annual management report.

During the ninth reporting period, the IMT assessed OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. While OPD did not meet the report submission deadlines set out in its policies, it remained in compliance with the requirements that each functional unit prepare a management report and that Division Commanders, Deputy Chiefs, and the Chief of Police meet to discuss the reports. Task 41 requires that each management report include relevant operating data and highlights ongoing or extraordinary problems and noteworthy accomplishments. While OPD's performance improved significantly since our first audit, it was not yet in compliance with this requirement. As in our last audit, we found the weakest aspect of the reports was their inclusion of their Performance Data." This category is defined in OPD policy as "data which indicate a need for corrective action, i.e., uses of force, discharging of firearms, personnel complaints, vehicle pursuits, and preventable vehicle collisions." Three of the five reports that did not pass would have received passing scores had they included this data.

OPD's 2005 Annual Management Reports were much improved over the previous years' reports. But to truly meet the intent of the NSA and the needs of management, the reports should include more thoughtful discussions of each unit's challenges and plans for the upcoming year. Our audit included several recommendations for improving the reports, including ensuring that annual management reports are submitted in time to

inform budget and management decisions for the following year and improving report content so that they contain information necessary for effective management, planning, and accountability.

During this reporting period, all of the compliance standards for this task were lowered from 95% to 85% or modified to include a more subjective pass/fail assessment.

K. Independent Monitor Selection and Compensation (Task 49; S.A. XIII.)

Section XIII of the Settlement Agreement, Task 49, requires the parties to select an Independent Monitor. The compliance deadline for this provision occurred during the first reporting period.

1. Independent Monitor Selection and Compensation (Task 49; S.A. XIII.)

a. Settlement Agreement Requirements

- By April 15, 2003, the parties must select a Monitor, subject to the approval of the Court, who shall review and report on OPD's implementation of, and assist with, OPD's compliance with the Settlement Agreement. The Settlement Agreement sets forth extensive provisions related to the Monitor's duties.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in April 2003. OPD obtained and remains in compliance with this Settlement Agreement task. On July 15, 2003, the City Council approved the parties' selection of a monitoring team. The Court approved that selection on August 28, 2003.

L. Compliance Unit (Tasks 50–51; S.A. XIV.)

Section XIV of the Settlement Agreement, Tasks 50–51, requires OPD to establish a Compliance Unit to oversee and coordinate OPD's compliance with the Settlement Agreement and to conduct a variety of annual audits to determine OPD's compliance with selected provisions of the Settlement Agreement. The compliance deadline for establishing the Compliance Unit (Task 50) occurred during the first reporting period. OPD is in compliance with this task as it has not only established a Compliance Unit, but continues to staff it with diligent individuals who work hard to facilitate implementation of the Settlement Agreement. The compliance deadline for conducting the annual audits occurred during the eighth reporting period. However, prior to this deadline, OPD had already conducted several audits and published a Special Order incorporating the requirements of this task.

1. Compliance Unit Liaison Policy (Task 50; S.A. XIV.A.)

a. Settlement Agreement Requirements

- By March 4, 2003, OPD must create a Compliance Unit to serve for the duration of the Settlement Agreement. The Compliance Unit will serve as the liaison between OPD, the Monitor and Plaintiffs' counsel, and will assist with OPD's compliance with the Agreement. Among the Compliance Unit's many duties is the preparation of a semi-annual report describing the steps taken, during that reporting period, to comply with the provisions of the Settlement Agreement.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in March 2003. OPD remains in compliance with this Settlement Agreement task. As the IMT has previously reported, OPD has incorporated this function into the Office of Inspector General (OIG), which has implemented a number of policies and procedures to facilitate the effective performance of its duties under the Settlement Agreement.

OIG's staff continued to perform a number of important tasks this reporting period, including: continuing to coordinate overall compliance efforts; conducting audits required by the Settlement Agreement and other Departmental objectives; assigning members to IAD to assist in auditing investigations and intake; and continuing to spearhead the compliance portions of the weekly MAP meetings. Additionally, during this reporting period, OIG staff re-tooled OPD's compliance assessment efforts by selecting and training new internal compliance assessors to spearhead OPD's compliance efforts for each task. OIG staff also have continued to provide invaluable assistance to the IMT in collecting data and evaluating Department policies, procedures, and systems. As during past reporting periods, several of the audits we conducted this reporting period involved data sets that were time-consuming and difficult to gather. With limited resources, however, OIG staff continued to work to ensure that the requested data was provided in as timely a manner as possible.

In the IMT's view OIG currently is in a state a flux. This is due, in part, to frequent staff turn-over and the imminent long-term absences of both of its top managers during an overlapping time period and, in part, because it has taken on significant additional projects that have resulted in the Inspector General spending less time on NSA compliance. OPD's NSA compliance efforts will suffer unless staffing and/or leadership gaps that arise are promptly and effectively addressed, and OIG has the strong backing of the Chief and other Department and City officials to energetically steer the reform process going forward. According to OIG, OPD plans to appoint an acting Inspector General who will meet with the Chief on a regular basis and be able to utilize the BOI Deputy Chief as a subject matter expert should he have questions or need assistance.

The NSA requires OPD to prepare semi-annual reports describing the steps taken during the reporting period to comply with the NSA. OPD prepared its last semi-annual report in July 2006 and reports that it currently preparing a combined report covering the last half of 2006 and the first part of 2007.

During this reporting period, the compliance standards for this task were modified to include a more subjective pass/fail assessment.

2. Compliance Audits and Integrity Tests (Task 51; S.A. XIV.B.)

a. Settlement Agreement Requirements

- By September 1, 2005, following the implementation of policies and procedures required by the Settlement Agreement, OPD must conduct annual audits of: arrest and offense reports (including follow-up investigation reports); use of force incident reports and use of force investigations; complaint processing and investigation; Mobile Data Terminal traffic; personnel evaluations; and citizen accessibility to the complaint process and the availability of complaint forms.
- The Settlement Agreement further sets minimum requirements for these audits and requires that their results be reported in OPD's semi-annual compliance reports.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in September 2005. As previously reported, OPD has already published a compliant policy for this task—Special Order 8011, *Compliance Unit Liaison Policy*. OPD has also published Training Bulletin V-P, which provides guidance for conducting audits. Several OIG staff members have attended additional professional audit training. Additionally, OIG has developed a series of audit plans, criteria, and evaluation tools along with a schedule for conducting audits.

During the ninth reporting period, the IMT assessed OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. OPD remains in compliance with Task 51. The NSA requires OPD to conduct six designated audits annually unless the timing of an IMT audit of the same area would make an OIG audit redundant or unnecessary. Due to lengthy delays in publishing directives related to internal investigations, citizen complaints, and use of force (policies in these areas were not published until December 2005 and February 2006), OIG was not able to audit the Department's conformance with these new policies last year. However, in 2005, OIG completed the following audits: Arrest, Offense and

Follow-up Investigation Reports (September 30, 2005); Personnel Reviews and Appraisals (September 30, 2005); Field Training Program (November 22, 2005); and MDT Audit (December 31, 2005).

In 2006, OIG completed the following audits: OC Log and Checkout Procedures (March 30, 2006); Promotional Consideration (April 24, 2006); Personnel Arrested, Sued or Served (May 3, 2006); Transporting Detainees and Citizens (May 19, 2006); In-Service Training and Academy Training (August 29, 2006), and Community Policing Plan (November 17, 2006). Based upon the audits conducted, we found OPD in compliance with Task 51.1. It has audited the areas required by the NSA, has conducted, or is presently conducting an audit in an acceptable substitute area. During this reporting period, OIG completed audits of Use of Force (December 22, 2006) and Management Level Liaison (April 10, 2007). OIG has informed the IMT that it is currently completing additional audits, in the areas of Performance Appraisals (Task 44); the Informal Complaint Resolution process (part of Task 4); Investigation of Allegations of *Manual of Rules* Violations Resulting from Lawsuits and Legal Claims (Task 14); and an Internal Affairs investigations review.

Task 51.2 establishes the minimum substantive requirements for the audits conducted by OPD. OPD is in compliance with Task 51.2. OIG's audits have met and exceeded the minimum requirements and also have identified deficiencies and proposed thoughtful recommendations for improvement. Task 51.3 requires OPD to report the results of its audits in its semi-annual compliance reports. OPD's combined Fifth and Sixth Semi-annual Compliance Report and its Seventh Semi-annual Compliance Report discuss the results of OPD's audits. Accordingly, OPD is in compliance with Task 51.3.

During this reporting period, the compliance standards for this task were modified to include a more subjective pass/fail assessment. During upcoming reporting periods, the IMT will continue to monitor this area to ensure that the required audits are conducted and will review the quality and content of the audits.

VIII. CONCLUSION

This is the IMT's first status report since the NSA was extended until 2010. Although many within OPD and the City do not yet recognize it, this extension period is an opportunity for Oakland not only to bring about the remaining necessary reforms, but also to ensure that the positive changes that have occurred in the Police Department take firm root. Taking advantage of this opportunity will require Oakland to continue to focus on attaining compliance with the NSA. The Oakland Police Department has accomplished an extraordinary amount over the past several years, but has not yet fully implemented the NSA as required to ensure consistently effective and respectful policing. We encourage the City and Department to continue their past level of effort so that the changes they are making will endure.