

FOURTEENTH 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 (retired)
Christy E. Lopez, Esq.
Robin Busch-Wheaton, *Project Coordinator*
Aubrie Nuño-Pelayo, *Administrative Assistant*

January 13, 2010

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. IMT MONITORING ACTIVITIES THIS REPORTING PERIOD	1
III. LOOKING FORWARD AND LOOKING BACK: EFFECTIVE AND RESPECTFUL POLICING IN OAKLAND	2
IV. COMPLIANCE OVERVIEW	7
A. <u>Policy Compliance</u>	13
B. <u>Training Compliance</u>	14
C. <u>Actual Practice Compliance</u>	14
V. DETAILED COMPLIANCE REPORT	15
A. Internal Affairs Division (IAD) (Tasks 1–17; S.A. III.)	15
1. IAD Staffing and Resources (Task 1).....	17
2. Timeliness Standards and Compliance with IAD Investigations (Task 2).....	18
3. IAD Integrity Tests (Task 3).....	20
4. Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4).....	22
5. Complaint Procedures for IAD (Task 5).....	24
6. Refusal to Accept or Refer Citizen Complaints (Task 6)	27
7. Methods for Receiving Citizen Complaints (Task 7)	28
8. Classifications of Citizen Complaints (Task 8)	30
9. Contact of Citizen Complainants (Task 9).....	32
10. Procedure Manual for Investigations of Citizen Complaints (Task 10).....	33

11.	Summary of Citizen Complaints Provided to OPD Personnel (Task 11)	33
12.	Disclosure of Possible Investigator Bias (Task 12)	35
13.	Documentation of Pitchess Responses (Task 13)	36
14.	Investigation of Allegations of <i>Manual of Rules</i> Violations Resulting from Lawsuits and Legal Claims (Task 14)	37
15.	Reviewing Findings and Disciplinary Recommendations (Task 15).....	38
16.	Supporting IAD Process-Supervisor/Managerial Accountability (Task 16)	39
17.	Audits, Review and Evaluation of IAD Functions (Task 17).....	41
B.	Supervisory Span of Control and Unity of Command (Tasks 18–23; S.A. IV.)	41
1.	Approval of Field-Arrest by Supervisor (Task 18).....	42
2.	Unity of Command (Task 19).....	43
3.	Span of Control for Supervisors (Task 20).....	45
4.	Members’, Employees’, and Supervisors’ Performance Reviews (Task 21).....	47
5.	OPD/DA Liaison Commander (Task 22)	49
6.	Command Staff Rotation (Task 23).....	50
C.	Use of Force Reporting (Tasks 24–32; S.A. V.).....	50
1.	Use of Force Reporting Policy (Task 24)	52
2.	Use of Force Investigations and Report Responsibility (Task 25)	55
3.	Use of Force Review Board (UFRB) (Task 26)	59
4.	Oleoresin Capsicum Log and Checkout Procedures (Task 27)	61
5.	Use of Force-Investigation of Criminal Misconduct (Task 28).....	63

6.	IAD Investigation Priority (Task 29).....	64
7.	Firearms Discharge Board of Review (Task 30)	65
8.	Officer-Involved Shooting Investigation (Task 31).....	66
9.	Use of Camcorders (Task 32)	68
D.	Reporting Procedures (Tasks 33–39; S.A. VI.)	69
1.	Reporting Misconduct (Task 33)	70
2.	Vehicle Stops, Field Investigation and Detentions (Task 34).....	72
3.	Use of Force Reports-Witness Identification (Task 35)	74
4.	Procedures for Transporting Detainees and Citizens (Task 36)	76
5.	Internal Investigations-Retaliation Against Witnesses (Task 37)	78
6.	Citizens Signing Police Forms (Task 38)	79
7.	Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39).....	80
E.	Personnel Assessment System (PAS) (Tasks 40–41; S.A. VII.).....	82
1.	Personnel Assessment System (PAS)- Purpose (Task 40)	83
2.	Use of Personnel Assessment System (PAS) (Task 41)	85
F.	Field Training Program (Task 42; S.A. VIII.).....	85
1.	Field Training Program (Task 42).....	86
G.	Academy and In-Service Training (Task 43; S.A. IX.).....	88
1.	Academy and In-Service Training (Task 43).....	89

H.	Personnel Practices (Tasks 44–46; S.A. X.).....	91
1.	Performance Appraisal Policy (Task 44).....	92
2.	Consistency of Discipline Policy (Task 45).....	94
3.	Promotional Consideration (Task 46).....	98
I.	Community Policing (Task 47; S.A. XI.)	100
1.	Community Policing Plan (Task 47).....	100
J.	Departmental Management and Annual Management Report (Task 48; S.A. XII.).....	102
1.	Departmental Management and Annual Management Report (Task 48)	102
K.	Independent Monitor Selection and Compensation (Task 49; S.A. XIII.).....	104
1.	Independent Monitor Selection and Compensation (Task 49)	104
L.	Compliance Unit (Tasks 50–51; S.A. XIV.).....	104
1.	Compliance Unit Liaison Policy (Task 50)	105
2.	Compliance Audits and Integrity Tests (Task 51)	106
VI.	CONCLUSION	107

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 fourteenth status report and the final status report of the IMT. This status report addresses the status of OPD's compliance with the Settlement Agreement as of January 13, 2010, and provides a brief recounting of some of the significant achievements OPD has made during the past seven years.

The NSA was initially scheduled to terminate on January 21, 2008. In March, 2007, the Court extended the Settlement Agreement for two years, until January 21, 2010, because the City and OPD had not achieved substantial compliance with the material provisions of the NSA, as required under the terms of the agreement. While OPD continued to make significant progress in complying with the NSA, in early 2009 it became clear to all parties that the City and Department would not be in substantial compliance with the NSA by January 21, 2010. Consequently, the Court directed the parties to come to an agreement regarding how compliance will be assessed after January 2010. The IMT informed the parties that it would not be available to serve as the monitoring team for any further extension period and assisted the parties to craft an agreement for completing the remaining reform work. On November 13, 2009, the parties reached a Memorandum of Understanding (MOU) to extend the majority of the NSA for another two years, until January 21, 2012. The City and Plaintiffs' Attorneys jointly interviewed monitor candidates, and selected a new entity to monitor compliance during the extension period. The Court has approved the parties' selection of Police Performance Solutions, LLC.

II. IMT MONITORING ACTIVITIES THIS REPORTING PERIOD

The IMT continued to provide ongoing monitoring and technical assistance during this reporting period.

The IMT regularly attended OPD Management Assessment Program and Crime Stop meetings; Internal Affairs Division weekly meetings; Executive Force Review Boards; Use of Force Review Boards; and the monthly meetings required by the Settlement Agreement. The IMT continued to meet with OPD officers, supervisors, commanders, and managers to discuss policy development and implementation, training, and other compliance issues.

OPD staff with whom the IMT met included officials from the Office of Inspector General, Bureau of Field Operations, Bureau of Investigations, Bureau of Services, Internal Affairs Division, and Training Division; OPD officers, supervisors, and commanders, including sergeants, lieutenants, and captains; the Discipline Officer; each of the three Deputy Chiefs; the former Acting Chief Howard Jordan and current Chief Anthony Batts. In addition, the IMT met with a variety of other stakeholders, including: the Plaintiffs' Attorneys; Oakland community members and groups; the City Administrator; the Office of the City Attorney; Alameda County Sheriff's Department officials; and the Public Defender's Office.

This reporting period, the IMT also went on-scene to the investigations of officer-involved shootings; observed line-ups and Field Training focus groups; met with Training Division staff; attended meetings of the Performance Assessment System (PAS) steering committee; observed OPD's criminal and administrative investigations of critical incidents; observed staff training sessions; and reviewed and analyzed OPD documents and files, including draft policies, misconduct investigations, personnel appraisals, supervisory notes files, police reports, stop data forms, and use of force reports.

The IMT attended several meetings of the Board of Inquiry into the officer-involved shootings of March 21, 2009, including the three-day meeting during which the Board reviewed the evidence provided by OPD, deliberated, and reached its findings.

We also continued to provide the Department with technical assistance to assist it in addressing various compliance and/or operational issues.

OPD revised several policies during this reporting period. The IMT continued to work closely with OPD to ensure that policy revisions meet OPD's operational needs and remain consistent with generally accepted best practices in policing as well as the Settlement Agreement's goals. The IMT continued to assess whether OPD trained appropriate personnel in NSA-related areas. The IMT also completed actual practice compliance reviews of all or part of 15 NSA tasks.

III. LOOKING FORWARD AND LOOKING BACK: EFFECTIVE AND RESPECTFUL POLICING IN OAKLAND

The Negotiated Settlement Agreement has required a myriad of changes in how the Oakland Police Department operates. It has required changes in how officers are supervised, trained, and evaluated; how force is reported and investigated; and how complaints of officer misconduct are accepted, investigated, and resolved. It has required changes in how OPD measures its community policing efforts; records and tracks car and pedestrian stops; and tracks officer behavior. The NSA has required changes in how officers report misconduct that they see other officers commit; document accounts of force by civilian witnesses; report when they are arrested; and even document the transport of civilians.

Despite the number of NSA requirements — 51 tasks divided into hundreds of subtasks — the ultimate objective of the NSA is concise and straightforward: “to enhance the ability of the Oakland Police Department to protect the lives, rights, dignity, and property of the community it serves.” (*Negotiated Settlement Agreement at 1.*) Over the past seven years, the countless new practices, dozens of audits, scores of policy rewrites, hundreds of meetings, and thousands of interactions between officers and civilians throughout the City of Oakland have been working towards this objective. Going forward, though the number of tasks that will be monitored has changed, and the identities of those serving in roles ranging from Chief to outside monitor have changed too, this end goal must remain the same.

The extension of the Negotiated Settlement Agreement reflects that Oakland has not yet sufficiently achieved its goal of improving the Police Department's ability to protect the lives,

rights, dignity, and property of the Oakland community. But the fact that it is not there yet should not detract from the hard-fought and significant gains the Police Department has made over the past seven years.

Officers are better trained and provided greater and more consistent guidance and supervision than they were seven years ago. Where previously it was not unusual for 15 or more patrol officers to be “supervised” by one sergeant, it is now highly unusual for a sergeant to supervise more than eight officers. The implementation of NSA requirements for both academy and in-service training, as well as the Field Training Program, has meant that the hundreds of new officers who have begun since the initiation of the Settlement Agreement have been trained in many of the best practices in policing.

Supervisors are also better trained and better equipped to supervise their officers. Where it was previously not uncommon for sergeants to serve months or years before receiving supervisory training, it is now unheard of for a sergeant to begin supervising a squad before completing supervisory training. The innovative early identification and intervention system known as IPAS, a Settlement requirement that was initially feared, has made supervisors more effective. IPAS is now not only accepted within OPD, it is appreciated.

Use of force reporting and investigation, which was almost non-existent seven years ago, is now robust and continues to improve. In its acceptance and investigation of civilian complaints about officer misconduct, OPD is quite simply a different department. Where five years ago the IMT found several hundreds of complaints that were never investigated, OPD now investigates every complaint and its investigations of complaints continue to improve.

These and other Settlement Agreement requirements have also encouraged the strengthening of police-community relationships. It is now routine for patrol officers to attend community meetings at least once per quarter, a NSA requirement that was bitterly resented at the outset. More Oakland police officers are now involved in problem-solving approaches to policing, which rely on close interaction with the community and direct response to community concerns.

For the second year in a row, the Department has reported that the crime rate in Oakland has fallen. In 2009, OPD reported that crime decreased 10 percent, and that homicides fell at an even greater rate. In a recent news report discussing this drop in crime, the commander of OPD’s Homicide Section was quoted as saying that investigators are “developing more trust with victims’ families and witnesses.”

The reasons for changes in crime rates are complex and controversial, and, of course, police officers must respect constitutional and other legal rights regardless of any perceived impact on crime rates. Nonetheless, this recent downtrend, particularly in the rate of homicides, and its correlation with building better relationships with community members, bolsters what supporters of the Negotiated Settlement Agreement have said since its inception: that the reforms required by the Negotiated Settlement Agreement are not inconsistent with effective policing, but rather are required for the City of Oakland and the Oakland Police Department to better protect the “lives, rights, dignity, and property” of the entire Oakland community.

Acknowledging the gains that have been made, we recognize that more work remains. Based on our observations, experiences, and reviews while monitoring the Oakland Police Department for the past seven years, we believe there are three overarching areas in the Oakland Police Department culture that need to be more fully developed if Oakland is to achieve the objectives of the NSA.

Transparency

Transparency engenders trust and promotes accountability. The more the community knows about what the Police Department is doing and how it is doing it, the more engaged it will be — and the Police Department needs an engaged community if it is to effectively fight crime.

OPD is becoming more transparent. The public release of the March 21 Board of Inquiry report was a sea-change event towards transparency. As difficult as it was for OPD to convene this Board, provide it with sensitive information, subject itself to critique and criticism, and then publish the Board's report, it was ultimately a powerful step towards the healing necessary within the organization and an indication that the Department has come out stronger than before. This process also demonstrates how transparency is important not only outside a police department, but within it.

Chief Batts appears to be taking a more open, constructive, and proactive approach than his predecessors with the media, one of the main conduits of information between government agencies and the broader community. If this continues, it should help transform the OPD culture to one that is more transparent.

OPD now often, though not consistently, provides the results of its internal investigations of complaints of misconduct to the complainant, another move towards more openness with even its critics in the community.

Still, there are a number of basic components of transparency that OPD does not have in place. OPD can and should make publically available its General Orders and other non-sensitive policies and directives. OPD can and should more fully report on trends in uses of force, complaints of misconduct, and the outcome of its investigations and inquiries into both. While state law prohibits the release of some information, it permits the public release of more information than OPD currently provides. OPD should also provide more comprehensive and up-to-date crime statistics to the public. When requested, OPD should provide police reports and other public records promptly and without unnecessary redactions.

“Available to the public” should always include “available online,” negating the need for an individual to navigate the Police Administration Building or City Hall to obtain public information, and making the information less expensive both to obtain and to provide. Consistent with the City's Equal Access Ordinance, the Department should make every effort to provide materials in the languages most commonly spoken by Oakland's diverse communities.

OPD has the potential to fully implement two other valuable tools of transparency: video cameras and audio recorders. OPD should fully implement and maintain its flagging in-car

video system and should video-record all interviews of suspects and witnesses, as its criminal investigation rooms are equipped to do. OPD should require that officers use audio and/or video recorders, as feasible, when searching residences pursuant to conditions of probation/parole and when executing search warrants. Sometimes these recordings will reveal to the public that an officer made a mistake or committed misconduct; far more often they will exonerate the Department. Regardless, such recordings shine a spotlight on police actions, allowing for discussion that can be constructive and improvement that can be life-saving.

Responsibility and Accountability

OPD has made tremendous gains over the past several years in ensuring that OPD officers at all ranks understand their responsibilities, and in holding them accountable where they do not fulfill those responsibilities.

Sergeants are required to do far more than seven years ago to fulfill their obligations to supervise their subordinates. Sergeants are required to be in the streets with their officers to approve certain types of arrests, review higher level uses of forces, and respond where a civilian complains about his or her treatment by an officer. Performance appraisals are now completed on time (rather than one, two, or three years late) and are more substantive than seven years ago. None of these things were required, or routinely occurred, seven years ago.

Use of force investigations, almost non-existent seven years ago, are becoming more substantive and probing. It is not uncommon for board reviews of high-level force investigations to identify potentially dangerous tactics and recommend training or other corrective measures. The broader acceptance and improved investigation of complaints of misconduct promotes accountability, as does the greater frequency of officers receiving discipline for committing misconduct. The promotions process now takes into account the applicants' community policing efforts as well as any record of misconduct. The IPAS system allows for more accurate and complete reviews of officer activity and has resulted in interventions intended to address problems before they result in dangerous actions, lawsuits, or otherwise negatively impact the officer's career or police-community relations.

Despite these significant gains, OPD still has substantial work to do in this area. Our recent IAD review demonstrated that, while the Department's investigations are vastly improved, OPD still has a difficult time sustaining misconduct. OPD now generally gathers and documents the appropriate evidence, but too often does not reach a finding consistent with that evidence. Our review of OPD's disciplinary process demonstrates that, even where complaints of misconduct are sustained, OPD still too often does not impose appropriate discipline. Whether OPD can consistently objectively analyze allegations of misconduct is an open question. OPD, like most police departments, recognizes this challenge. OPD commanders have acknowledged that they realize that more misconduct occurs than is sustained and that there is some truth in a significant number of complaints. These perceptions, however, do not square with a sustained rate that remains in the single digits. This dynamic is not uncommon in police departments nationwide, but that makes it no less serious an obstacle to a constructive working relationship between the police department and the community it serves.

Our IAD and use of force reviews also demonstrated that OPD's longstanding problems with supervisors and commanders taking responsibility and supervising their subordinates in instances ranging from searching vehicles, serving a search warrant, or responding to a critical incident, continue. While fading, hopefully permanently, the culture of allowing the most assertive officer or officers to control the scene, regardless of rank, still occurs too often. In force and misconduct cases we have reviewed, this resulted at times in dangerous tactics, disregard for an individual's legal rights, and otherwise substandard police work. If OPD wants to substantially improve its ability to protect both its officers and community members, OPD must demand that supervisors and commanders exercise their authority as appropriate and hold them accountable where they do not.

Respect for Law and Community

A number of OPD commanders, complaining about the high number of misconduct complaints, have stated words to the effect of, "If we could just get our people to talk nice to people, there would be fewer complaints." This is as good a synopsis of the problem, albeit simplified, as any. We have seen and heard countless examples of OPD officers handling potentially explosive incidents and people with incredible patience and skill. These officers, and the Department's efforts to fight crime, are poorly served, and their efforts undercut, by those officers at OPD who exhibit little respect or concern for the community they serve or, at times, the laws they are sworn to uphold.

The lack of concern for the dignity and rights of individuals is too often evident in OPD searches of people, vehicles, and homes. OPD officials with whom we have spoken agree that officers need additional training on when and how it is legal to search people, vehicles, and residences, and our recent IAD review is consistent with our past observations in this area. Significant changes in the law have occurred within the past year and OPD in particular has faced a number of challenges on this front. OPD should work closely with its legal advisors in the City Attorney's Office to ensure that its policies are up to date and that officers are trained on conducting proper searches and held accountable where they conduct improper searches. Moreover, OPD should consider going beyond what the law requires, as many departments have done, to ensure that searches are not improperly influenced by conscious or unconscious bias rather than by objective evidence of wrongdoing. Conducting properly supported and legally defensible searches will not only result in greater respect for the dignity and rights of the people in Oakland, it can mean more effective and efficient use of police resources.

While the more extreme examples of rude or callous behavior by OPD officers are usually identified by IAD, at times it appears that supervisors, including some in IAD, do not recognize the level of inappropriateness of some officer's actions, whether an officer is describing in graphic terms to a young man how he will be raped in jail if he does not provide information the officer seeks, or simply loudly eating his lunch while on the telephone with a crime victim. We have reviewed cases of officers leaving children on their front porch after having arrested their parents, or of leaving individuals by the side of the road late at night in high-crime areas of Oakland after towing their car.

We believe that overall, these types of incidents are relatively rare (although for some officers we believe they are all too frequent). The fact that they are the subject of complaints indicates that they have not become accepted or expected practice. Moreover, we have witnessed and read many instances of officers going beyond what was required to ensure that they respected the dignity and rights of individuals as they carried out their law enforcement duties. Nonetheless, the ripple effect of unnecessarily demeaning or callous acts, combined with routine derogatory profanity by some officers and other unprofessional behavior, undercuts efforts to forge alliances in the community and results in a high number of complaints that requires the attention of scarce resources to resolve. To stop this unhelpful and unnecessary behavior, OPD needs to provide focused training to officers on how to interact with the public, take corrective action where necessary, and sustain complaints of such misconduct where the evidence shows that it occurred.

Even with the current Chief, who seems to understand the critical importance of professionalism and respectful policing, completing this fundamental change in culture and attitude will be difficult. But it is necessary for OPD to come into compliance with the remaining requirements of the Settlement Agreement and, more importantly, to appropriately protect the lives, rights, dignity, and property of the community it serves.

IV. COMPLIANCE OVERVIEW

Our discussion of OPD's compliance efforts and status is organized around the 12 Settlement Agreement sections from which OPD derived 51 "tasks." At the start of the monitoring process, the IMT reviewed OPD's task designations, found the task division to be workable, and in the interests of clarity and consistency, adopted the same designations.¹

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

As of the eighth reporting period, all 51 Settlement Agreement tasks became due. As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to achieve compliance with a Settlement Agreement requirement.

The following chart lists the 51 tasks and summarizes the current state of compliance. Every task has been assessed, thus a lack of any checkmark indicates that the task has not been found in compliance or is no longer in compliance.

¹ Section XV of the Settlement Agreement imposes additional obligations on the Parties (e.g., semi-annual status reports to the Court and meet-and-confer obligations). Because the IMT agrees with OPD that there is no need to "task" these obligations, they are not included in the description of compliance efforts and status. Nevertheless, failure to abide by these provisions would, of course, constitute a violation of the Settlement Agreement.

<u>Task</u>	<u>Task Name</u>	<u>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	√	√		√ (as of 11/06)
2	Timeliness Standards and Compliance with IAD Investigations	√	√		√ (6/09; 12/09)
3	IAD Integrity Tests	√	√	√ (9/09)	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	√	√		√ (5/09)*
5	Complaint Procedures for IAD	√	√	√ (11/09)	<i>Under assessment</i>
6	Refusal to Accept or Refer Citizen Complaints	√	√		
7	Methods for Receiving Citizen Complaints	√	√	√ (1/09)	
8	Classifications of Citizen Complaints	√	√		√ (4/09)
9	Contact of Citizen Complainants	√	√		√ (2/09)
10	Procedure Manual for Investigations of Citizen Complaints	√	√		√ (11/06)

<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>
11	Summary of Citizen Complaints Provided to OPD Personnel	√	√		√ (3/09; 10/09)
12	Disclosure of Possible Investigator Bias	√	√	<i>Under assessment</i>	
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; 7/09)
16	Supporting IAD Process-Supervisor/Managerial Accountability	√	√		
17	Audit, Review and Evaluation of IAD Functions	√	<i>N/A</i>		√ (12/05)
18	Approval of Field-Arrest by Supervisor	√	√	√ (12/08)	
19	Unity of Command	√	√		√ (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	√	√	√ (12/09)	
21	Members', Employees' and Supervisors' Performance Reviews	√	√		√ (1/09)
22	OPD/DA Liaison Commander	√	√		√ (6/07)
23	Command Staff Rotation	√	N/A		√ (11/05)
24	Use of Force Reporting Policy	√	√	√(1/10)	
25	Use of Force Investigations and Report Responsibility	√	√	√(1/10)	
26	Use of Force Review Board (UFRB)	√	√	√ (1/10)	
27	Oleoresin Capsicum Log and Checkout Procedures	√	√		√ (5/09)
28	Use of Force-Investigation of Criminal Misconduct	√	√		√ (7/09)

<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>
29	IAD Investigation Priority	√	√		√ (7/09)
30	Firearms Discharge Board of Review	√	√	√ (1/10)	
31	Officer-Involved Shooting Investigation	√	√		√ (4/08; 1/10)
32	Use of Camcorders	√	N/A		√ (10/03)
33	Reporting Misconduct	√	√	√ (6/09)	
34	Vehicle Stops, Field Investigation and Detentions	√	√	√ (2/09)	
35	Use of Force Reports-Witness Identification	√	√		√ (1/10)
36	Procedures for Transporting Detainees and Citizens	√	√		√ (12/08)
37	Internal Investigations-Retaliation Against Witnesses	√	√		
38	Citizens Signing Police Forms	√	√		√ (04/06)

<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>
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	√	√		√ (12/09)
40	Personnel Assessment System (PAS) – Purpose	√	√	√ (12/08)	<i>Under Assessment</i>
41	Use of Personnel Assessment System (PAS)	√	√	√ (12/08)	<i>Under Assessment</i>
42	Field Training Program	√	√		√ (4/09)
43	Academy and In-Service Training	√	√		√ (7/09)
44	Performance Appraisal Policy	√	√	√ (1/10)	
45	Consistency of Discipline Policy	√	√	√ (7/09)	
46	Promotional Consideration	√	<i>N/A</i>		√ (9/09)
47	Community Policing Plan	√	√		√(11/08; 11/09)

<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>
48	Departmental Management and Annual Management Report	√	√		√ (6/08)
49	Monitor Selection and Compensation	√	N/A		√ (8/03)
50	Compliance Unit Liaison Policy	√	N/A		√ (8/03)
51	Compliance Audits and Integrity Tests	√	N/A		√ (10/05)

A. Policy Compliance²

OPD has been in full policy compliance with the NSA since the tenth reporting period. Implementing new policies in a variety of areas and revising policies in many others has been a time-consuming and difficult process for OPD and represents a significant accomplishment. Attaining policy compliance has created a strong foundation for OPD’s efforts to fully implement contemporary professional policing practices.

The IMT worked with OPD throughout the life of the NSA to ensure that NSA-related policies were consistent with the NSA and best practices not only when they were initially implemented but that they remained consistent when undergoing normal revisions and updates. In general, revisions have resulted in improved policies that reflect the impact of the policy on actual practice and provide better guidance to OPD members and employees. OPD should continue to revise NSA-related policies as appropriate, with the new monitoring team assessing these new policies to provide assurance that policies remain consistent with the remaining substantive requirements.

² 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.

B. Training Compliance³

OPD has achieved training compliance with all of the Settlement Agreement tasks. Forty-four of these tasks require training prior to implementation. 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 reviewed OPD's training on revised NSA-related policies to ensure that OPD remained in training compliance with each task.

The IMT was pleased to hear Chief Batts intends to require documentation of training for all OPD directives, not only those related to the NSA. The IMT has long recommended documentation of all training for operational, risk management, and accountability reasons. Requiring documentation only for NSA-related directives raised the troubling possibility that OPD did not recognize the importance of ensuring that all Departmental training was actually received. The new Chief's approach will alleviate that concern.

A. Actual Practice Compliance

During this reporting period, the IMT completed actual practice compliance reviews of all or part of the following 15 tasks:

- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 3, IAD Integrity Tests;
- Task 5, Complaint Procedures for IAD;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 20, Span of Control for Supervisors;
- Task 24, Use of Force Reporting;
- Task 25, Use of Force Investigation and Report Responsibilities;
- Task 26, Force Review Board;
- Task 30, Firearms Discharge Board of Review;
- Task 31, Officer Involved Shooting Investigation;
- Task 35, Use of Force Reports—Witness Identification;
- Task 39, Personnel Arrested, Sued, and/or Served with Civil or Administrative Process;
- Task 44, Performance Appraisal;
- Task 46, Promotional Consideration; and
- Task 47, Community Policing.

We are currently completing actual practice compliance reviews of the following tasks and subtasks:

- Task 5.2-5.5; 5.15-5.19; and 5.21, Complaint Procedures for IAD;

³ 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.

- Task 12, Disclosure of Possible Investigator Bias;
- Task 40, Personnel Assessment System; and
- Task 41, Use of Personnel Assessment System.

The results of these compliance reviews will be discussed in detail in the assessment reports we provide OPD and the Plaintiffs' Attorneys upon completion of each actual practice review.

OPD has made notable progress in all of the areas assessed. Since our last status report, OPD attained actual practice compliance with the following three tasks:

- Task 35, Use of Force Reports—Witness Identification;
- Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process; and
- Task 46, Promotional Consideration.

The Department also attained actual practice compliance with portions of Task 20, Span of Control for Supervisors; Task 30, Firearms Discharge Board of Review; and Task 44, Performance Appraisal. OPD fell out of compliance with Task 24, Use of Force Reporting.

OPD currently is in full or partial actual practice compliance with 48 of the 51 Settlement Agreement tasks. It is in full compliance with 32 tasks and partial compliance with 16 tasks.

V. DETAILED COMPLIANCE REPORT⁴

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 between the parties and IMT.

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

⁴ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

Internal Affairs Policy & 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 had vastly improved, although OPD was not yet in compliance with most of the NSA's tasks related to internal investigations. As discussed below, OPD continues to improve in these areas.

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. 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.

During the eleventh 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, 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 to assist OPD's efforts at improving its misconduct investigations and attaining compliance with the NSA. During this reporting period, the IMT continued to attend IAD's weekly meetings with the Chief, offering assistance and insight regarding specific investigations and emerging trends. The IMT also continued to conduct *ad hoc* reviews of OPD completed investigations and to communicate any significant problems or trends to OPD.

During this reporting period, the IMT completed actual practice reviews in a number of IAD-related areas. In particular, we completed assessments of the timeliness of OPD's misconduct investigations; whether jail detainees are able to effectively lodge complaints of officer misconduct; and whether the supervisors of officers alleged to have committed

misconduct are notified. We are currently completing actual practice reviews of the quality of IAD's investigations; and whether IAD ensures that investigations are completed by impartial investigators. The results of these compliance reviews will be discussed in detail in the assessment reports we provide OPD and the Plaintiffs' Attorneys upon completion of each actual practice review.

The significance of the improvements in OPD's receipt and investigation of officer misconduct complaints cannot be overstated. OPD is a vastly improved department when it comes to misconduct investigations. As will be discussed in more depth in our pending compliance assessment report, OPD must still make several small but exceedingly difficult changes if it hopes to position itself to gain community confidence in its ability and willingness to hold accountable OPD officers for misconduct.

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 & 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 & 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 thirteenth reporting period, the IMT assessed whether IAD continued to comply with the specialized training required by Task 1 for IAD staff. In particular, we assessed whether the current IAD commanders, investigators, intake officers, case management officers, and Pitchess Motion officer attended a POST-certified Internal Affairs course as soon as possible following their assignment to IAD. We found that OPD remained in compliance with this requirement. Absent extenuating circumstances, OPD continued to provide the required training to relevant new personnel.

OPD is in compliance with Task 1. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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. 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. In order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days. Class I investigations are those involving allegations of serious misconduct, including excessive force, false arrest, and lying. Class II investigations are those involving allegations of less serious misconduct, including rudeness, performance of duty, and tardiness. 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. Extensions beyond 180 days are rarely acceptable or necessary.

During the twelfth reporting period, we audited OPD's actual practice using these new compliance standards and requirements. We found that OPD was not yet in compliance with timeliness standards for Class I investigations, but had a high rate of compliance with timeliness standards for its Class II investigations. For Class I investigations, OPD's compliance level was 79%, and for Class II investigations, OPD's compliance level was 92%. We found that IAD and OPD command staff were regularly monitoring compliance with the timeliness standards. We also found that, as required by the NSA, IAD staffing is adjusted to maintain timeliness standards if IAD experiences an unusual proliferation of cases and/or workload.

During the thirteenth reporting period, the IMT conducted another audit of the timeliness of OPD's misconduct investigations. We found that OPD was in compliance with the timeliness requirements of Task 2 for both Class I and Class II investigations.

During the current reporting period, the IMT once again audited OPD's misconduct investigation timeliness. We found that OPD had sustained its timeliness requirement for both Class I and Class II investigations. The compliance level for Class I investigations was 90% and for Class II investigations was 96%.

This sustained significant improvement in the timeliness of IAD investigations means that, on average, both officers and civilians live with the specter of an open IAD case for over two weeks less now than they did one year ago. This improved timeliness, along with our findings that OPD has improved other aspects of its investigations, such as quickly contacting complainants, almost certainly also indicates that investigations are being initiated more quickly, allowing for better investigations and sending a message of responsiveness to the community. OPD, including the supervisors who conduct division-level investigations as well as IAD investigators, deserve credit for better serving their own officers and the community in this way.

OPD has continued to improve in the area of disciplinary timeliness. We found that the disciplinary process was completed within the required 30-day period 98% of the time. This significant and steady improvement over our last reviews (95% in June 2009; 79% in December 2008) serves both officers and the community well.

In addition, the Department continues to show progress in ensuring that the statutory §3304 deadline is not exceeded: OPD reports that there are no presently pending investigations that have exceeded §3304 and that there have been none since our June 2009 review. No investigations in our dataset exceeded §3304.

Our review showed that, on average, officers are notified of discipline 143 days after the date of complaint in sustained cases. This shows continued improvement over what we found during our June 2009 review, when, on average, officers were notified of discipline 154 days after the date of complaint in sustained cases. (In our December 2008 review, we found that, on average, officers were notified of discipline 197 days after the date of complaint in sustained cases.) During this review, the notification of discipline did not occur until over 250 days in two cases, over 200 days in three more cases, and over 150 in several more. Again, this sustained improvement in timeliness serves the entire Oakland community.

OPD's 180-day timeline for the completion of IAD investigations is longer by far than most agencies' deadlines. Best practices require completion, except in unusual cases, of internal investigations within 30 or 60 days. A shorter timeframe means subject officers have an IAD case hanging over their heads for less time; sends a message to the community that the Department is responsive to their concerns about professional policing; and means that evidence is often fresher – and more reliable – than when cases drag on for months. IAD now has in place systems to ensure timeliness and is decreasing the previous crippling backlog of overdue investigations. As our most recent review demonstrated, half of Class I cases are already being completed in less than 130 days and half of Class II cases are being completed in less than 105 days. We encourage OPD to consider changing the IAD timeline back to 90 days, still a generous timeframe in comparison to many other agencies, and one that will better serve OPD officers and the Oakland community.

OPD is in compliance with Task 2. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. Although OPD 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 prevented it from developing successful integrity testing. Based on our review of the tests conducted, we agreed with IAD's assessments. 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 included: completing criteria for identifying members/employees who are the subject of repeated allegations of misconduct; improving the documentation and review process associated with integrity 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, the compliance standards for this task were lowered from 95% to 90% and modified to include a more subjective pass/fail assessment. During the tenth reporting period, OPD proposed additional criteria for identifying members/employees who are the subject of repeated allegations. During the eleventh reporting period, the IMT worked closely with IAD to finalize these criteria. OPD created a working definition of "repeated allegations of misconduct" and developed a protocol for reviewing complaint histories of officers who reach a threshold of complaints of certain types.

During the twelfth reporting period, using the recently developed protocol, OPD created reports identifying officers who may be appropriate subjects for integrity testing. The IMT reviewed OPD's reports and provided OPD with technical assistance regarding ways to adjust its review criteria to help make the process more effective.

During the current reporting period, the IMT conducted an assessment of whether OPD is conducting integrity tests of officers who have been deemed appropriate for testing and whether OPD is otherwise complying with the requirements of Task 3. We found that while OPD has developed standards and criteria for identifying individuals who are the subject of repeated allegations of misconduct, it has not conducted any integrity tests on such individuals. Thus, while OPD has done some integrity tests, it has not conducted any focused on individuals who are the subject of repeated allegations of misconduct.

The Department's reasons for not conducting any repeated allegations integrity tests include staffing and logistical challenges. As discussed in our audit report, however, the lack of such testing also indicates a failure by the agency to adequately train responsible personnel regarding conducting integrity tests. This failure is discouraging, given that such testing is not only mandated by the NSA, but also has the potential to reap significant risk management rewards, and may save officers' careers.

On a more positive note, our review found that, as the NSA requires, OPD conducted its selective integrity tests in accordance with the parameters IAD has established. We generally found that the conduct and documentation of these tests was good and had improved since our previous review.

Well-conceived and focused integrity testing can allow OPD to use its resources more efficiently. Such testing also has the potential to prove to OPD personnel and the community that the Department is capable of policing itself in a fair and proactive manner. We encourage OPD to develop an effective system for conducting integrity checks of officers repeatedly alleged to have committed misconduct.

OPD is not in compliance with Task 3. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews, or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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*. The Department revised these policies during the eleventh reporting period.

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

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 twelfth reporting period, we completed an actual practice assessment of eight of the ten distinct requirements of Task 4. We found that OPD had made significant progress since our last review of Task 4 and was in compliance with each of the requirements reviewed. For our assessment, we analyzed a random sample of informally resolved complaints (ICRs) approved by OPD between December 1, 2007, and April 15, 2008. OPD's policies require that specific information be documented for each ICR. OPD complied with this requirement at a rate of 97%. During our last review, OPD had a compliance rate of 90%.

In addition to requiring specific documentation for each ICR, Task 4 requires that the documentation be forwarded to IAD for review and that the documentation include sufficient information for IAD to follow-up on the incident if necessary. We found that every complaint reviewed complied with these requirements. Additionally, in 97% of the cases we reviewed, we were able to confirm that OPD initiated the formal complaint process as required when the ICR process did not resolve the complaint. We were able to determine in 99% of the ICRs we reviewed that OPD personnel did not unduly influence complainants to consent to the informal complaint resolution process. We found OPD in compliance with the requirement that it have a central control system for complaints and Departmental requests to open investigations. The Department also was in compliance with the requirement that every complaint received by any supervisor or commander be reported to IAD on the day of receipt or at the start of the next business day. Based on our review, 87% of the complaints reviewed met this standard. When the IMT previously sought to assess compliance with this provision, we were unable to do so because OPD did not have a reliable system for receiving or tracking complaints received outside IAD by field supervisors or other OPD members and employees.

Our review indicated that, with a couple of important exceptions, OPD's process for forwarding misconduct complaints made in the field to IAD generally is working and continues to improve. This system was designed to, and for the most part does: 1) track complaints that

are received directly by the Communications Division or relayed to the Communications Divisions by supervisors or officers in the field; 2) ensure that when complaints are received directly by the Communications Division a sergeant is assigned to respond to the complainant to initiate the complaint process; and 3) ensure that IAD is promptly informed of complaints logged on the Daily Incident Log (DIL) by the Communications Division. As previously reported, the implementation of this process reflects a striking cultural shift from years back when complaints that were not received directly by IAD were often lost or ignored.

During our review, we did identify some problems with the DIL system and with IAD learning of misconduct allegations that are made in connection with use of force incidents. We informed IAD of these problems and, to its credit, it took immediate action to address the problems, including conducting internal audits and reinforcing policy requirements with OPD supervisors.

In addition to the requirements discussed above, Task 4 requires that OPD ensure that all complaints it receives are processed and tracked. In sharp contrast to the practice a few years ago, when hundreds of complaints a year were not assigned an identifying number and were effectively lost and uninvestigated, our review of over 1,600 matters entered into the IAD database during the period reviewed demonstrated that all but four had received an IAD case number, which is assigned to all misconduct complaints, or an IAD intake number, which is assigned to all matters, including service complaints, that OPD determines are not misconduct complaints. Upon review of the matters that were not numbered, we determined that only one of them should have received an IAD intake number. This is a striking and important difference from past practice.

During the thirteenth reporting period, we assessed OPD's compliance in actual practice with the two remaining provisions of Task 4 and found that OPD was in compliance with all of Task 4. Our review reports contained a series of recommendations aimed at assisting OPD to address areas likely to cause it compliance problems and to ensure that the gains that have been made are maintained.

OPD is in compliance with Task 4. Portions of this task (4.7 and 4.10) will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*) The remainder of this task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with the remainder of this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 part of Task 5. A complete discussion of our audit findings is included in our ninth status report. We found that while OPD had 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 Task 5. 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*). The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Policy C-2 and Special Order 8565.

During the thirteenth reporting period, we audited OPD's compliance with these policies and procedures. We found that OPD has developed a system that does a good job at centralizing the receipt of field complaints and the forwarding of those complaints to IAD. This system appears to have resulted in better immediate response to field complaints, fewer "lost" complaints, and more complete and consistent information about complaints being sent to IAD. We found that implementation of the system is not yet where it needs to be but that if OPD focuses on compliance with its own policies and procedures, it should be able to come into compliance relatively quickly. During the thirteenth reporting period, OIG also reviewed OPD's practices in this area and reached similar findings. Our review report included a series of recommendations to assist OPD in its efforts.

During the thirteenth reporting period, we also completed an assessment of Task 5.20. Task 5.20 requires the IAD Commander to review all "filed" cases (i.e., cases that are not under active investigation due to certain specified reasons such as pending litigation or the unavailability of a the subject officer) on a quarterly basis to determine whether the conditions that prevented investigation and final disposition have changed. We found significant improvement in this area and that OPD is in compliance with the Settlement Agreement. In the past, OPD often placed "filed" cases in permanent limbo, never reviewing or resolving such cases. This is no longer the case. OPD now places such cases on its weekly IAD meeting agenda to help ensure that they are not lost or forgotten and no longer routinely delays cases because they are related to an underlying lawsuit. Our review report included several recommendations to help ensure that the gains made in this area are maintained and to help tighten up a few areas.

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 last 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 approved by the Court and the IMT revised its review protocol in light of these changes.

During the current reporting period, we assessed OPD's compliance with Task 5.6, which requires that an OPD supervisor respond to take complaints of serious misconduct incident to arrest from a jail inmate taken into custody by OPD. This requirement is complicated by the fact that OPD no longer operates any jail, so must coordinate with the Alameda County Sheriff's

Office (ACSO) to ensure that it is notified when a detainee makes a complaint. As part of our review, we met with ACSO jail officials and learned that current ACSO jail officials had no knowledge of this NSA requirement. Subsequent to this meeting and other conversations between OPD and ACSO, OPD agreed to ensure that the ACSO jails are stocked with complaint brochures and forms and ACSO drafted a memorandum informing ACSO jail intake staff of the NSA requirement and telling staff to refer detainees complaining of OPD misconduct to the arresting or transporting officer. If the arresting officer has left, jail staff is told to provide a complaint form and “if the circumstances of the complaint are serious,” the staff person “can” call the OPD “Special Complaint Line.” OPD has no plans to provide posters or other high-visibility information to inmates, nor visit jail staff to ensure they understand this requirement.

We found that this change, if implemented, is an improvement that will help ensure that complaints about serious misconduct are not lost when a complainant is brought to jail. However, given how recent this new system is, and past problems with taking complaints (see, e.g., our Task 4.7 and Task 6 reviews), there is insufficient information at this point upon which to base a finding that there is a system in place that will ensure OPD supervisors respond to contemporaneous complaints by jail inmates about serious misconduct incident to arrest.

During the current reporting period, we also completed reviews of Tasks 5.2-5.5, 5.15-5.19, and 5.21. The report for these tasks is currently being drafted and will be shared with OPD when it is complete. Some of the continuing challenges for IAD and OPD in investigating allegations of misconduct are discussed at the beginning of this status report.

OPD is not in compliance with Task 5. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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

During the twelfth reporting period, we completed our assessment of OPD's actual practice related to Task 6. To conduct our review, using several different methods, we identified every complaint from January 1, to December 31, 2007, involving an alleged or apparent violation of Task 6 (e.g., a failure to take a complaint, discouraging a complaint, providing misinformation, refusing or failing to provide name or serial number, or failing to call a supervisor when an individual wanted to make a complaint). Our assessment focused on whether, when OPD becomes aware of instances in which officers or supervisors discouraged or failed to take misconduct complaints, OPD recognized and investigated the failure, and held accountable the officer or supervisor where appropriate. While OPD cannot hope to learn of each and every instance of an officer refusing, discouraging, or failing to take a misconduct complaint, it can successfully minimize such violations if it aggressively investigates and holds accountable those who commit them.

For the period assessed, we identified 37 cases meeting the criteria discussed above. We found 26 (70%) of the cases in compliance with the requirements of Task 6. While OPD was not yet in compliance with Task 6, we saw substantial improvement compared to past practice. Moreover, we noted steady improvement over time in the investigations we reviewed, and during our review worked with OPD to further improve officers' and supervisors' intake of misconduct complaints. We identified several areas OPD should focus on to ensure the proper intake of complaints in the field. OPD policy requires officers to contact a supervisor when learning that an individual wishes to make a complaint. We found many instances of officers not calling a supervisor or otherwise properly initiating the complaint process, and of supervisors not initiating the complaint process properly when they were called to the scene. While some of these deficiencies appeared due in part to a lack of understanding about what was required, in other instances, the refusals may have been more deliberate. We also found problems with the way complaints were being handled when they arose in connection with a use of force. While OPD supervisors routinely conducted investigations of uses of force, they often did not notify IAD when individuals complained of misconduct associated with a use of force or otherwise handle such allegations as misconduct complaints. Our audit report contained a series of recommendations to assist OPD in attaining compliance. A complete discussion of our audit findings is included in our twelfth status report.

During the current reporting period, OIG conducted an audit of Task 6 and found OPD not in compliance with this task.

OPD is not in compliance with Task 6. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 eleventh reporting period, several of these policies were substantially revised. In addition, during the eleventh 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 the eleventh reporting period, we completed a compliance review of this aspect of Task 7. We found that OPD is not yet in compliance with the requirement related to anonymous complaints. 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. During the current reporting period, the IMT reviewed the IAD database for recent entries of anonymous cases, and found that IAD personnel continue to classify cases with anonymous complaints in several different ways. We recommend that IAD develop a uniform method for marking and tracking these cases in its database to make it easier for it to identify and track the handling of these complaints.

During the twelfth reporting period, we conducted a review of OPD's actual practice in the remaining areas of Task 7. We found OPD in compliance with all of the requirements. The Department continues to operate a recordable, toll-free complaint phone line that is staffed by OPD personnel 24-hours a day to receive and process complaints. Task 7 also requires that guidelines for filing a misconduct complaint are prominently posted and informational brochures are made available in key Departmental and municipal locations, including that they are kept with Neighborhood Service Coordinators for availability at Neighborhood Crime Prevention Council meetings, and that these materials are available on the OPD website. OPD is in compliance with these requirements. As discussed above, it is also in compliance with the requirement that the materials be translated consistent with City policy. Complaint forms and brochures are available in Chinese, Spanish, and Vietnamese. However, despite this availability, we found that many of the Chinese-, Spanish-, and Vietnamese-translated complaint brochures currently in circulation still include English complaint form inserts. We also found OPD in compliance with the requirement that officers have complaint forms and brochures available in their vehicles at all times while on duty, but that OPD needs to ensure that they are always available in the necessary languages.

OPD is in compliance with all of Task 7 except Task 7.3, investigation of anonymous complaints. Task 7.3 will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*) The remainder of Task 7 will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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 the twelfth 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. We found OPD 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.

During the thirteenth reporting period, the IMT conducted another audit of OPD's actual practice compliance with Task 8. We found OPD to be in compliance with all of the task's requirements. Among other requirements, Task 8 requires OPD to categorize each misconduct complaint according to Class I (more severe) or Class II (less severe) offenses. We found that OPD routinely identifies every allegation as Class I or Class II, helping to ensure that investigations are handled appropriately. In contrast to our previous audit, we found that OPD is properly assigning investigations based on these classifications. We also found that OPD is complying with the Settlement Agreement's requirements regarding the taping and transcribing of statements and interviews that are conducted during misconduct investigations.

OPD is in compliance with Task 8. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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.

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

During the thirteenth reporting period, we completed another actual practice assessment and the reporting process for Task 9. We found that OPD has shown continued improvement in contacting complainants as soon as possible. As a result of the diligent efforts of IAD staff, OPD is in compliance with Task 9. We found that field supervisors are also playing an important role in ensuring that complainants are contacted as soon as possible to determine the nature, scope, and severity of complaints.

OPD is in compliance with Task 9. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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 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.

During the thirteenth reporting period, we conducted another actual practice assessment of Task 11. We found that OPD, and IAD in particular, have made significant progress since our last review and was in compliance with Task 11. At that time, OPD was in conditional compliance with Task 11.3, which requires that IAD notify the subject's immediate supervisor and commander of misconduct allegations. Our finding was conditional because OPD's compliance rate of 75% fell short of the 85% compliance rate required for this task. However, because we believe that in at least some instances, notification occurred but simply was not properly documented, and because of OPD's performance on the remainder of the task, we found OPD in conditional compliance. During this reporting period, we again audited Task 11.3 and found that OPD had raised its compliance level from 75% to 98%.

OPD is in compliance with Task 11. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, 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. During the eleventh 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 was not yet in compliance with this task. Following our audit, OPD began to make more routine use of recusal forms and trained its personnel that recusal decisions must be made before an investigation is initiated or at the time a potential conflict arises not at the completion of investigations.

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

During the thirteenth reporting period, we conducted another actual practice assessment of Task 12. We observed significant improvement but found that OPD was not yet in compliance with Task 12 based on the cases we reviewed. Because of the improvements we observed in more recent cases, we expanded the date parameters of our review and intend to report our formal compliance findings in the detailed report we will provide to the parties.

At the end of the thirteenth reporting period, OIG conducted its own assessment of the Department's compliance with Task 12. Like the IMT, OIG also found OPD out of compliance with the subtask that requires that OPD complaint investigators disclose relationships that might lead to bias or a perception of bias. Accordingly, OPD remains out of compliance with Task 12.

Task 12 will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 Procedure 05-03. On May 3, 2007, the Department published Internal Affairs Policy & Procedure 07-02, *Pitchess Motion Process Manual*. The IMT has confirmed that the Department has trained 95% of relevant personnel on Internal Affairs Policy & 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 the eleventh 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.

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

OPD is in compliance with Task 13. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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%.

OPD continues to investigate misconduct allegations that are made in lawsuits and legal claims. As discussed in our last status report, OPD's search warrant investigation arose in the context of OPD's investigation of misconduct alleged in a routine legal claim. Prior to the NSA, OPD rarely investigated allegations that were made in legal claims or lawsuits, leaving them to be addressed, if at all, solely through the claims and/or litigation process. OPD's investigation of officers' alleged misconduct that was initially revealed in a single legal claim underscores the importance of this Settlement Agreement provision.

OPD is in compliance with Task 14. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh reporting period, the IMT worked closely with the Department to revise these policies. Also during the eleventh 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. We also found OPD 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%.

During the thirteenth reporting period, we conducted another actual practice assessment of OPD's disciplinary system. As part of this assessment, we evaluated the recommendations made by the Discipline Officer. We found that OPD remained in compliance with the Task 15 requirement that the Discipline Officer make disciplinary recommendations in all sustained

internal investigations. We found that the Discipline Officer made discipline recommendations in all of the sustained vehicle collision cases and in 97% of the sustained misconduct investigations we reviewed.

OPD is in compliance with Task 15. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 the eleventh 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%.

During the thirteenth reporting period, we completed our actual practice compliance assessment of Task 16. Task 16.1 requires that OPD hold supervisors, commanders, and other OPD managers accountable for "supporting the IAD process." A variety of NSA tasks, including Task 16.2, specifically address ways in which OPD leadership must support the IAD process. Such support requires, for example, responding to the field to take misconduct complaints (Tasks 5 and 6); forwarding complaint information to IAD so that it can be tracked and resolved (Tasks 4 and 5); reporting misconduct that they observe or learn of, including retaliation (Tasks 33 and 37); complying with OPD timelines when they are assigned to investigate allegations of misconduct (Task 2); and, perhaps most directly, supervising – and intervening when necessary – to prevent, detect, and effectively respond to misconduct by officers under their command (Task 16).

In conjunction with the IMT's ongoing monitoring, including the review of the above-listed tasks, the IMT noted and reviewed instances where supervisors, commanders, and other managers did not support the IAD process, as described above, and assessed whether OPD held leadership accountable for any failures to support the IAD process.

Our reviews have shown that OPD is doing a better job of holding leadership accountable for supporting the IAD process, but is not yet where it needs to be. We found many exemplary instances of OPD holding supervisors and managers accountable. In addition to specific exemplary cases discussed in our Task 16 audit report, IAD command staff now issue negative case evaluation reports for unacceptable internal investigations and for missing internal IAD deadlines. It is likely because of these and similar measures that the quality and timeliness of IAD investigations has improved.

In other instances, OPD did not hold supervisors and managers accountable, and these cases indicated that, despite significant advances in this area, entrenched obstacles to supervisory accountability remain. One of the most direct ways in which OPD supervisors and commanders can support the "IAD process" is by properly supervising, reviewing, and intervening in the actions of their subordinates to ensure those actions are appropriate. Task 16.2 requires that where *OPD finds* that an OPD member or employee committed Class I misconduct, OPD must determine whether a supervisor or manager should have reasonably determined that the subordinate committed misconduct and hold the supervisor or manager accountable as appropriate. We found that OPD is not yet in compliance with this requirement because we identified cases in which OPD did not properly identify and investigate supervisory failures such as commanders failing to report misconduct.

OPD is not in compliance with Task 16. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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. During the current reporting period, the IMT completed an actual practice compliance review for Task 20.

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 compliance standards for this task were lowered from 95% to 90%. The IMT conducted its second audit of OPD's compliance in actual practice with Task 18 during the tenth reporting period. We found that, since our previous 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). 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 published Special Order 8536, clarifying that the witness identification provision requires identification of witnesses to the criminal offense. Because OPD was in compliance with each provision of Task 18 that had been assessed, we found OPD in conditional compliance with the task.

During the eleventh 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.

During the twelfth reporting period, we conducted a compliance review of OPD's actual practice focusing specifically on the witness identification provision of Task 18. Our findings were consistent with those of OPD's own compliance assessor. Based on our review, OPD still was not in compliance with Task 18's requirement that certain categories of arrests include documentation of the identity of available witnesses or documentation when there are no witnesses. As a result, we found that OPD was no longer in conditional compliance with Task 18. While many of the arrests reviewed may have been non-compliant because officers failed to document when there were no witnesses, other arrests were non-compliant because officers failed to identify readily available witnesses. In other cases, officers wrote in their reports that there were "no known witnesses," when, in fact, there were witnesses who simply were not identified. A fuller discussion of our findings and recommendations is included in our twelfth status report.

During the thirteenth reporting period, OIG conducted another audit of Task 18. Consistent with its previous assessments and those of the IMT, it found the Department in compliance with all Task 18 requirements with the exception of the witness identification provision.

OPD is in compliance with all of Task 18 except the provision that requires that all available witnesses are identified. This subtask will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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. 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 the eleventh reporting period, we completed a compliance assessment of Task 19. We found that OPD was 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 had a single, clearly identified supervisor or manager. 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.

During the thirteenth reporting period, OPD continued its efforts to improve its systems for organizational tracking. It began implementation of a new automated scheduling and payroll system used by a number of other public safety agencies.

During this reporting period, OPD continued implementation of its new automated scheduling and payroll system. We reviewed this system's functioning, as well as other Task 19 related unity of command systems, as part of our Task 20 review. Our review indicated that OPD continues to improve in this area.

OPD is in compliance with Task 19. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 practice 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 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.

During the eleventh 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 of 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 began to oversee implementation of changes in patrol and OPD's tactical units.

During the thirteenth reporting report, an anonymous complaint to IAD stated that the PSO squads were routinely over the 1:8 span of control, impacting the ability to provide adequate supervision to officers. We reviewed the projected schedules for the time period December 13, 2008, through May 1, 2009. These schedules confirmed that, in direct violation of the NSA, OPD had not assigned sufficient sergeants to assure the required 1:8 span of control ratio for at least three PSO squads during all or part of this time period. The IMT also interviewed PSO sergeants regarding their supervisory responsibilities. The Court admonished OPD about committing an intentional violation of the Settlement Agreement. OPD has since promoted additional sergeants to help ensure that officers receive adequate supervision.

During the current reporting period the IMT completed a comprehensive actual practice assessment of OPD's compliance with Task 20. While OPD is not yet in compliance with this task, the progress OPD has made during the past several years is substantial. In general,

supervision is closer, more consistent, and supervisors are better trained to perform what many consider to be the most difficult job in any law enforcement agency. We no longer see squads of 16-20 officers routinely supervised by only one supervisor (or, more often, a rotating cadre of supervisors). The agency, its officers, and the community benefit from more guidance for officers, especially in an agency like OPD which has a large percentage of newer officers. Our review found that OPD now ensures that sergeants, including PSO sergeants, are assigned no more than eight officers, with few exceptions. We found further that backfill, loan, and transfer decisions are made far more thoughtfully, and with proper criteria in mind, than in previous years, and are generally better documented. The span of control for special operations is also generally reasonable, although we did note problems in this area.

OPD's main challenge remaining in providing appropriate consistency of supervision is ensuring that sufficient numbers of Sergeants are assigned and maintained to ensure that squads are able to retain the same supervisor over a long period of time, without excessive backfill-supervision or supervision by assigned, but uncertified, acting sergeants. This consistency of supervision was evident in most squads, but in some, especially squads working unpopular times or areas of the city, officers were supervised by a series of supervisors over weeks or months. In other instances, acting sergeants who had not completed OPD's own process for ensuring they are certified to act as supervisors, were assigned to supervise squads for extended periods of time. Overall, we found that of 1,925 squads reviewed, 75% were reviewed by their primary supervisors and 25% were reviewed by either uncertified acting supervisors or backfill supervisors (e.g., supervisors working overtime or covering two squads).

OPD is not in compliance with Task 20. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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.

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*. The IMT has verified that OPD has trained more than 95% of its personnel on the Special Order.

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

During the twelfth reporting period, we conducted another compliance assessment of OPD's actual practice, and during the thirteenth reporting period, we completed the reporting process for our assessment. We found OPD in compliance with Task 21.

As our last Task 21 audit report noted, proactive supervision and early correction of problems are critical from a risk management perspective and help ensure successful and lengthy careers for individual employees. Consequently, we encouraged OPD to build upon its efforts in this area and ensure that supervisors are taking a proactive role in other important areas, including, for example, meeting with officers to review and discuss in-car videos, interactions with citizens and co-workers, and preparation of reports, preparation and execution of search warrants, and court testimony.

OPD is in compliance with Task 21. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct

reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 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 the current reporting period, 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 MLL has continued to contact the District Attorney's Office and the Public Defender's Office on a monthly basis.

We encourage OPD to continue the MLL position/process even after the MOU expires. This process has built a more constructive relationship between OPD and the Public Defender's office, has allowed OPD to identify and correct problems early on, and has provided an opportunity for greater transparency.

OPD is in compliance with Task 21. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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.

OPD is in compliance with Task 23. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 (now Executive Force Review Board or “EFRB”). 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 practice 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, by that date. 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 and completed both policies and training on time. 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. The IMT has confirmed that OPD 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 trained over 95% of relevant personnel 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 over 95% of relevant personnel on General Order B-12, *Firearms Range Program*.

Updating and drafting the new use of force policies was a significant undertaking by OPD. In addition to updating or drafting the policies required by the Settlement Agreement, OPD also reviewed and updated its other use of force policies to ensure that they are consistent with and reinforce one another, and that they represent contemporary policing practices. The IMT and the Court have commended the Department for completing this important work. 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 the eleventh reporting period, the IMT conducted detailed compliance assessments of several of the use of force tasks. During the twelfth reporting period, the IMT completed an assessment of Task 30 regarding OPD's Executive Force Review Board. During the current reporting period, the IMT completed actual practice compliance reviews of Tasks 24, 25, 26, 30, 31, and 35.

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 trained over 95% of relevant personnel 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 IMT has confirmed that the Department has trained over 95% of relevant personnel on General Order B-12.

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 uses 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, and 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 eleventh 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 the Department 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 the eleventh 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 the eleventh reporting period, the IMT conducted a compliance assessment of Task 24. We found OPD 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.

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 included 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. A full discussion of our findings is included in our eleventh status report.

During the twelfth reporting period, OIG evaluated the Department's compliance with Task 24 and found that supervisors were being notified of uses of force; were responding to the scene as required; and that officers were documenting their own uses of force appropriately. However, according to OIG's audit, officers were not always documenting the force that was used by other officers as required by OPD policy. In response, OPD issued two Information Bulletins: *Use of Force—Common Mistakes* and *Use of Force Preparation Format*, to reinforce use of force reporting and investigation requirements. If followed, these Information Bulletins should help improve OPD's use of force reporting and investigation system.

During the current reporting period, we continued to review OPD's use of force reports and to provide the Department feedback on tactical, training, and investigative issues related to force issues. During the current reporting period we also completed an actual practice compliance review of Task 24. Our review found that OPD is in compliance with all of Task 24 except the provision that requires OPD officers to notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force. OPD attained a high level of compliance with this provision (90%), but slipped from the required compliance level of 95% for this critical task, which OPD achieved during the previous audit. The lack of proper notification occurred in cases involving "Level 4" uses of force, the lowest level of force. The use of force cases we reviewed for this review had incident dates of April 2009. In April 2009, OPD issued a special order addressing concerns that some lower-level force was not being reported and reminding officers that whenever a firearm is intentionally pointed at a person, and/or a firearm is held in any ready or retention position pointed in the general direction of a person, it must be reported. OPD should be able to again attain compliance with this part of Task 24 if it continues to closely monitor use of force reporting and supervisor notification—and hold officers accountable where they do not properly report the force they used.

OPD is not in compliance for Task 24. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 incorporated the provisions of this Special Order into the 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 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 eleventh reporting period, the IMT worked closely with OPD to assist in its implementation of the revised use of force investigation processes. The IMT provided training to OPD supervisors and commanders regarding use of force investigations and responded to the field to observe supervisors' on-scene handling of incidents. We observed training sessions of commanders regarding the new policies and procedures and attended force review boards.

During the eleventh 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 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. We found that this is an area 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. During the thirteenth reporting period, OIG assessed the timeliness of use of force investigations and found that only 26% were completed and reviewed within required timelines. It thus appeared that timeliness of force investigations continued to be a problem.

Our review during the eleventh reporting period also found that OPD has had difficulty tracking the timeliness of its use of force investigations. OPD has taken steps to address this issue. 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 but found some areas still in need of improvement. Overall, we found that 80% of the investigations reviewed included the information required by Task 25. During the twelfth reporting period, OIG audited OPD's compliance with these requirements and found that 87% of the investigations included the required information.

Our review found OPD in compliance with the remainder of the Task 25 requirements, including whether OPD supervisors make specific recommendations regarding each use of force; whether force reports are reviewed by the officer's chain of command and recommendations are made regarding whether the force complied with OPD policy; and whether reviewers order additional investigation where needed.

We also found OPD in compliance with the requirement that it train all patrol and Internal Affairs supervisors on how to conduct 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. OPD has implemented some of these investigations. A full discussion of our findings is included in our eleventh status report.

During the current review period, we continued to attend 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. We also continued to review OPD's use of force reports and to provide the Department feedback on tactical, training, and investigative issues related to force issues.

During the current review period, we conducted an actual practice compliance review of Task 25. Our review found that OPD is now in compliance with all of Task 25 except the requirement that use of force investigations be timely. While the Department continues to struggle to complete timely use of force investigations, it has shown some improvement in timeliness since our April 2008 audit. During our last audit of this task, we found that 21.3% of all force investigations reviewed met required deadlines. Overall, 56% of the investigations we reviewed for the current audit met required deadlines.

The area most in need of improved timeliness involves the Department's most serious use of force investigations. These investigations involve Level 1 uses of force, defined as officer-involved shootings or other force that causes death or is likely to cause death. Consistent with OPD's current use of force investigative deadlines, Level 1 use of force investigations must be completed (including IAD Commander approval) within 75 calendar days of the incident plus one documented extension approved by the Chief of Police in advance of the due date. Only one of the fifteen Level 1 cases we reviewed was completed within this timeframe. This case involved an accidental discharge by an officer while holstering his weapon at home. During our last audit, none of the Level 1 cases were completed in a timely fashion. In the current audit, the overdue investigations were completed anywhere between 106 days to 348 days. The average time for completing the investigations was 199 days. This is longer than the average time that Internal Affairs takes to complete misconduct investigations. In two of the overdue cases, there was no documentation of extensions being requested or granted. The remaining 12 overdue cases involved multiple extensions and/or extensions that were requested after the due date.

Since the Executive Force Review Board (EFRB) relies upon the completed IAD investigation in order to conduct its review of Level 1 cases, these incidents in some cases were not reviewed by top commanders for several months to nearly a year after they occurred. As we have previously discussed, 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 has been included as an area of concern in our status reports. The Department shares our concerns. To ameliorate this problem, when its initial assessment of a critical incident reveals training, tactics, or officer safety issues, OPD has been providing the involved officers with immediate feedback rather than waiting several months for the EFRB to occur. As we have reported, this stop-gap measure is a good one, but does not negate the need for timely completion of Level 1 use of force investigations and EFRB review, particularly since the use of force investigation and review, if functioning properly, provides additional insights into any policy, training, or tactical deficiencies related to the use of force incident.

The Department has requested to change its deadline for completing Level 1 use of force cases from 75 days to 180 days. We have informed the parties and the Court that such a change would not be consistent with contemporary law enforcement practices or prudent risk management. In addition to these reasons and the ones discussed above, the investigation of critical incidents such as officer-involved shootings should be completed promptly in order to help bring closure to the involved parties.

Level 2 and 3 use of force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident plus one documented extension approved in advance of the due date. We reviewed a total of 28 Level 2 and 3 use of force investigations. Twenty-three of the investigations were completed within the deadline (75% of the Level 2 investigations and 85% of the Level 3 investigations). While not yet meeting the 95% compliance standard, this is marked improvement over our last audit when only 13% of Level 2 investigations and 35% of Level 3 investigations were completed within the

deadline. These improvements are the result of greater management oversight by BFO commanders, including the assignment of a hardworking administrative sergeant to monitor the timeliness and quality of these investigations. In addition, field sergeants are becoming increasingly adept at conducting use of force investigations.

In our audit report, we recommended that, to come into compliance with this task, OPD reinforce use of force investigative deadlines to all field supervisors and commanders and hold them accountable for meeting deadlines.

OPD is not in compliance with Task 25. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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.

During the eleventh 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.⁵ We found OPD in compliance with Task 26.1, although we noted a wide variance in the quality of the reviews conducted. While some of the FRBs did a good job identifying

⁵ 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.

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. It appeared that some of the variance in the quality of the reviews was 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, OPD 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. OPD has continued this positive practice during the current reporting period.

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. We found OPD in compliance with this requirement. Task 26.3 requires the FRB to forward to the Internal Affairs Division any determination that a use of force is not consistent with OPD policy. Since the FRB did not find any of the uses of force reviewed for our audit out of policy, it did not forward any cases to IAD. 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.

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 although we recommended that the FRB include additional details an analysis in its annual reports in order to make them more useful risk management tools for the Chief and City. Task 26.6 requires the FRB to report its annual review findings to the Chief of Police. We found OPD in compliance with this requirement.

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. A discussion of our findings is included in our eleventh status report.

During the current reporting period, we continued to attend Force Review Boards and discuss our observations and concerns about use of force reporting and investigations with presenters, Board members, and commanders overseeing this process.

During the current reporting period we attempted to complete another actual practice compliance review of Task 26. While we selected a review period that allowed sufficient time for all cases to have undergone board review, we found that too few during our review period had completed the board process and were thus ready for our review. Upon learning from the IMT about the outstanding cases, OPD informed us that these cases should have been reviewed by the Force Review Board and that it would review its processes to identify how and where the cases had been missed.

OPD is out of compliance with Task 26. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 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 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 the twelfth reporting period, OIG audited Task 27. OIG found that OPD continues to be in compliance with the requirement that it maintain a log of all members and employees who check out and use OC canisters. OIG found, consistent with the last IMT audit, that while the Department is preparing and distributing monthly reports to command staff and supervisors regarding OC spray, the reports are not yet accurate. OIG reported that it has worked with the Property and Evidence Unit to identify and resolve the source of this continuing problem.

During the thirteenth reporting period, the IMT conducted another actual practice review of OPD's compliance with Task 27. We found that OPD continued to be in compliance with the requirement that it maintain a log of all OC canisters that are distributed to OPD personnel. In addition, we found that OPD has improved and clarified the categories listed on its log that explain the reason for the canister distribution. While our audit found that for the first five to six months of the period reviewed there was a systematic failure on the part of OPD personnel to submit their OC canisters for replacement following a reported use of force involving OC Spray, we observed significant improvement in OPD's practices during the second half of the period audited. Through proactive management efforts, OPD commanders now have a solid handle on when, how often, and which officers use OC spray during use of force incidents.

OPD is in compliance with Task 27. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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. We found that OPD was 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 eleventh 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 (BOI) 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.

During the thirteenth reporting period, we conducted another actual practice assessment of OPD's compliance with Task 28. In our previous audit of Task 28, we found that OPD did not yet have in place a system for ensuring timely notification of criminal misconduct. As a result, many notifications were made too late to permit OPD and outside agencies to coordinate their efforts from the outset, and coordination of interviews and other investigative steps was lacking. This impacted the quality of these cases. We found these problems were due in large part to a lack of knowledge about OPD's own policies in this area, or the reasons for those policies, even among those responsible for carrying out the policies. OPD subsequently placed BOI responsibility for these responsibilities at a higher level. As a result, BOI personnel and three consecutive IAD commanders successfully implemented and maintained systems for ensuring that instances of apparent criminal misconduct are, for the most part, identified early and handled with alacrity. Given this significant improvement and generally high level of achievement, as well as the small dataset, we found OPD in conditional compliance with Task 28, even though its compliance rate did not meet the stringent 95% threshold required by this task. Our audit report included several recommendations to assist OPD in its handling of criminal misconduct. Among our recommendations, we urged OPD to continue to assign high level commanders to monitor criminal misconduct cases due to their significance.

OPD is in compliance with Task 28. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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. We found that OPD's handling of criminal misconduct allegations was evolving and improving but that OPD was not yet in compliance with Task 29. A discussion of our review findings is included in our tenth status report.

During the thirteenth reporting period, we conducted another actual practice assessment of OPD's compliance with Task 29. This assessment was done in conjunction with our Task 28 assessment and is discussed above.

OPD is in compliance with Task 29. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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.

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.

We completed a compliance assessment of Task 30 during the twelfth reporting period. A full discussion of our findings is included in our twelfth status report. We found that OPD was not yet in compliance with Task 30 due to a lack of timeliness in convening Executive Force Review Boards and a failure to make disciplinary recommendations for serious policy, training, or tactical violations associated with officer-involved shootings. Our audit report included a series of recommendations to strengthen OPD's review of officer-involved. A full discussion of our audit findings and recommendations is included in our twelfth status report.

During the current reporting period, we continued to attend OPD's Executive Force Review Boards convened to evaluate officer-involved shootings, in-custody deaths, and other

serious incidents, including police pursuits resulting in death or serious injuries. We also 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 improve the EFRB.

During the current reporting period, we also conducted an actual practice compliance review of Task 30. Our review found that OPD still is not timely in convening Executive Force review Boards, that required participants do not attend each EFRB, and that training or information bulletins regarding each case that goes before the board are not always prepared. In a more positive development, we found that, since our last audit, OPD has shown substantial improvement in making disciplinary recommendations for serious policy, training or tactical violations associated with officer-involved shootings.

OPD is out of compliance for Task 30. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 & 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 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.

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 eleventh 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. A discussion of our findings is included in our eleventh status report.

During the current reporting period, the IMT went on-scene to the investigations of officer-involved shootings; observed officer, suspect, and witness interviews; and continued to attend meetings of the Executive Force Review Board.

During the current reporting period, we also conducted an actual practice compliance review of Task 31. We found that OPD remains in compliance with all of the requirements of Task 31. Our report recommended that OPD increase its efforts to obtain timely officer involved shooting reports from the District Attorney's Office. We recommend that OPD meet with the District Attorney to determine the barriers to timely provision of the reports from the District Attorney and work with the District Attorney to remove these barriers.

OPD is in compliance with Task 31. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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.

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 the eleventh reporting period, the Department completed installation of the in-car video systems into approximately 101 police cars. Due to a number of technical difficulties, however, none of the cameras were made operational until the twelfth reporting period.

During the twelfth reporting period, OPD continued to work with the City's Information Technology Department to address the technical difficulties and partially launched the system in Areas 1 and 2 of the City. OPD worked on resolving the remaining technical issues so that it could activate the system in Area 3 as well. Additionally, during the twelfth reporting period,

OPD installed kiosks in the report writing room and Internal Affairs that can be used to reviewing in-car video footage. OPD also started to use the footage to review misconduct complaints and critical incidents such as vehicle pursuits.

During the past year, as discussed as an area of concern in our last status report, OPD's progress in implementing the in-car camera system has stalled. While OPD purchased approximately 101 cameras, according to OPD, only 45 of them were made operational in OPD vehicles. Due to vendor installation problems and attrition, as of June 2009, only 30-35 cameras remained operational. The original vendor went out of business and OPD is negotiating with a new company to complete the installation of cameras. According to OPD, however, completion of this process may take several months. While OPD has some minimal ability to repair camera equipment, it reports that it does not have adequate support for servicing cameras that malfunction or break.

In-car video cameras are an important risk management and officer safety tool. They have the added benefit of promoting transparency and community confidence. The cameras are able to document officer interactions with civilians, to capture video evidence of criminal conduct, and to document officer adherence or non-adherence to OPD policies and procedures. The cameras also assist officers in documenting their activities during contacts, arrests, and citations. This is why law enforcement agencies across the country are using them with increasing frequency and they are viewed by many agencies as critical policing tools. Despite the small number of operational cameras in OPD, the cameras already have been used both to corroborate allegations of misconduct and to exonerate officers accused of wrongdoing. Video captured by the cameras has provided irrefutable evidence to investigators, saving them both time and money in investigation costs. Actual footage from the cameras also has been used for training purposes for OPD officers to demonstrate proper and improper police tactics.

Despite all of these benefits, this important risk management tool has never been fully implemented and is in danger of disappearing altogether. We continue to urge the City to assist OPD in fully implementing the in-car video system as soon as possible.

B. 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.

During the current reporting period, the IMT conducted actual practice compliance reviews of Task 35, Use of Force Reports—Witness Identification; and Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process.

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 implemented many of these recommendations and others they 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 thirteenth reporting period, we completed another actual practice compliance review of Task 33. We found that, while OPD was not yet in compliance with this task, Task 33 represents another task in which OPD, and IAD in particular, have made significant progress since our last review. Our findings are discussed in detail in our last status report.

OPD is not in compliance with Task 33. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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*. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on these 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 had 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 expected that OPD would correct the SDF and train 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 (FBR). Unfortunately, it did not include the stop data forms among the computerized forms which officers can complete electronically from their vehicles. During the twelfth reporting period, OPD reported that it has contracted with a vendor to update FBR to include stop data forms. As of the current reporting period, this update has not yet been completed.

Also 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 created two new forms, containing somewhat different fields. During the twelfth 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 supported these efforts but encouraged the Department not to create a third version of the stop data form when it makes this change.

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.

During the thirteenth reporting period, we conducted another actual practice assessment of OPD's compliance with Task 34. As in our previous audits, we found that OPD still is not in compliance with the requirement that officers complete a stop data form for at least 95% of field stops, field investigations, and detentions. We found OPD in compliance with the requirement that stop data forms be filled out completely and accurately. In addition to requiring that stop data forms be completed accurately for every stop, Task 34 requires that OPD maintain a searchable stop data database containing information from the stop data forms. OPD remains in compliance with this requirement. Task 34 requires that the data captured on the forms be completely and accurately entered into the stop form database. The compliance standard for this requirement is 85%. OPD was not in compliance with this task. Only 49% of the stop data forms reviewed were completely and accurately entered into the databases. A review of the records revealed various errors and omissions. Approximately half of the records in the database contained missing or inaccurate location information.

Our audit included a series of recommendations, including that OPD routinely assess whether officers are documenting all stops consistent with OPD policy; resolve problems with form legibility; incorporate the collection of all stop data into OPD's field-based reporting system; refine its current stop form database to ensure that it can conduct a variety of relevant queries; and to conduct an analysis of stop data collected. The findings of our last review are discussed in greater detail in our previous status report.

During the current reporting period, OIG conducted a review of stop data forms and found OPD not in compliance with Task 34 requirements and articulated a number of useful recommendations.

OPD is not in compliance with Task 34. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 the eleventh 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 our review showed 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. Our review found OPD in compliance with this requirement. 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.

During the twelfth reporting period, OIG conducted a review of Task 35 and reported that OPD was in compliance with all Task 35 requirements.

During the current reporting period, the IMT completed an actual practice compliance review of Task 35 and found that OPD is now in compliance with all of Task 35. We found that OPD has improved significantly in identifying known witnesses in use of force reports. A large part of this improvement is due to substantially better documentation in use of force investigations when there are no known witnesses to an incident. The Department has repeatedly stressed to personnel the importance of including complete and accurate information about witnesses in use of force reports, including documenting when there were no known witnesses. In addition, it has assigned an administrative sergeant in the Bureau of Field Operations to review use of force reports for completeness and to send them back for corrections when necessary. These efforts have resulted in significantly improved reports. We found substantial improvement as well in the requirement that OPD obtain contact information for witnesses.

OPD is now in compliance with Task 35. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 was 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 provisions.

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

During the tenth reporting period, the IMT audited OPD's actual practice compliance with this task. While OPD was 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 had made significant progress since our prior 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 the 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 the eleventh reporting period, OPD's Communications Division commander worked to improve compliance with Task 36. In addition to assessing the Department's compliance, he conducted additional training for dispatchers and provided OPD personnel with reminders regarding the information that is required to be called in on each stop.

During the twelfth reporting period, we conducted another compliance assessment of Task 36. We were pleased to find that OPD in compliance with all Task 36 requirements. We found that OPD officers logged in and out on the radio as required in 92% of the transports. The compliance standard is 90%. We found that OPD remained in and improved its compliance with the remaining requirement of Task 36.

OPD's efforts in this area have resulted in significant improvements over time. In attaining compliance with this task, OPD has improved officer safety. We recommend that OPD continue to self-assess whether officers are reporting transports as required to maintain this improved safety. In furtherance of officer safety, we also continue to recommend that OPD require its officers to call in all of their stops, not just those involving transports.

OPD is in compliance with Task 36. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 made a number of significant changes in its approach to complaints of retaliation. The Court 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 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 was never adopted. Instead, during the eleventh 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 the thirteenth reporting period, we completed another actual practice compliance assessment of Task 37. We found significant improvement in OPD's handling of retaliation cases. In our previous assessment of Task 37, we found that none of the retaliation cases were adequately investigated. In our most recent audit, we found OPD's investigation of retaliation allegations sufficient in 71% of the cases reviewed. OPD's investigations of retaliation cases, however, are not yet where they need to be. We continued to observe cases in which critical allegations were never addressed; cases closed without sufficient investigation; and an officer not held accountable for allegations that were investigated and sustained. One such case involved a complaint of retaliation related to one of the witness officers in the Riders case. Our audit report included a series of recommendations aimed at assisting OPD to continue to improve its handling of retaliation cases.

During the current reporting period, OPD continued to provide quarterly reports to the Court listing the status of investigations into allegations of retaliation.

OPD is not in compliance with Task 37. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 practice 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.

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

OPD is in compliance with Task 38. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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.

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 previously discussed, 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 was not yet in compliance with this task, but 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 eleventh reporting period, this General Order was published but not implemented due to objections from the OPOA.

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.

During the twelfth reporting period, OPD drafted a revised version of General Order E-3.1. The IMT reviewed and approved the policy, finding it a reasonable and workable alternative to the original draft. The revised policy was published during the current reporting period and the IMT confirmed that OPD has trained 95% or more of relevant personnel on this policy.

During the current reporting period, the IMT conducted an actual practice compliance review with this task. We found that OPD now has in place systems for proactively identifying OPD members or employees who have been arrested or become involved in a civil suit that may be relevant to their work. OPD also has in place systems for reviewing whether persons transferring to sensitive positions may be involved in a civil suit that may be relevant to their work. We further found that where OPD learns of individuals who were arrested and did not properly notify OPD, they are held accountable.

OPD is now in compliance with Task 39. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

C. 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 is now referred 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 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 resulted in a number of supervisors identifying employees who may be in need of counseling, remedial training, or other specialized assistance.

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 Department has since trained all personnel on the new system.

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

OPD published a revised version of General Order D-17 on August 20, 2008. The IMT has verified that OPD has trained 95% or more of relevant personnel on this policy.

The IMT did not conduct a formal assessment of PAS until the twelfth reporting period to allow sufficient time for the system to be up and running. This assessment determined that OPD was not yet in compliance with all requirements of this task. We found that while much of the system's data accurately reflected information from other OPD data sources, as detailed in our 120-page audit report provided to the Parties, there were several critical areas in which IPAS data was incomplete, inaccurate, and/or organized in an unwieldy manner.

Supervisors and managers are becoming more adept at using the IPAS system and increasingly rely upon it when performing a range of supervisory duties, including evaluating personnel performance. OPD is also using the system to identify members and employees in need of intervention or greater supervisory monitoring. OPD is in compliance with the majority of Task 41's requirements. OPD, however, is not yet in compliance with Task 41. Due to data problems, it has not been identifying all members as required by the NSA or timely documenting intervention strategies that occur. The results of intervention and supervisory monitoring have been somewhat mixed. Some members and employees have exhibited improved behavior while others have not. It will be critical for OPD to build upon successful strategies and implement new ones where warranted. We found that OPD commanders and managers have a generally positive view of IPAS and are using it for a variety of purposes including preparing performance appraisals and general supervision. OPD, however, currently is underutilizing the system for assessing and managing at-risk behavior. Because IPAS is a new system, there is an understandable learning curve. Additional training for supervisors and commanders in how to identify potential at-risk behavior along with some system adjustments will assist OPD to take greater advantage of this powerful tool that is now at its disposal.

During our audit, we shared our observations, concerns, and recommendations regarding the system with OPD. OPD has responded energetically and constructively, showing a desire to resolve identified deficiencies. This is due in large part to the skill and dedication of OPD's PAS coordinator. The PAS Coordinator has continued to demonstrate exceptional organization, leadership, and a firm commitment to ensuring that the PAS system functions effectively and consistently as a risk-management tool for OPD.

Our audit report lists a series of recommendations aimed at assisting OPD to achieve full compliance with Tasks 40 and 41 while improving the functionality and usability of the system. A full discussion of our audit findings is included in our twelfth status report.

During the current 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.

During the current reporting period, the IMT also completed an actual practice compliance review of Task 40-41. The findings of this review will be discussed in our forthcoming Task 40-41 report.

OPD is currently not in compliance with Task 40. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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 was assessed in conjunction with the PAS database assessment. 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.

OPD is not currently in compliance with Task 41. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

D. 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 practice 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.

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 tenth reporting period, we expressed concern about the Field Training Unit being provided the resources it needs to keep up with the significantly larger number of trainees

and FTOs entering the program. During the eleventh reporting period, OPD continued to consistently staff a position in the Unit that previously had been staffed on a sporadic basis.

In recent years, OPD continued to hire and train new officers. In order to keep pace with the new hires, OPD needed to increase the number of FTOs available to train the new officers. As discussed as an Area of Concern in our eleventh status report, it is 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. According to OPD, it shared our concern and had no intention of lowering standards in its field training program.

During the twelfth reporting period, we began another assessment of OPD's Field Training Program. While conducting the assessment, we discovered that despite our previous admonitions regarding lowering the standards in field training, OPD had selected a number of new field training officers who did not appear to meet new program standards. These standards require that ethics, professionalism, relationships with the community, quality of citizen contacts, and commitment to OPD philosophy be primary criteria in the selection process. Additionally, candidates are required to demonstrate their commitment to community policing and be barred from selection if they have an excessive number of complaints, sustained investigations, or excessive numbers of uses of force. OPD did not disqualify any candidates due to their complaint or use of force histories, and certified a number of candidates who are extreme outliers amongst their peers in terms of complaints and uses of force. OPD asserts that all of the FTOs it has certified are qualified candidates but acknowledges that the selection process occurred very quickly and could have been more discerning.

Based on the concerns we raised regarding the FTO selection process, OPD committed to re-evaluating all candidates and to not allowing candidates who need further development to train new officers until they have proven their suitability.

During the thirteenth reporting period, OPD completed its re-evaluation of candidates. As a result, we were able to complete our actual practice assessment. With the exception of two areas, we found that OPD was in full compliance with all of the requirements of the Field Training Program provisions of the NSA. We found OPD in conditional compliance in the remaining two areas.

The first area of conditional compliance pertains to the FTO selection process discussed above. As a result of the re-evaluation of its FTO candidates, OPD decided to decertify seven FTOs and to place nine additional FTOs on informal monitoring. The FTOs that were decertified all recently had been sustained for serious misconduct. According to OPD, the FTOs that were placed under informal monitoring would not be provided trainees. Instead, these officers would be required to participate in FTO staff meetings, have their performance evaluated, and would be mentored and coached. OPD stated that it would not assign trainees to these officers until the officers have demonstrated their suitability to serve as FTOs. While informal monitoring helps ensure that FTOs who may not be prepared to train new officers are not assigned trainee officers, it is not ideal. This is because officers under informal monitoring were still afforded all of the benefits of being an FTO, including increased pay and stature, but without having to do any of the work involved with being an FTO.

As part of its revision of General Order B-8, OPD is making the command review process it used to reassess the FTOs a required component of the initial FTO selection process in order to ensure that candidates receive appropriate scrutiny. This is a positive development that we support. While OPD undertook a serious effort to reassess the suitability of its FTOs, there remain a number of active FTOs about whom we continue to have concerns. We have expressed these concerns to OPD and encourage it to remain vigilant to ensure that no FTO provides training that departs from OPD's values and standards. Based on the remedial measures OPD implemented after we expressed concern regarding the selection process, including reassessing FTOs, decertifying FTOs, placing FTOs on informal monitoring, and revising its policy to ensure that candidates receive appropriate scrutiny, we found OPD in conditional compliance with the FTO selection provisions of Task 42.

The second area of conditional compliance pertains to ensuring consistency of training in the Academy and the Field Training Program. Task 42 requires OPD to conduct focus groups with trainee officers to evaluate the training provided and to assess whether the field training is consistent with what was taught in the Academy. According to OPD, the focus groups have not identified any substantial discrepancies between what is taught in OPD's Academy and the Field Training Program. However, there have been a number of instances in which trainees in focus groups have identified differences that they perceive to be discrepancies but that the Field Training Unit elects to characterize as mere "stylistic" differences or preferences. We expressed our concern to the Field Training Unit that some of the differences they describe as stylistic appear to be in fact real discrepancies and, importantly, are perceived by the trainees as such. Our concerns were mitigated somewhat by the fact that all feedback from the focus groups is discussed and considered, not just information that is deemed to be a discrepancy. Nonetheless, because such characterizations can impact the assessment of information from the focus groups, we found OPD in conditional compliance with this requirement.

Our audit report contained a series of recommendations aimed at ensuring the advances made in the Field Training Program are maintained and that areas that are not fully compliant are strengthened.

OPD is in conditional compliance with Task 42. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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

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

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

also graduated seven officers from its Sixth Lateral Academy. During the eighth reporting period, OPD's 155th Basic Academy class graduated. During the ninth reporting period, the 156th, 157th, and 158th Basic Academies graduated, along with the Seventh Lateral Academy. During the tenth reporting period, the 159th and 160th Basic Academies graduated. During the eleventh reporting period, the 161st, 162nd, and 163rd Basic Academies graduated. During the twelfth reporting period, the 164th, Santa Clara, and 165th Basic Academies graduated. The Eleventh Lateral Academy graduated during the thirteenth reporting period.

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 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.

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.

The IMT completed an audit of this task during the eleventh reporting period. We found that OPD was 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.

At that time, we found that OPD was 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. A more complete discussion of our findings is included in our eleventh status report.

During the twelfth reporting period, we observed the final inspection of the Santa Clara Academy students. Additionally, at the request of OPD, we reviewed training instructor files and provided OPD with feedback aimed at assisting OPD to ensure that its selection of Academy instructors is consistent with the NSA.

During the thirteenth reporting period, we conducted another assessment of the three areas that were out of compliance during our last audit. We found that OPD was in compliance in each of the areas.

OPD is in compliance with Task 43. The only portion of this task that will be actively monitored under the MOU is 43.1.1, which requires OPD to ensure that personnel are adequately trained for their positions. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements of this subtask. (*MOU, paragraph 10.*)

F. 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 practice 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. The IMT verified that the Department 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.

During the current reporting period, the IMT conducted actual practice compliance reviews with Task 44, Performance Appraisal; and Task 46, Promotional Consideration.

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*. The IMT has verified that the Department has trained 95% of relevant personnel on this policy.

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 practice 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 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 thirteenth reporting period, OPD continued to report the status of completed and delinquent performance appraisals at management meetings. OIG completed an assessment of Task 44 during the current reporting period. OIG found that OPD has continued to make progress in its performance appraisal system but is not yet in compliance with all of the NSA's performance appraisal requirements. Based on OIG's assessment, OPD is not yet in compliance with the requirement that the appraisals of members with substantial collateral duties include consultation with other supervisors or managers. OIG also found that OPD is not in compliance with the requirement that the appraisals of members supervised by two or more individuals due to a transfer are completed by the appropriate supervisor or with the requirement that the performance appraisals of certain commanders document that their subordinates work to enhance the quality of community contacts. Following OIG's audit, OPD updated its performance appraisal forms and provided supervisors and managers with refresher training on completing performance appraisals.

During the current reporting period, we conducted another actual practice assessment of Task 44. We found that OPD is in compliance with all of Task 44 except the requirement that the performance appraisals of Area Captains document that their subordinates worked to enhance community policing, and that they are held accountable for whether they did. OPD is not in compliance with this requirement because no appraisals for Area Captains were completed. OPD is in compliance with the remainder of this task.

OPD is not in compliance with Task 44. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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 twelfth 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, the Chief of Police reviewed, adjusted, and approved it. The Chief 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.

During the current reporting period, the Department completed made additional revisions to the Matrix that 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. Some 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 subsequent reporting periods, 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 the twelfth 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.

During the thirteenth reporting period, we completed another actual practice compliance assessment of Task 45. We found that although the Department was not yet in compliance with Task 45, it had made substantial progress since our last assessment. We found that OPD has implemented a centralized system for tracking discipline and corrective action but that this system has not yet been fully implemented throughout OPD. OPD remained in compliance with the requirement that the Discipline Officer make discipline recommendations in all sustained internal investigations. The Department also remained in compliance with the requirement that before recommending discipline, unless directed by the Chief of Police, the Discipline Officer convene a meeting with the Deputy Chief or designee in the affected chain of command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member or employee's overall performance.

As discussed above, Task 45 requires that OPD impose discipline that is fair and consistent with the Discipline Matrix. During our most recent audit of Task 45, we observed a more rigorous assessment of mitigating and aggravating factors, including consideration of the member or employee's discipline history; the consequences of the misconduct; the member or employee's role in the misconduct; and their acceptance of responsibility and/or remorse. We also found substantial progress in ensuring that discipline imposed is consistent with OPD's own Disciplinary Matrix. During the most recent audit, we found that substantially fewer cases had variances outside of the proscribed discipline ranges. Only two of the vehicle collision cases had variances and both of these cases included specific written justification for the variances. Eleven of the misconduct investigation cases concluded with discipline that varied from the proscribed ranges. Each of these cases resulted in no discipline being imposed or in discipline imposed that was below the discipline established by the Matrix. Six (55%) of these 11 cases included specific written justification explaining the variances. This included several cases resulting in last chance agreements or retirement in lieu of termination.

While we found improvement, we continued to observe instances of inconsistent treatment that undermine OPD's efforts to establish a fair and consistent disciplinary system. While we noted significant improvement in OPD's ability and willingness to impose discipline that is fair and consistent, we continued to observe cases where this does not occur, including several cases that fell outside of the period covered by this audit. The cases in which we continued to observe problems with fair and consistent discipline tended to fall into one or both of the following categories: 1) cases involving popular or well-connected officers or commanders including officers and commanders who are given leeway because they are regarded as strong performers or high producers; or 2) cases in which OPD selects and sustains MoR provisions that carry a lower penalty in order to decrease the maximum possible discipline that can be imposed and/or because OPD does not want to "stigmatize" officers with certain findings.

We discussed specific cases falling into both of these categories with OPD but are most concerned by cases that fall into the first category, i.e., apparent favoritism. This is because as OPD becomes more adept at applying the Matrix, we are seeing fewer cases that fall into the second category – i.e., inapt MoR designation – but we continue to see apparent favoritism. We have discussed with OPD that notwithstanding the presumptive penalties set forth in the Matrix, OPD has the ability and responsibility to mitigate and aggravate cases outside of presumptive ranges if necessary to reach results that are fair and consistent. The key is to do so using objective factors and to document these factors. Given the extensive revisions that OPD has made to its Matrix, it is unlikely that it will need to impose discipline that falls outside of the presumptive ranges often.

Cases of apparent favoritism, although few in number, are of particular concern because actual or perceived favoritism in the disciplinary process makes officers and the community lose trust in the entire system and make it more difficult to uphold disciplinary decisions through appeal and arbitration. Unfair disciplinary decisions also embolden the offending officers to commit misconduct again, sometimes with escalating severity and consequences. Further, in a

number of instances, favoritism results not only in lax discipline but in officers not being sustained at all for misconduct (including serious misconduct) or having sustained findings overturned by OPD notwithstanding the strength of the objective evidence.

Of the misconduct cases we reviewed for our most recent audit, there were 12 cases in which it appeared possible that inappropriate factors (such as favoritism, conflicts of interest, or political interference) played a role in the disciplinary process. These cases resulted in reduced discipline or no discipline and such result could not be explained by any discernable legitimate factors. These cases included a case involving two Internal Affairs intake officers sustained for running outside businesses while on duty at IAD. Each of these officers received the lowest level discipline possible (counseling and training) despite the significant aggravating factor that the misconduct was committed by officers assigned to the Internal Affairs Division. It also includes a case in which the City Administrator, without any written explanation, overturned the sustained finding regarding a commander and radically reduced the discipline. These cases also included an out of compliance pursuit case, an unlawful vehicle search case, and profanity cases that resulted in no discipline notwithstanding the facts of the cases and the officers' histories. In several cases completed after the period covered by this audit, we continued to observe instances of inconsistent treatment that undermine OPD's disciplinary system.

In addition to the problems discussed above, we observed troubling inconsistencies in the manner in which OPD's Skelly officers review sustained discipline cases. Officers and employees are entitled to a Skelly hearing in disciplinary cases resulting in punitive action involving a loss of pay. Absent a conflict of interest, OPD captains and deputy chiefs serve as the Department's Skelly officers presiding over Skelly hearings. The hearings are intended to provide members and employees an opportunity to respond to the proposed discipline prior to its imposition. Many of OPD's Skelly officers make decisions that are rationally related to the facts and circumstances of the cases they review. Other Skelly officers, however, have reduced the discipline automatically without regard to the facts and circumstances of the case. We have discussed this issue with OPD at length. It has agreed that its Skelly officers need additional training. The current IAD Commander also is trying to ameliorate the problem by not allowing certain commanders to act as Skelly officers. In order to address this issue, OPD should ensure that its Skelly officers understand and reinforce the values, mission, and integrity of the Department.

Until factors such as political interference, favoritism, conflicts of interest, or other inappropriate factors play no role in OPD's disciplinary process, the system will not function as intended and will do a disservice to the OPD members and employees.

OPD is not in compliance with Task 45. This task will be actively monitored under the MOU. The Monitor will conduct the required audits, reviews or studies to assess whether OPD is complying with the substantive task requirements. (*MOU, paragraph 10.*)

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. During the current reporting period OPD published Policy & Procedure 08-02, *Personnel Division Policy and Procedure Manual*, which outlines the materials required to be included in promotional packets provided to the Chief and others for consideration.

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 to January 30, 2006, and reported that the Department's actual practice 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.

During the thirteenth reporting period, OIG completed an assessment of Task 46, finding OPD in compliance with the task.

During the current reporting period, the IMT conducted an actual practice assessment of Task 46. We found that OPD is now in compliance with this task. Our review did not assess, or reflect our view of, the ultimate propriety of any particular promotion. Rather, it assessed whether OPD has in place a system which appropriately incorporates required integrity, accountability, and community policing factors into the promotions process, and that provides accurate and complete information to the Chief and City Administrator so that they can effectively assess these factors in deciding whom to promote. We found that it does. Further, we found no applicants with sustained Class I offenses within the previous 12 months that had been promoted.

OPD is in compliance with Task 46. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

G. 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 "CrimeStop" 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.

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 eleventh review period, this information was provided to the IMT. The IMT reviewed the information and provided comments to OPD.

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

During the twelfth reporting period, OPD revised Training Bulletin III-A.5 to incorporate direction regarding its methods and mechanisms for measuring community policing and problem-solving.

We conducted a compliance assessment of Task 47 during the twelfth reporting period. Our assessment of Task 47 found that OPD was in compliance with each of the provisions reviewed. Accordingly, we found OPD in conditional compliance with Task 47. This compliance finding was conditional because we did not review the Task 47.3 requirement that OPD implement mechanisms to measure its community policing and problem-solving activities. OPD had not yet had sufficient time to implement this requirement.

During this reporting period we conducted an assessment of OPD's compliance with the requirement that OPD measure community policing efforts. We found that OPD has implemented some mechanisms to measure its community policing efforts, including requiring officers to document their completed problem-solving projects on beat project forms; tracking the projects completed by its dedicated problem-solving officers; tracking the number of commanders who participate in community internet groups; and tracking the number of officers who attend community meetings each quarter. In addition, OPD began to include in the performance appraisals of its patrol officers an assessment of whether officers complied with the new requirement to complete a minimum number of problem-solving projects each year. While these measures are sufficient to comply with Task 47, there is significant room for OPD to make its measurement efforts more useful to the Department and the communities it serves. For example, while OPD officers complete beat project forms for each individual project, we found a wide variance in the quality of information captured on each form. Additionally, we found that

there is little, if any, aggregate assessment of this data by OPD supervisors or commanders. Such assessment would help OPD to identify critically useful information such as the total number of beat projects completed; the types of beat projects completed in each Area; and the strategies that prove most effective in addressing common community concerns.

OPD is in compliance with Task 47. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

H. 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 12 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 twelfth reporting period, we completed our compliance assessment of OPD's 2007 annual management reports. OPD is in compliance with Task 48. Our review indicated that OPD has significantly improved both the quality and timeliness of its annual management reports since our first assessment of OPD's annual management reports in 2005. In general, the reports were more detailed and thorough, increasing their potential as useful planning and oversight tools for OPD upper management. OPD has made a focused effort to improve in this area and, in our view, this effort has succeeded. A full discussion of our findings is included in our twelfth status report.

During the thirteenth reporting period, OPD completed its 2008 annual management reports. In 2009, as in 2008, the meetings between Division Commanders were more formalized than during the years of our previous audits. Members of the IMT attended these meetings, which occurred over two days. The discussions we observed during these well-attended meetings were informative and included some probing questioning. However, similar to last year, we continued to note that the quality of discussions was inconsistent. This may be due in part to the fact that, in violation of OPD policy, the commanders were not provided many of the reports sufficiently in advance to review them in preparation for the meetings. A number of the reports were provided to commanders only after prompting from the IMT. Such conduct weakens the management value of the annual reports and calls into question whether OPD will maintain compliance with this important process.

During the current reporting period, OPD has just begun to prepare for its review of 2009 annual management reports. We encourage OPD to continue to make this process more substantive and useful to the agency.

OPD is in compliance with Task 48. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

I. 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 the eleventh 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.

OPD is in compliance with Task 49. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

J. 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; 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. During the twelfth reporting period, OIG staff met with the compliance assessors on a regular basis to assist them with compliance efforts. OIG staff also have continued to provide invaluable assistance to the IMT in collecting data and evaluating Department policies, procedures, and systems.

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 a semi-annual report, the Combined 8th and 9th Semi-Annual Report, in December 2007. OPD published its combined 10th and 11th Semi-Annual report in December 2008, covering the time period from July 2007 through June 2008. OPD published its 12th & 13th Semi-Annual Report, covering the time period from July 1, 2008—July 31, 2009, in August 2009.

OPD is in compliance with Task 50. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

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).

In 2008, OIG completed the following audits: Performance Review Meetings (March 25, 2008); Summary of Citizen Complaints and Disclosure of Possible Investigator Bias (June 4, 2008); Timeliness Standards for IAD Investigations (July 18, 2008); Oleoresin Capsicum Log and Checkout Procedures (October 17, 2008); Use of Force (November 3, 2008); MDT Audit (December 12, 2008); and Review of Tasks 5, 8, and 9: Receiving and Processing Complaints (December 22, 2008).

In 2009, OIG has completed the following audits: Personnel Practices (February 25, 2009); Promotional Consideration (March 16, 2009); Investigating Anonymous Complaints (April 29, 2009); Arrest Approval and Report Review (July 2, 2009); Complaint Procedures for IAD (July 14, 2009); Disclosure of Possible Investigator Bias (August 4, 2009); Refusal to Accept or Refer a Citizen Complaint (October 14, 2009); Span of Control (October 15, 2009); and MDT Audit (December 15, 2009).

Task 51.2 establishes the minimum substantive requirements for the audits conducted by OPD. OPD remains 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 semi-annual reports discuss OIG's audits.

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

OPD remains in compliance with this task. This task will not be actively monitored under the MOU. If the Monitor observes material non-compliance with this task, the Monitor may conduct reviews as necessary to determine whether the City has fallen out of substantial compliance and the extent and nature of the alleged deficiency. (*MOU, paragraph 11.*)

VI. CONCLUSION

The IMT thanks the Oakland Police Department and the City of Oakland for the opportunity to participate in this important effort. We have tremendous respect for the diligence, creativity, and integrity of the many individuals in the Police Department and the City whose continued efforts have made the Department's achievements under the Settlement Agreement possible. We are confident that if the Department remains focused and committed to the goals of the NSA, it will be able to attain full compliance with the Settlement Agreement and serve as a model for other agencies.

We are also grateful to the Plaintiffs' Attorneys, John Burris and Jim Chanin, for their unflagging efforts to see that the terms of the Settlement Agreement are met, and their equal willingness to listen to us and to critique us.

It has been a privilege to work for the Honorable Judge Thelton Henderson, without whose wise guidance, these past seven years would have been far less fruitful as well as less pleasant. None of us will ever have a better boss.

Most of all, we acknowledge the half million individuals who live and work in the great city of Oakland every day, especially those in poorer communities and communities of color. Like many in the Police Department and the City, it is for you that we gave our best efforts, and for you that we most hope the City and Police Department soon succeed in providing the best protection they can of the "lives, rights, dignity, and property" of all Oakland residents.