

**ELEVENTH 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***

**May 14, 2008**

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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 eleventh status report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from August 1, 2007, to April 30, 2008.

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. AGREEMENT ON ASSESSING SUBSTANTIAL COMPLIANCE**

At the Court's status conference of January 18, 2008, the Court asked the parties to consult with the IMT and reach agreement on the meaning of "substantial compliance" set out in the Negotiated Settlement Agreement (NSA). The meaning of this term is significant, as it is the benchmark by which the Court will determine whether the requirements of the NSA have been met at the end of the extension period in January 2010.

Pursuant to the Court's direction, the parties and the IMT together worked to reach agreement on the meaning of substantial compliance. The parties began with the definition of substantial compliance provided in the NSA. According to the NSA, "substantial compliance" means that OPD has complied with the material provisions of the NSA. The NSA explains that materiality is determined by reference to the overall objectives of the Agreement, and, further, that non-compliance with technicalities, or otherwise minor failures to comply, while generally complying with the NSA, will not be deemed a failure to substantially comply.

The IMT proposed, and the parties agreed, that the IMT recommend to the Court that OPD be considered in "substantial compliance" if OPD comes into compliance with the NSA requirements as assessed pursuant to previously agreed-upon protocols, and maintains this compliance for one year. As reported in our tenth status report, the parties and the IMT previously expended considerable effort developing these protocols for assessing OPD's compliance with the NSA. The parties recognize that these protocols may be modified if the parties and the IMT agree.

This definition of substantial compliance requires that OPD come into compliance with the material provisions of the NSA by January 21, 2009, and maintain that compliance until January 21, 2010. Achieving substantial compliance by January 2009 will require considerable

sustained effort and continued commitment by OPD and the City. The IMT knows from the close monitoring we have been conducting for over five years that this compliance is attainable, and we look forward to working with the Police Department to help it achieve this goal.

### **III. IMT MONITORING ACTIVITIES THIS REPORTING PERIOD**

The IMT regularly attends OPD Management Assessment Program and CrimeStop meetings; Internal Affairs Division weekly meetings; Executive Force Review Boards; Use of Force Review Boards; and monthly meetings required by the Settlement Agreement. The IMT routinely participates in ride-alongs with officers and meets with Plaintiffs' Attorneys and OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

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; the Assistant Chief; 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; City Council Members; the Office of the City Attorney; the District Attorney's Office; and the Public Defender's Office.

This reporting period, the IMT also went on-scene to the investigation of an officer-involved shooting; observed Academy and in-service training sessions of OPD officers; attended line-ups and command retreats; met with OPD Field Training Unit staff; attended meetings of the Performance Assessment System (PAS) steering committee; observed OPD's criminal and administrative investigations of critical incidents; and reviewed and analyzed OPD documents and files, including draft policies, investigations, police reports, and use of force reports.

In addition to the technical assistance provided during the above-listed activities, the IMT provided focused technical assistance in the areas of use of force and internal investigations. At OPD's request, IMT member Charles Gruber conducted a day-long use of force investigation training for supervisors and commanders. The IMT also conducted a review of cases IAD had closed as "service" or "no MOR (Manual of Rules) violation" complaints, and worked with IAD to improve its ability to ensure misconduct complaints are not incorrectly closed without sufficient investigations or proper findings. At OPD's request, the IMT also conducted a brief review of the IAD intake process and recommended measures to improve the efficiency and efficacy of IAD's intake unit. We continued to provide the Department with referrals to outside resources and agencies to assist it in addressing various compliance and/or operational issues.

OPD substantially revised a number of policies related to internal investigations of misconduct during this reporting period. OPD also sought several stipulations modifying the requirements of the Settlement Agreement. The IMT committed substantial time and effort to working closely with OPD and Plaintiffs' Attorneys to help them reach agreement on policy revisions and Settlement Agreement modifications that addressed OPD's legitimate concerns and

ensured that the revised policies and Settlement Agreement remain consistent with generally accepted best practices in policing as well as the Settlement Agreement's goals. The IMT continued to spend considerable time working with the parties to reach agreement on assessing compliance with the NSA and revising the review protocols and processes for assessing compliance with NSA tasks.

As discussed in this report, during this period, the IMT monitored OPD's progress on each of the 51 Settlement Agreement tasks. We completed actual practice compliance reviews of all or part of ten tasks: Methods for Receiving Citizens' Complaints (Task 7); Unity of Command (Task 19); Span of Control for Supervisors (Task 20); Use of Force Reporting Policy (Task 24); Use of Force Investigations and Report Responsibility (Task 25); Use of Force Review Board (Task 26); Firearms Discharge Board of Review (Task 30); Officer-Involved Shooting Investigation (Task 31); Use of Force Reports-Witness Identification (Task 35); and Academy and In-Service Training (Task 43). We are currently completing the reporting and "exit" process for Task 30 and will report on our compliance findings once we have had the opportunity to discuss them fully with the Department. We are currently conducting actual practice compliance reviews of all or part of seven additional tasks: Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Complaint Procedures for IAD (Task 5); Refusal to Accept or Refer Citizen Complaints (Task 6); Methods for Receiving Citizen Complaints (Task 7); Supporting IAD Process-Supervisor/Managerial Accountability (Task 16); Reporting Misconduct (Task 33); and Departmental Management and Annual Management Report (Task 48). The results of these ongoing compliance reviews will be reported in our next status report.

OPD has made notable progress in all of the areas assessed. As discussed below, OPD attained actual practice compliance with Task 19, Unity of Command; Task 24, Use of Force Reporting Policy; and Task 31, Officer-Involved Shooting Investigation. It also attained actual practice compliance with significant portions of Task 25, Use of Force Investigations and Report Responsibility; Task 26, Use of Force Review Board; Task 35, Use of Force Reports-Witness Identification; and Task 43, Academy and In-Service Training.

In light of the significant progress that is being made in these areas, in our view, OPD will soon attain full compliance if it continues its efforts and adopts the recommendations made in our review reports. As detailed below, OPD currently is in full or partial actual practice compliance with 38 Settlement Agreement requirements.

#### **IV. OPD ACCOMPLISHMENTS AND AREAS OF CONCERN**

##### **A. OPD Accomplishments**

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

## **Progress in Community Policing**

During this reporting period, OPD implemented or improved a number of programs that have the capacity to further more effective community policing.

In January, OPD implemented an area command system of policing. This approach means that management and accountability for OPD policing—including crime reduction, productivity, and police-citizen interactions—will be geographically, rather than temporally, structured. Geographic accountability is meant to improve efficiency and make OPD more aware of and responsive to crime-related problems in every neighborhood. It also has the potential to allow OPD officers, supervisors, and commanders to gain a deeper understanding of the neighborhoods in which they work and greater familiarity with the people who live and work there, too. Previously, only a small fraction of OPD's officers, problem-solving officers, foot patrol units, and crime reduction teams, were geographically based.

OPD has previously used a geographic area command structure with mixed success. However, we are hopeful that differences in OPD's efforts this time will bring about better results and will improve police-community relationships as OPD seeks to lower crime throughout Oakland.

One of the reasons the IMT is hopeful about the impact of geographic accountability on crime reduction and community policing is that it is accompanied by renewed efforts by the City and OPD command staff to reward proactive community policing and closely track and respond to crime trends. Performance evaluations now include greater focus on problem-solving community policing efforts and productivity. In OPD's bi-weekly Crimestop and Management Assessment Program (MAP) meetings, we have seen far greater emphasis on responding to crime trends. Each week an area commander discusses challenges in the commander's area. Commanders support particularly laudable proactive police work by bringing in individual officers for acknowledgement before the entire command staff. Problem-solving projects are routinely discussed. Communications with the community have improved. Chief Tucker has an "open door" policy with community groups active in Oakland, and attendance by officers at Neighborhood Crime Prevention Council meetings has reportedly improved. The citizen complaint process is more accessible and responsive than in the past. The passage of Measure Y by the Oakland community has made available resources for community policing that simply did not exist a few years ago. The Department is aggressively reaching out to other City agencies and community stakeholders to assist them in their efforts. One recent example is the Department's participation in a large scale, coordinated effort called "Operation Safe and Clean Streets" to address crime and quality of life issues in West Oakland.

As reported below, OPD has not yet completed the process of defining for itself how it will measure the impact of its community policing efforts; however, this should not detract from the very real progress OPD has made in attempting to integrate community policing into its everyday law enforcement efforts.

OPD and the City of Oakland now have in place a structure for effective community policing and have exhibited the will to make this structure work. The measures described above are significant steps to bringing about more effective community policing. We recognize that significant challenges, from filling patrol positions and bringing down investigative caseloads, to improving first-line supervision and accountability, remain. Nonetheless, OPD's efforts and successes in this critical area are significant and can be the basis for further success in Oakland's community policing efforts.

### **Improvements in Use of Force Reporting and Investigations**

OPD's new use of force policies comply with the Settlement Agreement and incorporate contemporary and constitutional law enforcement practices. The new policies mark significant progress in how OPD directs its personnel to use, report, and review force. Consistent with professional law enforcement agencies across the state and country, OPD's new policies require that uses of force be reported and subjected to escalating levels of supervisory response and review, depending on the level of force used. When these policies were first implemented, they caused considerable apprehension among OPD officers who were not accustomed to explaining or documenting their use of force in most instances, or to having uses of force closely reviewed by supervisors. Supervisors, in turn, were not accustomed to routinely responding to the field when officers used force or to assessing each force incident for policy compliance and training and tactical issues. OPD invested and continues to invest substantial time and energy in training officers, supervisors, and commanders on the new policies and procedures. In particular, the effort of the OPD Captain charged with implementing these force policies has been impressive and exemplary. He has committed long hours and exhibited a high level of thoughtfulness and competence as well as a keen understanding of OPD values and the day-to-day operational demands placed on officers and supervisors.

The use of force audits we conducted this reporting period allowed us our first systematic look at the impact of these policies. We were very pleased to find a marked improvement in OPD's use of force reporting and investigations. Officers and supervisors alike are becoming increasingly adept at reporting force and explaining why the type and level of force used was appropriate under the circumstances. OPD field supervisors are doing a much better job at identifying and interviewing non-OPD as well as OPD witnesses and describing and documenting any injuries that result to officers or to individuals upon whom the force was used. Supervisors are learning to assess factors that are critical to avoiding unnecessary or tactically unsound force, including whether officers attempted to use reasonable verbal means before resorting to force and whether the force was de-escalated or stopped when appropriate.

It appears that OPD's better use of force reporting and investigating is starting to pay off. The increased management oversight that OPD is exercising in this area helps protect against unnecessary force and provides a host of risk management benefits to the City and Department. By identifying and correcting training and tactical issues, OPD helps to protect officers from unnecessary injury and accusations, while respecting individuals' rights to be free from excessive force. According to the Department, it has experienced a decrease in excessive force allegations. According to the City, it has experienced a decrease in the number of lawsuits and claims filed against the City related to police conduct. When such allegations are made or claims

are filed, unlike in the past when the Department often could not locate contemporaneous information regarding the incident, it now has ready access to use of force reports and investigations completed at the time of the incident to help it assess and respond to the allegations.

We commend OPD's efforts in improving its use force reporting and investigations. We encourage the Department and the City to continue and expand its analyses of trends related to use of force to further measure the impact of its efforts in this area.

## **B. Areas of Concern**

### **Maintaining Standards in New Police Officer Training**

During this review period, we conducted a comprehensive assessment of the training OPD provides to police officer trainees in the Academy. We have also conducted two in-depth reviews of OPD's field training program. OPD has made significant strides in both its Academy training and field training programs. As discussed elsewhere in this report, there is room for improvement in the Academy. Nonetheless, the strengths of OPD's Academy are numerous. The Academy serves as a rigorous 24-week introduction to law enforcement. OPD's Academy provides future officers with a foundation in basic policing while incorporating instruction on leadership, ethics, community policing, and problem-solving—topics whose relevance and importance will not fade over the course of an officer's career. Once students graduate from the Academy, they are assigned to a 16-week field training program in which experienced officers teach them how to apply the lessons learned in Academy classrooms to working as patrol officers on the streets and in the community. Our last review of OPD's field training found a program that was well-supervised, held itself to high standards, and reinforced departmental policies, procedures, and values. Among the core improvements the Department has made to its field training program is the manner in which it selects, trains, and evaluates Field Training Officers. The FTO selection criteria require that individuals interested in serving as FTOs demonstrate not only knowledge of Departmental policies and procedures but also leadership skills, professionalism, ethics, and commitment to community policing. These officers must also attend an FTO training program.

OPD is operating in an extremely challenging climate. Oakland residents, police officials, and city leaders are all justifiably concerned about crime and public safety. In an effort to support OPD's crime-fighting efforts, the City has authorized funding and directed OPD to hire an additional 70 plus officers by the end of the year. In order to meet this aggressive hiring deadline, in addition to rapid recruiting and expedited background checks, OPD will need to use an outside Academy to train this volume of officers. This is because the Department does not have the infrastructure (classroom space, driving and shooting ranges, or sufficient numbers of instructors) to accommodate this many new hires in such a relatively short time period. The Department's training capacity is already stretched thin by the overlapping Academies that OPD has been running for the past year.

Notwithstanding the hiring mandate, it is critical that, as it moves forward, OPD maintains its current high standards not only in its recruitment of new officers, but also in Academy and field training. The job that police officers perform is too important, and the trust that the community places in police officers is too high, to take shortcuts. Cities pay a high price when they sacrifice police officer hiring, training, or supervision standards in order to put officers on the street rapidly. While shortcuts in background investigations, truncated academy training, the use of unqualified field training officers, and lax supervision may have helped some departments to swell their ranks quickly, they also have led to disastrous consequences. These consequences have included for example, in Miami and Washington D.C., unusually high numbers of rapid-hire officers who ended up being fired, involved in serious police misconduct, and convicted of criminal misconduct.

Shortcuts and lax oversight in OPD's own field training program were responsible, in part, for the events that led to the deep erosion in public trust necessitating the current Settlement Agreement. The Department has worked hard to address these issues. OPD well understands that the same good training that makes highly ethical officers also serves to develop officers who are energetic, responsive to the public, and proactive in their work.

We urge OPD to work to avoid reliving past pitfalls and to maintain high levels of integrity in police officer selection, training, and supervision. The stakes are simply too high to cut corners in these areas for the sake of expediency.

### **IAD Process As Surrogate Supervision**

As we continued to review internal investigation case files this reporting period, it became apparent that, despite the many excellent supervisors we encounter on a daily basis, there are too many instances of supervisors passing off to IAD matters that are the supervisor's responsibility to handle. This unnecessarily increases IAD caseloads while decreasing accountability in the field. In particular, we have been struck by the frequency of "complaints" IAD received from OPD supervisors regarding infractions by OPD members/employees, and of complaints that OPD supervisors take in the field but pass on to IAD with little or no inquiry of their own.

We have seen too many instances in which a supervisor immediately asks IAD to investigate an officer or civilian employee who has not been doing his/her work, has been late, or has been otherwise derelict in duty. In many of these instances, the appropriate response would be for the supervisor to document the problem, take corrective action, and continue to closely supervise the person. Where the behavior does become a pattern requiring the imposition of discipline, the sergeant should be charged with conducting the division-level investigation (if OPD deems a formal investigation is necessary). It may be that sergeants are erring on the side of reporting misconduct which, generally, is a positive development. However, given the importance of strong direct supervision and of reducing case loads where possible, sergeants may need additional training in how to handle these matters directly and should then be required to do so.

We have also seen many instances of reports to IAD from field sergeants regarding complaints of misconduct that have occurred in the field during an arrest or other interaction supervised by the sergeant. These reports are sometimes styled as “risk management memoranda” in the context of a use of force, or as “letters of advisement.” In very positive contrast to years past, upon receipt, IAD investigates these complaints, rather than filing them. However, it is the sergeant’s supervisory responsibility to do more than just relay a complaint to IAD. The sergeant, while on scene, can interview witnesses still on scene, take taped statements from complainants, and gather evidence far more easily than can an IAD investigator beginning the investigation days or weeks later. As important, this approach reinforces the fact that a sergeant is, to some extent, responsible for the actions of his/her subordinates. IAD should, of course, still review the investigation and conduct any necessary additional investigation to ensure that the fact-gathering and analysis are sufficient, but the initial steps in investigating field complaints should be handled by the sergeant taking the complaint.

First-line supervisors are the key to success in any policing agency, and OPD is no different. We encourage OPD to reinforce in supervisors their responsibility in this area, as in all other aspects of supervision, to be the first line of agency integrity and accountability.

## **V. COMPLIANCE OVERVIEW**

Our discussion of OPD’s compliance efforts and status is organized around the twelve 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.<sup>1</sup>

The twelve 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.

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<sup>1</sup> 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.

The following chart lists the 51 tasks and summarizes the current state of compliance:

<u>Task</u>	<u>Task Name</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	√	√		√ (11/06)
2	Timeliness Standards and Compliance with IAD Investigations	√	√	√	
3	IAD Integrity Tests	√	√	√	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	√	√	√	<i>Under assessment</i>
5	Complaint Procedures for IAD	√	√	<i>Under assessment</i>	
6	Refusal to Accept or Refer Citizen Complaints	√	√	<i>Under assessment</i>	
7	Methods for Receiving Citizen Complaints	√	√	√	<i>Under assessment</i>
8	Classifications of Citizen Complaints	√	√	√	
9	Contact of Citizen Complainants	√	√		

<b><u>Task</u></b>	<b><u>Task Name</u></b>	<b><u>Compliant Policy</u></b>	<b><u>Training Compliance</u></b>	<b><u>Actual Practice Compliance**</u></b>	
				<b><u>Partial Compliance</u></b>	<b><u>Full Compliance</u></b>
10	Procedure Manual for Investigations of Citizen Complaints	√	√		√ (11/06)
11	Summary of Citizen Complaints Provided to OPD Personnel	√	√	√	
12	Disclosure of Possible Investigator Bias	√	√		
13	Documentation of Pitchess Responses	√	√		√ (04/06)
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	√	√		√ (11/05)
15	Reviewing Findings and Disciplinary Recommendations	√	√		√ (11/06)
16	Supporting IAD Process-Supervisor/Managerial Accountability	√	√	<i>Under assessment</i>	
17	Audit, Review and Evaluation of IAD Functions	√	N/A		√ (12/05)
18	Approval of Field-Arrest by Supervisor	√	√		√(c)(6/07)
19	Unity of Command	√	√(c)		√ (2/08)*

<u>Task</u>	<u>Task Name</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	√	√(c)		
21	Members', Employees' and Supervisors' Performance Reviews	√	√(c)	√	
22	OPD/DA Liaison Commander	√	√		√ (6/07)
23	Command Staff Rotation	√	N/A		√ (11/05)
24	Use of Force Reporting Policy	√	√(c)		√ (4/08)*
25	Use of Force Investigations and Report Responsibility	√	√(c)	√	
26	Use of Force Review Board (UFRB)	√	√	√	
27	Oleoresin Capsicum Log and Checkout Procedures	√	√	√	
28	Use of Force- Investigation of Criminal Misconduct	√	√(c)		
29	IAD Investigation Priority	√	√		

<u>Task</u>	<u>Task Name</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	√	√(c)	<i>Report pending</i>	
31	Officer-Involved Shooting Investigation	√	√		√ (4/08)*
32	Use of Camcorders	√	N/A		√ (10/03)
33	Reporting Misconduct	√	√	√	<i>Under assessment</i>
34	Vehicle Stops, Field Investigation and Detentions	√	√	√	
35	Use of Force Reports-Witness Identification	√	√	√	
36	Procedures for Transporting Detainees and Citizens	√	√	√	
37	Internal Investigations-Retaliation Against Witnesses	√	√		
38	Citizens Signing Police Forms	√	√		√ (04/06)
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	√	√		

<u>Task</u>	<u>Task Name</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	√	√*(c)	<i>Not yet assessed</i>	
41	Use of Personnel Assessment System (PAS)	√	√*(c)	<i>Not yet assessed</i>	
42	Field Training Program	√	√	√	
43	Academy and In-Service Training	√	√(c)	√	
44	Performance Appraisal Policy	√	√(c)	√	
45	Consistency of Discipline Policy	√	√	√	
46	Promotional Consideration	√*	N/A	√	
47	Community Policing Plan	√	√	√	
48	Departmental Management and Annual Management Report	√	√(c)	√	<i>Under assessment</i>
49	Monitor Selection and Compensation	√	N/A		√ (8/03)

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
50	Compliance Unit Liaison Policy	√	N/A		√ (8/03)
51	Compliance Audits and Integrity Tests	√	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 Compliance<sup>2</sup>**

At the end of the ninth 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 the tenth reporting period, OPD achieved full policy compliance with the NSA by completing a policy for the outstanding task—Promotional Consideration (Task 46). 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.

During this reporting period, the IMT worked 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 Compliance<sup>3</sup>**

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 ten areas: Methods for Receiving Citizens’ Complaints (Task 7); Unity of Command (Task 19); Span of Control for Supervisors (Task 20); Use of Force Reporting Policy (Task 24); Use of Force Investigations and Report Responsibility (Task 25); Use of Force Review Board (Task 26); Firearms Discharge Board of Review (Task 30); Officer-Involved Shooting Investigation (Task 31); Use of Force Reports-Witness Identification (Task 35); and Academy and In-Service Training (Task 43).

OPD has made notable progress in all of these areas. As discussed below, OPD attained actual practice compliance with Task 19, Task 24, Task 31, and parts of Task 25, Task 26, Task 35, and Task 43. We are currently completing the reporting and “exit” process for the Task 30 review that was completed during this reporting period and will report our compliance findings

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<sup>2</sup> 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.

<sup>3</sup> 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.

once the exit process is completed. We are currently conducting actual practice compliance reviews of all or part of seven additional tasks: Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Complaint Procedures for IAD (Task 5); Refusal to Accept or Refer Citizen Complaints (Task 6); Methods for Receiving Citizen Complaints (Task 7); Supporting IAD Process-Supervisor/Managerial Accountability (Task 16); Reporting Misconduct (Task 33); and Departmental Management and Annual Management Report (Task 48). The results of these ongoing compliance reviews will be reported in our next status report.

OPD currently is in full or partial actual practice compliance with 38 Settlement Agreement requirements. OPD is in full compliance with the following 17 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); Unity of Command (Task 19); OPD/DA Liaison Commander (Task 22); Command Staff Rotation (Task 23); Use of Force Reporting Policy (Task 24); Officer-Involved Shooting Investigation (Task 31); Use of 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 21 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); Use of Force Investigation and Report Responsibilities (Task 25); Use of Force Review Board (Task 26); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigation and Detentions (Task 34); Use of Force Reports-Witness Identification (Task 35); Procedures for Transporting Detainees and Citizens (Task 36); Field Training Program (Task 42); Academy and In-Service Training (Task 43); 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).

## **VI. DETAILED COMPLIANCE REPORT<sup>4</sup>**

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.

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<sup>4</sup> The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

**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 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, although OPD was not yet in compliance with most of the NSA’s tasks related to internal investigations. The IMT will begin another comprehensive review of the tasks related to IAD during the upcoming reporting period.

During the tenth 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.

Also during the tenth reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. In addition, OPD proposed a series of changes to General Order M-3 and to its internal investigations policies and procedures. During the current reporting period, the IMT committed substantial time and effort working closely with OPD and Plaintiffs’ Attorneys to help them reach agreement on these policies and procedures as well as related modifications to the Settlement Agreement. The IMT and the parties worked to address OPD’s legitimate concerns regarding the internal investigations policies while ensuring that the revised policies and Settlement Agreement remain consistent with the policing field’s best practices and the Settlement Agreement’s goals. With the exception of one area, timelines for completing internal investigations of misconduct, the IMT agrees with the modifications agreed to by Plaintiffs’ Attorneys and OPD.

During the current reporting period, the IMT conducted a review of cases IAD had closed as “service” or “no MOR (Manual of Rules) violation” complaints, and worked with IAD to improve its ability to ensure misconduct complaints are not incorrectly closed without sufficient investigations or proper findings. Subsequent to the IMT’s review, IAD audited and reopened many cases that it determined had been incorrectly closed as service complaints or “no MOR” cases. In addition, during this reporting period and at OPD’s request, the IMT conducted a brief review of the IAD intake process and recommended measures to improve the efficiency and efficacy of IAD’s intake unit.

These activities are part of the IMT’s larger effort, described in our last report, to assist OPD’s efforts at improving its misconduct investigations and attaining compliance with the NSA. The IMT has continued routinely to attend IAD’s weekly meetings with the Chief (the existence of the meetings is a notable achievement in itself), offering assistance and insight regarding specific investigations and emerging trends. The IMT continues to conduct ad hoc reviews of OPD completed investigations and to communicate 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.

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 the tenth reporting period, OPD completed training for these members. Accordingly, we moved OPD from conditional compliance to full compliance for Task 1.

Also during the tenth reporting period, OPD published IAD Policy and 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 the tenth reporting period, the IMT confirmed that the Department has trained at least 95% of relevant personnel on this new policy. Also during the tenth reporting period, the compliance standards for Task 1 were lowered from 95% to between 85% and 90% depending on the particular provision.

During the current reporting period, the IMT clarified its review methodology for this task in response to questions from OPD. In addition, as part of our review of IAD's intake unit discussed above, we provided OPD with recommendations regarding ways to better utilize IAD staff.

## **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 revised these policies and procedures.

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 the tenth reporting period, the compliance standards for this task were lowered from 95% to 85% and the IMT revised its methodology for assessing investigation timeliness. The compliance requirement for this task was also substantively modified by the parties' agreement that an investigation of misconduct should be considered "timely" even if it takes longer than 180 days to complete, provided that the IAD commander approves the extension beyond 180 days and the IMT agrees. The IMT informed the Parties and the Court that this further extension, particularly in light of the agreement to lower the compliance level to 85%, is neither necessary nor advisable. This is because the quality of an investigation is in large part dependent on the availability of evidence that tends to dissipate over time. Quick completion of an investigation tells officers that their department understands the apprehension officers feel when they are under investigation and signals to the community the police department aggressively addresses allegations of misconduct. In the IMT's view, the new deadline for completing internal investigations of misconduct is not consistent with best practices and works against the Settlement Agreement's goal of high quality and timely investigations.

During the upcoming reporting period, the IMT will assess OPD's compliance with this task.

## **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 and 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 was 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. During the tenth reporting period, OPD worked to address some of the resource constraints. As a result of its efforts, IAD 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.

Our audit included additional 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 the tenth reporting period, OPD proposed additional criteria for identifying members/employees who are the subject of repeated allegations. During this reporting period, the IMT worked closely with IAD to finalize these criteria. OPD has now created a working definition of "repeated allegations of misconduct" and developed a protocol for reviewing complaint histories of officers that reach a threshold of complaints of certain types.

During the tenth reporting period, the compliance standards for this task were lowered from 95% to 90% and modified to include a more subjective pass/fail assessment. During the current reporting period, the review protocol for this task was revised to reflect the development of criteria identifying members/employees who are the subjects of repeated allegations of misconduct.

**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, these policies were revised.

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 had made important progress with this task and is in compliance with a number of its provisions, but was 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. These cases 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 the tenth 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 the tenth 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.

During the current reporting period, we began assessing compliance with parts of Task 4 relating to the receipt of complaints by IAD and forwarding informal complaint resolutions to IAD. We intend to complete that assessment and conduct a second assessment of the remainder of Task 4 during the next reporting period.

**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.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this part of Task 5. 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 was not yet where it needs to be and was not yet in compliance with this task. During the tenth reporting period, all but one of the compliance standards for this task were lowered from 95% to 85% or 90%.

Tasks 5.1 through 5.5 involve procedures related to OPD's response to complaints in the field. During the tenth 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. The new systems are incorporated in two new policies developed the tenth reporting period and finalized during 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 April 15, 2008, the Department had not yet trained 95% of relevant personnel on Policy C-2; the IMT will review training data to make this determination in upcoming reporting periods. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Special Order 8565.

Tasks 5.6 through 5.14 relate to complaints by Oakland City Jail inmates. 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 current reporting period, OPD worked with the IMT and the Plaintiffs' Attorneys to modify the Settlement Agreement to address the receipt of misconduct complaints by detainees regardless of which jail OPD takes them. This stipulation has been finalized and is pending submission to the Court. The IMT has revised its review protocol in light of these changes.

Since our compliance assessment of Task 5 during the ninth reporting period, we have worked with OPD to explore ways to improve compliance with this task and to maintain the significant gains it has made in this area. The IMT has 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. We continue to meet regularly with IAD to discuss cases and we review cases on an ad hoc basis to further assist IAD's efforts.

During the current reporting period, we began assessing compliance with parts of Task 5 relating to the receipt and forwarding of field complaints to IAD. We intend to complete that assessment and conduct a second assessment of Task 5.15-5.21 during the next reporting period.

**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. During the tenth reporting period, the IMT agreed to change the required compliance standard from 95% to a more subjective Yes/No assessment.

**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 from the Police Department. 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, during the current reporting period, several of these policies were substantially revised. In addition, during this reporting period, the Parties agreed to modify the Settlement Agreement's language related to the Task 7 requirement that OPD staff a recordable, toll-free complaint hotline that has an advisement that the call is being recording. As modified, OPD policy and the Settlement Agreement require that callers be advised that the call is being recorded only when a complaint is taken by IAD. After-hours calls taken by the Communications Division will not include this advisement.

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 the tenth reporting period, citizen complaint forms, into Spanish, Chinese, and Vietnamese.

During the tenth 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. A complete discussion of this review is included in our tenth status report. Also during the tenth 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.

Task 7 also requires OPD to accept and investigate anonymous complaints to the extent reasonably possible. During this reporting period, we completed a compliance review of this aspect of Task 7. OPD is not yet in compliance with the requirement related to anonymous complaints. After a review of dozens of cases that initially appeared to be anonymous complaints, we determined that 25 constituted anonymous complaints of misconduct. Of these 25 complaints in our data set, we found that 18 (72%) were investigated to the extent reasonably possible. In three cases, we were unable to determine whether the complaint was investigated to the extent reasonably possible, but based upon the available information, it appears it was not.

While OPD is not yet in compliance with the Settlement Agreement's requirement that anonymous complaints be investigated to the extent reasonably possible, it does a far better job investigating these cases than previously.

OPD no longer dismisses out-of-hand complaints made anonymously. In nearly every complaint we reviewed, IAD conducted some investigation of the complaint where at all possible. Our review found that IAD routinely took affirmative steps to attempt to re-contact anonymous complainants to obtain additional information, such as using call-tracing to identify the telephone number of calls made to dispatch and then calling those numbers in the hopes of reaching complainants.

There were many examples of good investigations of anonymous complaints. These are described in our review report for Task 7.3. In addition to the many good investigations of anonymous complaints, there were many cases we found out of compliance because investigators did not take the investigative steps that reasonably should have been taken. In each of these cases, these investigative steps could have changed the outcome of the investigation. These cases reflect some of the same problems we have noted in other investigations, as well as some particular to anonymous cases. We also found problems with inadequate and inaccurate documentation similar to what we have found more broadly.

It is impossible to know for certain whether these investigations would have been more substantive had the complainant not been anonymous, but in many instances, the available information suggests they would have been. For example, in one case, OPD had sufficient information to follow up on the complaint of excessive force by an anonymous caller, but did not. It may be that investigators believe that anonymous complainants are inherently less credible.

Our review report for Task 7.3 made a number of recommendations for improving investigations of anonymous complaints and attaining compliance. Upon receiving our report, IAD's commander immediately developed and presented to investigators a training regarding anonymous complaints detailing our findings and setting out our recommendations, which are discussed below.

IAD should continue to work on improving interviews of parties and witnesses and on improving and documenting analysis of credibility and evidence and resolution of discrepancies. IAD should reiterate to its investigators that anonymous complaints must be given the same consideration as investigations with named complainants. IAD should ensure that investigators understand that complainants are not necessarily less credible because they are anonymous.

OPD should reiterate to all dispatchers, IAD intake officers, and other OPD officials who may receive anonymous complaints, that, although it is proper to ask for the complainant's name and contact information, where the complainant is unwilling to provide this information, the person taking the complaint should not continue to seek this information and should instead reaffirm OPD's commitment to investigating anonymous complaints and attempt to obtain as much information as possible about the complaint. OPD should hold OPD members and employees accountable if they do not properly accept anonymous complaints.

IAD should ensure that Chronological Logs, Complaint Investigation Reports, and related documents are reliably accurate and complete and that investigative files include all information related to the investigation. This includes ensuring that the full description of the complaint and any information that might facilitate investigation is included in the CAL/case file. Similarly, Communications Division managers must ensure that complaint logs are reliably accurate and complete.

IAD should admonish all intake officers and investigators to listen to available recordings of complaints, rather than rely on written descriptions of complaints to determine their nature and whether there is enough information to allow for investigation of the complaint. IAD reports that, going forward, investigators and intake officers will listen to all audio recordings related to complaints.

OPD should record all call-backs to anonymous complainants. OPD is sometimes able to determine the telephone number from which an anonymous complaint was made. Because anonymous complainants are, by definition, difficult to contact, and because the investigator may learn enough about the nature of the complaint to conduct an investigation even where the complainant refuses to give a formal statement, every conversation with an anonymous complainant is significant. Currently, return calls to anonymous complaints are not routinely recorded. We recommend that all return calls be recorded.

In our view, the same factors impacting compliance with Task 7.3 impact compliance with other tasks related more generally to the quality of OPD's internal investigations. We will be assessing compliance with these tasks during the upcoming reporting period and hope to see substantial improvement in this area.

## **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, during this reporting period, the IMT worked closely with the Department to revise General Order M-3. In addition, as described below, this task was modified by stipulation.

This task was initially 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. This task was further modified during this reporting period by stipulation allowing an Acting Chief, Assistant Chief, or Deputy Chief to direct that a Class I investigation be conducted by a non-IAD investigator. Previously, only the Chief could order this.

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 the tenth 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.

The IMT intends to assess compliance with this task during the upcoming reporting period.

**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*. During the tenth reporting period, OPD proposed changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 the tenth 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.

**a. 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*. During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 the tenth reporting period, OPD improved documentation that, for example, members and employees are notified when a complaint is filed against them. At the beginning of the tenth 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 the tenth 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*. During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 the tenth 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 that 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 and Procedures 05-03. On May 3, 2007, the Department published Internal Affairs Policy and Procedure 07-02, *Pitchess Motion Process Manual*. The IMT has confirmed that the Department has trained 95% of relevant personnel on Internal Affairs Policy and Procedure 07-02.

During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 motions.

During the tenth 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. During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 the tenth 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**

- Except upon written authorization from the Chief of Police, the investigator's first-level commander/manager and the IAD Commander or designee shall be responsible for reviewing recommended findings. The Discipline Officer shall be responsible for making 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 reflect changes to OPD's disciplinary process. During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these policies. Also during this reporting period, the parties modified this task by stipulation so that investigative findings are reviewed by the investigator's first-level commander/manager and the IAD commander or designee. The new language is reflected in the iteration of Task 15 above. This change should streamline the internal investigation review process.

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 the tenth 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 the tenth 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*. During the tenth 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. As discussed above, during this reporting period, the IMT worked closely with the Department to revise these 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 the tenth reporting period, IAD developed a method for identifying Task 16 cases. It added a new Class I Manual of Rules provision specifically dealing with supporting 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 the tenth reporting period, both of the compliance standards for this task were lowered from 95% to 90%.

Our compliance assessment of Task 16 is ongoing and we intend to report our findings in the next status report.

**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, requires a number of measures 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 and training compliance for all six of the tasks in this area.

**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 the tenth reporting period, 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. Also during the tenth 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 the tenth reporting period, the IMT conducted its second audit of OPD's compliance in actual practice with Task 18. We found that, since our last review of Task 18, OPD had made significant progress in ensuring that its supervisors respond to the scene of designated arrests and that required elements are reviewed and documented sufficiently. We found OPD 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 found OPD in conditional compliance with the task. OPD will achieve full compliance with Task 18 upon satisfactory implementation and assessment of the outstanding provision.

The IMT did not assess OPD's compliance with the requirement that available witnesses be identified due to concerns raised by OPD, which we shared, 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, OPD has now 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.

During this reporting period, OIG conducted several assessments of OPD's compliance with Task 18. According to OPD, it was performing well in all areas of Task 18, with the exception of witness identification. An unacceptable number of reports were silent regarding the presence or absence of witnesses. Without this information, there is no way of determining whether there were no witnesses to an incident, or whether the witnesses were not identified. OPD has addressed this issue at several commander meetings. As noted above, we will be assessing OPD's compliance with this requirement in an upcoming audit. If the police reports show that witness identification is not occurring as required, OPD will fall out of compliance with Task 18.

During the tenth reporting period, 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 discern quickly that much of the data provided was inaccurate and/or simply outdated. The IMT spent a considerable amount of time working with Personnel, OIG, and other OPD units to assist them in compiling accurate staffing rosters. The Department acknowledged the deficiencies in its management of basic personnel data and undertook efforts to improve and modernize its personnel recordkeeping systems.

During the tenth reporting period, both of the compliance standards for Task 19 were lowered from 95% to 85%.

During this reporting period, we completed a compliance assessment of this task. We found that OPD is in 100% compliance with Task 19.1, requiring that each member or employee of OPD have a single, clearly identified supervisor or manager, and with Task 19.2, requiring that members and employees work the same schedules as the individuals they supervise.

In stark contrast to practice when the NSA first was implemented, our review showed that all OPD members and employees have a single, clearly identified supervisor or manager. Whether a member/employee had a single clearly identified supervisor or manager was determined by: whether the member/employee was assigned to a specific supervisor or manager, and that supervisor or manager was responsible for performing supervisory duties (e.g., completing appraisals, conducting bi-monthly performance reviews, conducting field supervision, approving arrests, and responding to uses of force).

We were able to clearly identify a single supervisor for each of OPD's 1015 members and employees as of June 1, 2007. Our review showed that OPD is doing very well in assigning a single, clearly defined supervisor to its officers.

We found that of the 665 members and employees reporting to a sergeant as of June 1, 2007, 86 had a schedule that varied by more than two hours or worked some different days than their sergeant. In addition, 15 members and employees had schedules listed on the organizational charts as "varies." Most of these employees were annuitants conducting background checks. The remaining members and employees worked the same schedules as their sergeants or had a schedule variance of two hours or less. Our review showed that each instance of a schedule variance greater than two hours or with different days off was justified by the nature of the member/employee's assignment, including his/her duties and the level of supervision otherwise being provided.

Our report included the following recommendations for improving performance in this area and maintaining compliance: 1) improve organizational tracking to ensure that OPD can quickly and reliably ascertain where members and employees work; the hours they work; and to whom they report; 2) consider providing additional supervisory coverage, either uniformed or civilian, in the Communications Division to improve the efficiency and effectiveness of this critical interface between OPD and the Oakland community; and 3) formalize the system for ensuring that significant events and job performance information is communicated between officers' unassigned and assigned sergeants.

**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. That review showed that OPD had not reached actual practice compliance with Task 20 and 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). During the tenth reporting period, OPD began the acting sergeant selection and training process and reported that

with assignment of several additional sergeants to patrol it soon should be able to meet the requirements of this task. In addition, OPD reported that pending completion of the acting sergeant selection and training process, it was trying 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 the 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.

During this reporting period, we conducted an abbreviated but dispositive compliance assessment of Task 20. Our review of the data quickly revealed that OPD did not adequately document the actual supervision of its units on a daily basis, particularly its specialized units such as Crime Reduction Teams and other tactical units. We had questions whether these units and patrol units were supervised by their primary supervisors during a sufficient percentage of shifts to be in compliance, and there was insufficient documentation to demonstrate an adequate percentage of shifts were supervised by a primary sergeant as required by this task. Additionally, there was also little evidence of documentation that backfill and special operations supervision.

We informed OPD that we would continue our data analysis if requested, but that our initial review of the data had already made clear that OPD was not in compliance with Task 20. Moreover, we were unwilling to stop the audit without a finding, as we had already done this twice for this task. OPD agreed that we should not expend further resources analyzing the data and requested that we meet to further explain our findings. We met with OIG to explain our findings and discuss with them steps for improving compliance. OIG has already begun to oversee implementation of changes in patrol and OPD's tactical units that should improve OPD performance in this area.

**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 Appraisals*, 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 the tenth reporting period, OPD published Special Order 8650, *Performance Appraisals*. In upcoming reporting periods, the IMT will confirm if OPD has trained at least 95% of relevant 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 the tenth reporting period, the parties reached a stipulation changing the bi-weekly meeting requirement so that it only applies to members and employees working in certain units or positions. Also during the tenth reporting period, many of the compliance standards for this task were lowered from 95% to 85% or 90%.

During this reporting period, the parties agreed that OPD would no longer be required to track the bi-weekly performance review meetings. Supervisors and Commanders must continue to hold these meetings and the IMT will assess compliance via interviews and observations.

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.<sup>5</sup> During the eighth reporting period, we found that supervisors' review of their subordinates' conduct for patterns of potential misconduct had much improved. However, we found that OPD was not yet in compliance with the requirement that it hold supervisory personnel accountable if there are patterns of improper behavior by their subordinates that supervisors do not identify. A complete discussion of our audit findings is included in our eighth status report.

**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.

**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 the tenth 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

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<sup>5</sup> In the future, we will assess these requirements in conjunction with Tasks 41 and 44.

due to bad reports, defective search warrants, granted motions to suppress, or contradictory evidence or testimony. A complete discussion of our findings is included in our tenth status report.

During the tenth reporting period, all of the compliance standards for this task were modified to include a more subjective pass/fail assessment. During this reporting, we continued to review the monthly reports produced by the MLL, to discuss MLL-related issues with the stakeholders, and to provide OPD with recommendations for improving the reports. The commander who was serving as the MLL was promoted during this reporting period and a new MLL was appointed. We look forward to working with the new MLL and assessing his performance.

**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 the tenth 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. 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 tenth 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 the tenth reporting period, 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 tenth 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*. Though this policy is not required by the NSA, it provides critical instruction to officers regarding a frequently encountered high risk activity. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Training Bulletin III-S.

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 required by the NSA. According to the Training Division, the Department has not begun training on Training Bulletin V-K, *Excited Delirium*. The Department reports that it has trained over 95% of relevant personnel on General Order B-12, *Firearms Range Program*; the IMT is currently auditing to confirm training compliance with this policy.

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. As discussed above in the Commendations section of this report, OPD has started to reap the fruits of its labor. As a result of the new policies and procedures and the consistent oversight and leadership in this area, there have been significant improvements in OPD's use of force reporting and investigations.

During this reporting period, the IMT conducted detailed compliance assessments of several of the use of force tasks. As discussed above, OPD has made significant progress in its use of force reporting and investigations. Our specific findings are discussed below.

**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 required by the NSA

During the tenth 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 the tenth 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 required by the NSA. According to the Training Division, the Department has not begun training on Training Bulletin V-K, *Excited Delirium*. Although this policy is not required by the NSA, it involves high risk activities. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Training Bulletin III-S, *In-Custody Ingestion of Narcotics*. The Department reports that it had trained over 95% of relevant personnel on General Order B-12; the IMT has requested training data to confirm this.

In addition, during the tenth reporting period, one of the compliance standards for this task was lowered from 95% to 90%.

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, for example, hand strikes, use of tasers or OC spray, pointing firearms at an individual. The new policies also require officers to summon their supervisors to the scene when certain levels of force are used or there is an allegation that such force was used.

Until the current reporting period, the IMT 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. During this reporting period, we continued to work with OPD to fully implement its new use of force reporting and investigative process. In addition, the IMT provided a day-long training to OPD supervisors and commanders regarding use of force investigations.

During this reporting period, the IMT conducted a compliance assessment of Task 24. OPD is in compliance with all of the requirements of this task. Task 24.1 requires OPD personnel to notify their supervisors as soon as practicable following any reportable use of force or allegation of excessive use of force. It also requires personnel to report force on the appropriate forms. Based on the use of force investigative reports and supplemental materials reviewed, personnel notified their supervisors and properly reported the force used in 96% of the cases we reviewed. In the cases that were out of compliance, supervisors were notified but not as soon as practicable. This appears to have been due, at least in part, to a lack of understanding of OPD's use of force reporting policies.

In addition to reviewing use of force reports completed by OPD personnel, we reviewed every Internal Affairs force complaint corresponding to the time period of the force reports reviewed. We reviewed these complaints as a means of assessing whether persons against whom force is used are reporting more or different uses of force than are being reported by OPD officers. In all but one of the 13 complaints we reviewed, we found that officers had complied with the Department's use of force reporting policies.

Task 24 also requires supervisors to respond to the scene upon notification of certain levels of force in order to conduct a use of force investigation. Supervisors responded as required in 98% of the cases we reviewed. The remaining requirements of Task 24 relate to notification of OPD's Homicide and Internal Affairs Divisions and the District Attorney's Office and City Attorney's Office when officers fire their weapons at suspects or use force that results in death or injury likely to result in death. We found that OPD notified Homicide and Internal Affairs as required in each of the officer-involved shooting cases reviewed. Likewise, although there were issues with documentation, we found that OPD notified both the District Attorney's Office and the City Attorney's Office as required by the Settlement Agreement.

Our assessment included several recommendations to assist OPD to remain in compliance with Task 24. These recommendations include providing periodic refresher training to all officers and supervisors regarding use of force reporting requirements, especially prior to special events or overtime assignments staffed by officers who do not usually work field assignments. We also recommended that OPD continue to review use of force reports for accuracy and to ensure that internal investigations of force complaints include an analysis of use of force reporting and notification requirements. Our final recommendation stressed the importance of holding officers and supervisors accountable when these requirements are not met.

**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 the tenth 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. In addition, some of the compliance standards for this task were lowered from 95% to 90%. 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 the current reporting period, the IMT continued to work closely with OPD to assist its implementation of its new use of force investigation processes. As discussed above, the IMT provided training to OPD supervisors and commanders regarding use of force investigations. The IMT also 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 also attended a number of Executive Force Review Boards and 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.

The IMT will continue to work closely with OPD in this area. Until this reporting period, the IMT 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 reporting period, the IMT conducted a compliance assessment of Task 25. Task 25.1 requires that Internal Affairs complete use of force reports in the most serious use of force cases including officer-involved shooting cases and other uses of force that result in or create a substantial risk of death or serious injury. For all other uses of force, depending on the level of force used, on-scene supervisors or officers are required to complete use of force reports. The compliance standard for this requirement is 95%. As discussed above, OPD is doing a very good job in adjusting to the new use of force policies. Use of force reports were completed as required by Task 25.1 in 98% of the cases we reviewed.

In addition to requiring that force be reported, Task 25 requires OPD to conduct timely investigations into the force used by its officers. This is an area still in need of significant improvement. The compliance standard for this requirement is 90%. However, only 21% of the investigations reviewed were completed within the Department's deadlines and none of the most serious use of force cases were completed on time. These cases were completed between three to seven months late. Delays of this magnitude are problematic because any underlying training, tactics, and officer safety issues go unaddressed. We have discussed this issue with OPD and it was included as an area of concern in our third status report in 2004. The Department shares our concerns. To ameliorate this problem, OPD has reported that when its initial assessment of a critical incident reveals training, tactics, or officer safety issues, it will provide the involved officers with timely feedback rather than waiting several months for the Executive Force Review Board (EFRB) to occur. This stop-gap measure is a good one, but does not negate the need for timely completion of use of force investigations and EFRB review, particularly since the use of force investigation and review, if functioning properly, should provide additional insights into any training, tactical, or policy deficiencies related to the use of force incident.

OPD has had difficulty tracking the timeliness of its use of force investigations. The use of force database maintained by IAD contains a number of fields but does not allow for tracking the timeliness of investigations. In addition, the database contains a number of blank fields and data entry errors that impact the reliability of the database. These errors may also impact the reliability of the Department's Personnel Assessment System (PAS), an issue that we will assess as part of our PAS review. In recognition of these problems, BFO created its own use of force

tracking system. Using an Excel spreadsheet, the Bureau has begun tracking the timeliness of use of force investigations, including interim deadlines and extensions. The spreadsheet is maintained by the Bureau's administrative sergeant and is a step in the right direction. Based on the Bureau's spreadsheet, timeliness has improved in recent months but continues to be a problem, with the majority of investigations continuing to exceed the due dates. Recognizing that maintaining separate use of force tracking systems in Internal Affairs and BFO is inefficient and may cause additional data reliability and integrity concerns, OPD is working to integrate the two systems so that the Department is using a single system for tracking use of force cases. Additionally, it is planning to assign an officer to assist in tracking use of force cases and any necessary follow-up. These are positive developments that we encourage the Department to implement as soon as possible.

In addition to requiring that OPD conduct timely use of force investigations, Task 25 requires OPD to include certain information in each of its use of force investigations. The compliance standard for this requirement is 90%. We observed significant improvement in a number of areas, including ensuring that the officer who used force documents the incident; separating and separately interviewing officers; obtaining statements from other personnel who witnessed the incident; ensuring that force reports do not include the use of non-descriptive boilerplate language; and documenting and analyzing evidence. We found that the most improvement is needed in the following areas: ensuring that non-OPD witnesses are identified and interviewed; considering discrepancies in statements or other evidence; and considering training and tactical issues as part of the investigation. Overall, we found that 80% of the investigations reviewed included the information required by Task 25.

Task 25 also requires OPD supervisors to make specific recommendations regarding each use of force, including whether the force was proportional to the resistance encountered and reasonably related to the objective the officers were attempting; whether reasonable verbal means to resolve the situation were attempted, if feasible; and whether the force was de-escalated or stopped when appropriate. The compliance standard for this requirement is 90%. While we did not always agree with the recommendations that were made by supervisors, we were pleased to find that supervisors made recommendations on these topics in 97% of the cases we reviewed.

After use of force investigations are completed, they are required to be reviewed by the officer's chain of command and recommendations must be made regarding whether the force complied with OPD policy. In addition, reviewers are expected to order additional investigation where needed. The compliance standard for these requirements is 95%. Ninety-two percent of the cases were reviewed through the chain of command and 100% of the cases included a recommendation regarding whether the force complied with OPD policy. Eighty percent of the cases that required additional investigation included such a recommendation. As above, we did not always agree with the recommendations that were made by supervisors.

In all of the cases in which we disagreed with the recommendations and/or outcomes, we provided the reasons for our disagreement to OPD. We look forward to working with the Department to address these issues.

OPD is in compliance with the requirement that it train all patrol and Internal Affairs supervisors on how to conduct use of force investigations. Based on our review of training records, all 103 of OPD's current patrol and Internal Affairs supervisors have received some type of supervisory training on conducting use of force investigations.

Our review of OPD's use of force investigations included a number of recommendations to assist OPD in achieving compliance with all of the requirements of Task 25. These recommendations include integrating and ensuring the accuracy of the Department's use of force tracking systems; reinforcing use of force investigative deadlines to all field supervisors and commanders and holding them accountable when the deadlines are not met; and ensuring that all supervisors understand and are required to fulfill their responsibility to conduct probing inquiries into the force used by their personnel, including identifying and correcting training and tactical deficiencies; and holding officers accountable for out of compliance uses of force.

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

The IMT's work assisting OPD to implement its new use of force processes has included providing training to OPD supervisors and commanders regarding use of force investigations; attending Force Review Boards and Executive Force Review Boards; and having 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.

During this reporting period, the IMT conducted a compliance assessment of Task 26. Task 26.1 requires OPD's Force Review Board (FRB) to review all Level 2 Use of Force Investigations following the completion of the investigation of the incident by a supervisor. Under OPD's current policies, the following types of force are considered Level 2 uses of force: any strike to the head (except for intentional strikes with an impact weapon which are considered

Level 1 uses of force); carotid restraints that do not result in the loss of consciousness; uses of impact weapons where contact is made; unintentional firearms discharges that do not result in any injuries; police canine bites; and any use of force which results in injuries to the subject requiring emergency medical treatment or hospital admittance. During the time period for the cases we reviewed, use of a taser was also considered a Level 2 use of force subject to review by the FRB.

The FRB reviewed all of the investigations in our audit sample following the completion of the investigation of the incident by a supervisor. Accordingly, OPD is in compliance with Task 26.1. However, we noted a wide variance in the quality of the reviews conducted. While some of the FRBs did a good job identifying important issues and making remedial recommendations, we found that other FRB reviews were perfunctory, failing to address significant tactical or training issues, including the effective use of tasers; the need to take cover when threats are presented; dealing with mentally ill offenders; improperly closing the distance on potentially armed suspects; command and control issues; and poor foot pursuit tactics. Based on our observations, it appears that some of the variance in the quality of the reviews may be due to the lack of a consistent high-level command presence at the FRBs. In a number of the cases we reviewed, the highest ranking commander attending the Board was a lieutenant. During the course of conducting our review, we informed the Department's use of force subject matter expert about our concerns in this area. In response, he began requiring that a deputy chief attend each FRB and if one is not available, that a patrol captain or other experienced captain attend the board. This is a positive development and one that we believe is critical for the Department to continue.

Task 26.2 requires the FRB to make a recommendation regarding whether the use of force was in or out of policy for every Level 2 use of force. The FRB made a recommendation in all of the Level 2 cases assessed. Accordingly, OPD is in compliance with Task 26.2. Based on our review of the investigative files, we agreed with the FRB's determination in all but one of the cases. The case in which we disagreed is an example of one of the cases discussed above.

Task 26.4 requires the FRB to make recommendations to the Chief of Police regarding additional use of force training; changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations. OPD is not yet in compliance with this requirement. OPD made sufficient recommendations to the Chief in only approximately one-third of the cases reviewed. In several cases where recommendations should have been made, the FRB did not make *any* recommendations to the Chief related to the incident. In other cases, while the FRB made at least one recommendation, the recommendations were not sufficient given the nature and seriousness of the issues requiring remediation. The FRB's recommendations were insufficient in these cases because the absence of recommendations and/or the recommendations that were made failed to address significant tactical and/or training issues that warranted recommendations to the Chief for remediation. These issues included unsafe tactics in conducting a vehicle stop; improper handling of a mentally ill offender; lack of supervisory command and control during an incident; improperly closing the distance on a potentially armed suspect; and not waiting for back-up.

Task 26.5 requires the FRB to conduct an annual review of the use of force cases it examines to identify any trends in use of force that may have policy or training implications. OPD is in compliance with this requirement. According to the FRB's annual review report, it conducted a total of 15 Force Review Boards in 2007 and reviewed 110 use of force investigations. Based on its review of these cases, the FRB identified the following patterns that have training implications: officers giving confusing or conflicting commands to suspects; officers failing to arrest for Penal Code 148/243 offenses; officers going "hands on" with suspects who are believed to be armed with a handgun; and officers failing to have victims/citizens sign arrest reports before taking police action. We are aware that during the course of the year, the FRB identified other trends in force issues, including a variety of training points related to tasers. However, these trends are not discussed in its annual review. The FRB addressed the issues identified in its review and other issues that were noted during the year in various ways, including working with the Training Division to provide line-up training reinforcing proper verbal commands; directing sergeants to re-train officers in particular areas and requiring the sergeants to notify the Training Division upon completion of the training; and sending email summaries to all commanders of training points that arose from FRB reviews. Beginning this year, the FRB began requiring officers to come into the FRB immediately following the Board's discussion of the incident. The FRB began this process in order to provide the officer and his or her sergeant "on-the-spot" counseling directly from the Board and to recognize good conduct. This is a positive development that we encourage the Department to continue. It helps to ensure that remedial training is provided quickly and since the training is coming directly from the FRB, there is less likelihood that the training message will be misinterpreted or misconstrued.

Task 26.6 requires the FRB to report its annual review findings to the Chief of Police. OPD is in compliance with this requirement. It issued a brief annual report summarizing its use of force trends review. The report was distributed to the Chief, Deputy Chiefs, and City Attorney's Office. The report contains global statistical information regarding the number of different types of force incidents and notes the trends discussed above. This report, however, does not provide any analysis or detail regarding the statistics. Since use of force is a critical risk management issue for the Department and City, the annual report would be much more useful to the Chief and other departmental managers if it included a detailed analysis of force issues, including discussing the circumstances in which officers use force of different types (including the circumstances preceding the uses of force, types of calls, numbers of officers, type of officer, suspect characteristics, geographic location of incidents, etc.); the nature of the force used (including, for example, length and number of taser deployments); the number and extent of injuries to officers and suspects; the canine bite ratio; and any policy or training recommendations related to these issues.

Our compliance assessment included several recommendations to assist OPD in attaining full compliance with Task 26. These recommendations include ensuring a consistent high-level command presence at FRBs; training and requiring FRB members to conduct more probing reviews; conducting a more detailed analysis of force issues each year; and continuing to provide direct, immediate counseling and feedback to officers following FRBs.

**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 the tenth reporting period, on December 29, 2006, OPD published Department General Order C-8, *Oleoresin Capsicum*. The IMT has confirmed that the Department has 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 the tenth 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.

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

During this reporting period, OPD continued to report officers' compliance with the OC check-out requirements at its Management Assessment Program (MAP) meetings.

**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 the tenth 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. A discussion of our audit findings is included in our tenth status report.

The compliance standard for this task remains at the 95% level. During the current reporting period, the parties agreed that OPD will be considered in compliance with this task if it notifies the District Attorney within 24 hours of the Bureau of Investigations Deputy Chief learning of criminal misconduct by an OPD member. Previously, the BOI Deputy Chief was required to inform the District Attorney within two hours.

**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 the tenth 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. These changes did not materially alter the compliance requirements for this task. Also during the tenth reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

During the tenth 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. A discussion of our review findings is included in our tenth status report.

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

During the current reporting period, the IMT continued to attend OPD's Firearms Discharge Boards of Review, now referred to 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 noted above, during this reporting period, we continued to have regular discussions with the presenters, Board members, and commanders overseeing this process to learn their perspectives and provide any insights about how to enhance the EFRB functions.

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. Until this reporting period the IMT 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. During this reporting period, we continued to work with OPD in this area and completed a formal compliance assessment of several use of force-related tasks, including Task 30. This assessment has been completed but the reporting process is still underway. We will report on our findings once we have had the opportunity to discuss them fully with OPD and complete our review report.

## **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 the tenth 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. Also during the tenth reporting period, some of the compliance standards for this task were lowered from 95% to 90%.

OPD addressed most of the other provisions in Internal Affairs Policy and 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. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Homicide Policy & Procedure 01, *Lethal Force/In-Custody Death Investigations*; and 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 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.

Until this reporting period, the IMT 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 reporting period, we continued to work with OPD in this area and completed a formal compliance assessment of Task 31. We found that OPD is in compliance with all of the requirements of Task 31.

Task 31 requires that Homicide and Internal Affairs investigators respond to the scene of every officer-involved shooting. Both Homicide and Internal Affairs investigators responded to the scene of each of the officer-involved shootings reviewed to begin conducting separate, parallel investigations. Homicide investigators conduct a criminal investigation while Internal Affairs investigators conduct an administrative investigation. The administrative investigation focuses on policy and training compliance, whether proper tactics were used, and other risk management issues. Prior to the NSA, OPD did not conduct administrative investigations of officer-involved shootings. As a result, it missed opportunities to identify and correct deficiencies in this critical area. The Department is now doing comprehensive administrative investigations of officer-involved shootings and reviewing them at the highest levels of the Department. The on-scene response by Internal Affairs investigators is a central component of these administrative investigations. Previously, only Homicide investigators responded to the scene of officer-involved shootings. When Internal Affairs first began "rolling out" to the officer-involved shooting scenes, there was a predictable adjustment period in the Department. Investigators and commanders from both Homicide and Internal Affairs had to determine their respective roles and responsibilities while on the scene. Officers had to adjust to the presence of Internal Affairs in a situation that is already highly stressful and disorienting. Based on our observations on-scene and the improvements we have seen in officer-involved shooting investigations, the Department appears to have adjusted well to this more comprehensive response to shootings.

Task 31 also requires OPD to conduct OIS investigations in partnership with, and when deemed appropriate by, the Alameda County District Attorney's Office. In all of the cases reviewed OPD has cooperated with the District Attorney. According to the District Attorney's Office, OPD's cooperation with its office in investigating officer-involved shootings is exemplary. OPD notifies the District Attorney's Office in a timely fashion following officer-involved shootings, providing the District Attorney an opportunity to come out to the scene and participate in subject officer investigations. Likewise, OPD provides the District Attorney's Office with evidence it has gathered to assist the District Attorney in conducting its own assessments.

After the District Attorney's Office has completed its review, it issues its own officer-involved shooting report, informing the Department of its decision whether to prosecute the subject officers. Historically, it has taken months and in some cases over a year to receive the District Attorney's report. These delays have continued despite OPD having reached an agreement with the District Attorney's Office in late 2006 in which the Office stated that it would endeavor to provide OPD with a determination within two weeks of receiving OPD's completed investigative packet. The District Attorney's reports mark important closure to the Department's officer-involved shooting investigations. Excessive delays in receiving the District Attorney's determination prolong the already high levels of stress and anxiety experienced by officers who are involved in shootings. We have encouraged the Department to continue to work with the District Attorney's Office to address this issue.

**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.

During the tenth reporting period, the Department issued Department General Order I-15, *In-Car Video Management System*, and began beta-testing the ICVMS. During this reporting period, the Department completed installation of the in-car video systems into approximately 101

police cars. However, with the exception of four test vehicles, the systems are currently not operational due to a number of technical difficulties with the network used to upload data from the systems. According to OPD, the network is unstable apparently due to be a problem with the system software and the City's firewall configuration. OPD is working with the City's Information Technology Department to address these problems. The Department hopes that this can be completed sometime in May 2008. Once the system is operational, the videos captured by the cameras will be uploaded to the 911 Call Center where a dedicated employee will be responsible for maintaining and copying the videos. According to OPD, the videos will be retained for five years. Once the technical problems are addressed, OPD will need to train everyone on the new technology and work to ensure that the system is being used as intended and is kept operational through frequent inspections and maintenance. OPD intends to phase the cameras into use starting with one section of the City.

**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.

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

During the current reporting period, we began our second compliance assessment of Task 33. We will report on the findings of this assessment in our next status report.

## **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 the tenth 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 the tenth reporting period, the Department had not yet trained 95% of relevant personnel on these policies. The IMT has requested training data to 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 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 the ninth reporting period, OPD drafted new stop data forms. It remains to be seen whether these forms will decrease the confusion discussed above because OPD has opted to create two new forms, containing somewhat different fields. During the current reporting period, OPD began requiring all officers to use the new forms. The Department is using one form for those stops that result in a citation and another form for stops not involving citations. The Department has reported that it intends revise its Field Contact Forms to incorporate the stop data forms, thereby decreasing redundant paperwork that officers are required to complete. We support these efforts but encourage the Department not to create a third version of the stop data form when it makes this change.

During the tenth reporting period, OPD assigned a new manager to oversee the Department's SDFs. During the current reporting period, this manager regularly reported during MAP meetings her efforts to assess and improve OPD's efforts to accurately and consistently complete stop data forms. OPD's Bureau of Field Operations has also conducted at least two self-reviews of officers' completion of stop data forms and reported on these audits during the monthly monitor meetings. Noting that many officers are not completing all required fields on the forms, the manager is working to improve compliance in this area.

OPD's efforts have been focused on collecting stop data. Currently, however, OPD does not effectively analyze the stop data its officers painstakingly gather. Although not required by the NSA, if OPD were to analyze stop data and act upon information regarding "hit rates," etc., more officers, OPD management, and the City, will likely see the value in collecting stop data. More importantly, the efficiency and effectiveness of OPD's detentions and searches might well improve, benefiting officers and the community alike.

During the tenth 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 appeared 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 the tenth reporting period, OPD negotiated several changes to the NSA's use of force provisions and revised General Order K-4. Also during the tenth reporting period, all of the compliance standards for this task were lowered from 95% to 85% or 90%.

During this reporting period, we continued to work with OPD in this area and completed a formal compliance assessment of Task 35. Task 35 requires use of force reports to include the name, telephone number, and address of witnesses to use of force incidents when such information is reasonably available to the members/employees on the scene. It also requires that use of force reports document when there are no known witnesses. The compliance standard for these requirements is 90%. OPD is not yet in compliance with this task but we have seen substantial improvement. Eighty-three percent of the cases we reviewed included all of the required contact information or sufficient information to contact the witnesses should it be necessary (e.g., if a phone number was missing but the name and address were documented, we considered the case compliant) and/or stated when there were no known witnesses to the incident.

Task 35 also requires OPD to include in use of force reports the names of all OPD personnel who witness the incident. OPD is in compliance with this requirement. Based on the use of force reports and investigative files, all of the cases reviewed included the names of OPD members and employees who witnessed the use of force. We noticed a dramatic improvement in

this area. The reports we reviewed consistently included the names of OPD personnel who witnessed the use of force and generally also included the names of OPD personnel who were on scene but did not witness the incident. This practice provides risk management benefits to OPD, including assisting it in supervising and managing its personnel.

Our assessment included recommendations to assist OPD in attaining full compliance with Task 35. We recommended that OPD reiterate to supervisors and to commanders who review use of force reports the requirement to document all witnesses to use of force incidents and the information that must be documented, including noting when there are no witnesses. We also recommended that OPD hold accountable officers, supervisors, and commanders who fail to ensure documentation related to witnesses to uses of force.

**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 the tenth 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 appeared 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 conducted some internal audits and training to ensure compliance with Special Order 8262 and this Settlement Agreement provision.

During the tenth 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. We found OPD in compliance with the remaining requirement of Task 36. Members included the time, mileage, location, purpose of the transport, gender of the person being transported, and the identification of the transporting member in 84.8% of the transports we reviewed. A discussion of our review findings is included in our tenth status report. During this reporting period, OPD's Communications Division commander has worked to improve compliance in Task 36. In addition to assessing the Department's compliance, he has conducted additional training for dispatchers and provided OPD personnel with reminders regarding the information that is required to be called in on each stop. While these efforts are important for compliance purposes, they also help improve officer safety.

During the tenth 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. VI.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. 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 discussion of our findings is included 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 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.

During this reporting period, OPD revised its retaliation Manual of Rules (MOR) provision and drafted additional MOR provisions to further define OPD's rules regarding retaliation. The IMT reviewed and approved these MOR provisions, 398.73, *Retaliation*; 398.74,

*Retaliation, Accountability; 175.95, Retaliation; 175.96, Adverse Actions; 175.97, Protected Activities.* These MOR revisions are contained in Special Order No. 8789, published on January 22, 2008.

During this reporting period, OPD continued to provide quarterly reports to the Court listing the status of investigations into allegations of retaliation. The most recent of these was filed on March 26, 2008. 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 had 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 the tenth 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 and the OPOA engaged

in arbitration sessions earlier this year regarding this issue. 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 was not yet, taking to detect and track arrests and lawsuits of its officers. During the tenth reporting period, OPD drafted General Order E-3.1, *Department Notification Compliance Verification*, to address these issues. During the current reporting period, this General Order was published but has not yet been implemented. The IMT will closely monitor to ensure that this General Order is promptly and fully implemented. As of April 15, 2008, the Department had not yet trained 95% of relevant personnel on this General Order.

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 the tenth 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, 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 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 the tenth reporting period, OPD published Department General Order D-17, *PAS and IPAS – Supervisors, Commanders, and Managers*. While OPD trained at least 95% of its supervisors, managers, and commanders on the policy, it did not provide 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.

At the end of the current reporting period, OPD provided the IMT with revisions to General Order D-17. We are currently reviewing these revisions and will be working with OPD to quickly finalize these revised policies. We will report on these policies in our next status report.

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. According to OPD, it will provide training to all personnel after it has completed revisions of the policy.

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 tenth 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 the tenth 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 IMT met again with the PAS Administration Unit and the PAS Activity Review Panel. We continued to be impressed by their thoughtfulness and commitment to the PAS program. According to the Review Panel, PAS is starting to show positive results, including decreasing at risk conduct by individuals who have been identified for intervention through the PAS process. Additionally, during this review period, we continued to hear positive comments from supervisors and commanders about PAS, including how much they appreciate having ready access to more information about their subordinates. The IMT has refrained from conducting a formal assessment of PAS to allow for sufficient time for the system to be up and running. Now that the system has been operational for a period of time, the IMT will formally assess whether it meets the specific criteria set forth in the NSA. We will report on our assessment in a future status report.

During the tenth reporting period, the compliance standards for this task were modified to include a more subjective pass/fail assessment. During this reporting period, the parties agreed to slightly modify the PAS database to exclude the field for Other Supervisory Observations and Concerns. This information is already tracked in the Supervisory Notes File (SNF) for all officers, which is maintained and tracked at the bureau level.

## **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 the tenth 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. During the current reporting period, the IMT clarified its review methodology for this task. The task requirements and the IMT's methodology were not materially altered.

**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.

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. However, during this reporting period, OPD continued to consistently staff a position in the Unit that previously had been staffed on a sporadic basis. This is an encouraging and will likely assist the Department to maintain and improve upon the progress it has made in its Field Training Program.

During this reporting period, OPD continued to hire and train new officers and has plans to hire and train a large number of additional officers by the end of the year. In order to keep pace with the new hires, OPD will need to increase the number of FTOs available to train the new officers. The Department is already experiencing difficulty in this area and the problem will become more acute as the number of new officers increases. As discussed above, despite these pressures, it's critical that OPD not sacrifice the quality of field training it is providing to new officers by selecting unqualified FTOs and/or by otherwise lowering program standards. OPD shares our concerns and is exploring ways of increasing the pool of qualified FTOs. It is aggressively recruiting individuals who it believes would make good field training officers, has increased the financial incentive to work as an FTO, and is guaranteeing officers the right to transfer back to their original assignment after their FTO service is no longer needed.

During the tenth 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. During the current reporting period, the parties agreed that OPD should have additional flexibility in assigning new recruit trainees to specific Field Training Officers to address the needs of the trainee. OPD agreed that it will rotate trainees to at least two patrol areas during field training and to different field training officers, consistent with OPD policy.

**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 154<sup>th</sup> 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 155<sup>th</sup> Basic Academy class graduated. During the ninth reporting period, the 156<sup>th</sup>, 157<sup>th</sup>, and 158<sup>th</sup> Basic Academies graduated, along with the Seventh Lateral Academy. During the tenth reporting period, the 159<sup>th</sup> and 160<sup>th</sup> Basic Academies graduated. During the current reporting period, the 161<sup>st</sup>, 162<sup>nd</sup>, and 163<sup>rd</sup> 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, at the time the new policy was implemented, 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 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 met with the Department's expert and 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 was required by the NSA, OPD was not routinely documenting or tracking the training. This made 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.

The IMT completed an audit of this task during the current reporting period. We found that OPD is in compliance with most of Task 43, including requirements that: 1) OPD implement a training plan that includes elements required by the Settlement Agreement; 2) OPD training include additional emphasis on ethics and professionalism, critical thinking and problem-solving, conflict resolution, and relationships with the community; 3) OPD consult with at least four other large law-enforcement agencies that have excellent reputations for professionalism regarding the areas listed above in number two; 4) OPD training expand professionalism in all aspects of training (recruit academy, in-service training, and field training) using realistic scenario-based training exercises; 5) sergeants and commanders receive 40-hours in-service supervisory and leadership training before (for sergeants) or within six months of (for commanders) promotion; 6) all members receive 40 hours of training every 18 months; 7) sergeants receive at least 20 hours of supervisory training every 18 months; and 8) commanders receive at least 20 hours of commander training every 18 months.

We found that OPD is not in compliance with three important requirements: 1) that OPD's training plan ensures that certain OPD officers and employees are adequately trained for their positions and trained to use the most contemporary developments in policing; 2) that OPD's training plan establishes criteria and methods for selecting, training, evaluating, and maintaining records for OPD training instructors; and 3) that the complaint history of every in-service or Academy training instructor is reviewed prior to appointment and the instructor appointed only if the individual is shown to be supportive of the philosophy and values of OPD and to have not had a sustained Class I offense within the two years prior to appointment.

In many respects, we found that OPD training is exemplary. In several areas, it exceeds California's statewide standards for law enforcement training. OPD has committed substantial resources to improving and updating its training in recent years. OPD still needs to improve in some areas—most importantly in how it selects, retains, and evaluates training instructors. However, the quality of training we observed during this audit was uneven. In some instances, good training materials that had been painstakingly developed were unused and replaced with ineffective or substandard training. In addition, too many officers had not received the required amount of perishable skills training at the required frequency (every 24 months). This is a

significant deficiency because the perishable skills training is directly related to officer safety, focusing on issues such as tactical firearms, arrest and control procedures, tactical communications, and driving.

The IMT made several recommendations for improving performance in this area and attaining compliance: 1) improve methods of evaluating and documenting evaluation of instructor performance. OPD should conduct a minimum number of classroom observations of each instructor. These observations should be done by the Training Division Commander, Training Division staff, and/or by rotating OPD commanders from throughout the Department. Observers should be trained about what they are expected to assess and use a worksheet to document their observations. Substandard performance should be discussed with the Training Division Commander and corrected immediately. Performance appraisals should also include information regarding instructors' performance as instructors; 2) regularly review and update expanded course outlines to ensure inclusion of required content in all courses; 3) incorporate more small group exercises and scenario-based training in both Academy and in-service training; 4) initiate greater management oversight and coordination among instructors; 5) continue to review PAS data on training instructors to identify discipline or other issues of concern; 6) ensure that all new sergeants receive training prior to promotion; 7) adhere to General Order B-20 instructor selection process and conduct regular, well-documented audits of process to ensure adherence; 8) continue to encourage and support professional development of staff by facilitating opportunities for outside training and professional networking; and 9) conduct a Department-wide training needs assessment for every job category consistent with General Order B-20.

Prior to and during the course of our audit, energetic new Training Division staff, including the Division commander and the sergeant who serves as the Academy Coordinator, began addressing many of these issues. For example, the Training Division has revamped its perishable skills training schedule to ensure that officers attend the required training at the required frequency. The Division is also updating all of its instructor files and formalizing the instructor selection process. The Division has been extremely receptive to feedback, has acted immediately when concerns have been brought to its attention, and is striving to continually improve OPD training. Given these attributes, we believe that OPD can attain full compliance with the outstanding provisions of Task 43 relatively quickly.

During the tenth 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 the tenth 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 the IMT. As of April 15, 2008, 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 the tenth 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 the tenth reporting period, OPD published Special Order 8650, *Performance Appraisals*. As of April 15, 2008, 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 the tenth 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. We found that OPD had made some progress in completing the appraisals in a timely fashion, but was not yet in compliance with the Settlement Agreement's deadlines. However, OPD had made significant improvements in the content of performance appraisals completed. Based on our review, over 96% of performance appraisals completed contained the required content. This was in stark contrast to our previous audit in which we found that inclusion of required information was sporadic and more often than not missing than present. We also found that 96% of the appraisals reviewed included the required signatures from supervisors, managers, and commanders. In our previous audit, we found that signatures were largely illegible and/or missing from the appraisals. A complete discussion of our audit findings is included in our eighth status report.

During the current 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.

During the tenth 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 and again during the current reporting period. The task now provides that the Discipline Officer may prepare a Discipline Recommendation without convening a Discipline Conference, at the Chief's direction. 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 the tenth 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 the 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 the tenth reporting period, two of the compliance standards for this task were modified to include a more subjective pass/fail assessment. During this reporting period, the parties agreed that OPD would track and maintain disciplinary and corrective action resulting from an IAD or Use of Force Board finding, as well as Performance Deficiency Notices and Letters of Discussion in the centralized supervisory notes file.

### **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 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 the tenth reporting period, the Department published the Chief of Police memorandum on promotional consideration. In addition, according to OPD, its Personnel Department operates pursuant to draft Policy 07-02, *Personnel Division Policy and Procedure Manual*. However, this policy has never been published and it is unclear whether relevant personnel division staff have been trained on the policy.

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 the tenth 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 appeared 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 have long encouraged OPD to continue its efforts to incorporate assessments of its community policing and problem solving efforts into CrimeStop 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. As during the last reporting period, during this reporting period, OPD continued to more regularly include information regarding some of its problem solving efforts into its CrimeStop meetings. CrimeStop meetings now routinely include discussion of problem-solving efforts. In addition, CrimeStop meetings now include a presentation from a different area commander each week. In addition to highlighting recent challenges and successes, the commander singles out individual officers for particularly laudable proactive work.

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 the tenth 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. During the current review period, this information was provided

to the IMT. The IMT reviewed the information and provided comments to OPD. OPD has reported that it is reviewing the comments and is reworking its community policing policy. As we have previously noted, this information is critical to OPD's Task 47 compliance efforts.

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. We have previously 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 the tenth 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.

During the tenth 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.

During the current reporting period, we began a review of OPD's 2007 annual management reports. The IMT observed the management report meetings and has reviewed drafts of the annual management reports. Once we have been provided and have the opportunity to review the final annual management reports, we can complete this review. It is apparent from our review thus far that OPD practice in this area is much improved.

## **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. During this reporting period, the City Council approved a contract for the IMT to continue to monitor OPD's compliance with the Settlement Agreement until the end of the extension period.

### **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. During the tenth 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.

During this reporting period, OIG experienced challenges due, in part, to the overlapping long-term absences of both of its top managers and to continuing staff turnover. Both of the managers have now returned and we are working with OIG to assist it in managing the reform process. As we have previously discussed, OPD's 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.

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

The NSA requires OPD to prepare semi-annual reports describing the steps taken during the reporting period to comply with the NSA. OPD published its last semi-annual report, the Combined 8th and 9th Semi-Annual Report, in December 2007. OPD intends to publish its next report as a combined 10th and 11th Semi-Annual report in August 2008, covering the time period from July 2007 through July 2008.

## **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.

In 2007, OIG completed the following audits: MDT Audit (March 2, 2007); Management Level Liaison (April 10, 2007); Informal Complaint Resolution (September 21, 2007); Investigation of Allegations of Lawsuits and Claims (September 21, 2007); Receiving and Processing Complaints (September 24, 2007); Personnel Practices (August 31, 2007); MDT (December 26, 2007); and Methods for Receiving Complaints (December 26, 2007). Additionally, OIG recently conducted an audit of Performance Review Meetings (March 25, 2008).

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 8th and 9th Semi-Annual Report discusses OIG's audits. Accordingly, OPD is in compliance with Task 51.3.

During the tenth reporting period, the compliance standards for this task were modified to include a more subjective pass/fail assessment. Also during this reporting period, the IMT recommended that OIG shift resources away from auditing Mobile Data Terminal (MDT) usage for Settlement Agreement purposes (OPD should still audit as part of routine management and supervision). OIG's MDT audit is in many ways obsolete given the prevalence of both Department-issued and personal cell phones by OPD officers, and OIG's last audit of MDTs found very low usage rates. The IMT recommended that OPD instead develop a policy that would cover use of cell phones and other electronic devices by officers because OPD lacks such a policy. OPD recently developed a cell phone policy that includes a number of important provisions. However, it does not include key provisions to ensure that commanders proactively manage the use of cell phones or other electronic devices including, for example, reviewing the use of devices following critical incidents such as officer-involved shootings. The OIG has decided that it will continue to conduct the MDT audit required by the NSA.

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.

## **VII. CONCLUSION**

This is an extraordinarily challenging time for the City of Oakland and the Oakland Police Department. Oakland's residents and Police Department are justifiably concerned about crime. We commend the City and the Department for recognizing that the requirements of the NSA are not only consistent with OPD's broader crime fighting efforts, they bolster these efforts. The systems OPD is implementing to comply with the NSA are systems that, among other things, make OPD more responsive to community concerns; reward officer productivity; support accountability of officers who are not performing as they should; and improve the quality of officer training. We look forward to continuing to work with the Oakland community to implement and maintain these systems.