



OAKLAND POLICE DEPARTMENT REMEDIAL ACTION PLAN FIRST REPORT

**OFFICE OF THE COMPLIANCE DIRECTOR
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MAY 1, 2013**

TABLE OF CONTENTS

Cover Letter from Compliance Director..... 3

Introduction..... 4

Initial Findings..... 9

Action Plan

TOPICAL AREA #1..... 11

While the vast majority of OPD Officers are dedicated, hardworking men and women doing an extraordinarily difficult job, a few behave in manners that result in citizen complaints and administrative investigations.

TOPICAL AREA #2..... 28

Supervisors fail to enforce Departmental policy by not intervening in or reporting unacceptable behavior that they are either informed of or witness.

TOPICAL AREA #3..... 46

Investigations fail to thoroughly and impartially seek the truth in reported allegations of officer misconduct.

TOPICAL AREA #4..... 53

Executive leadership has permitted members of the organization to believe that the behaviors articulated in Topical Areas # 2 and #3 are both tolerated and acceptable.

TOPICAL AREA #5..... 55

Executive leadership fails to act proactively on issues/processes within their ability to implement that, cumulatively, would have major impact on Departmental effectiveness.

Tentative Budget for first year..... 57



Office of the Compliance Director

U.S. District Court, Northern District of California

May 1, 2013

This is the first Compliance Director's Remedial Action Plan, issued as required by Judge Thelton Henderson's Compliance Director Court order dated December 12, 2012. It has been compiled after only six weeks of intensive effort by my staff and me to understand a complex issue that has lingered for over ten years.

In producing this initial product we have reviewed stacks of documents, and have interviewed dozens of people representing the whole spectrum of stakeholders in this project. We feel that we have made an acceptable start, but that the product we present here is far from completed. We have determined to align our future work closely with the Independent Monitor's Quarterly Reports, updating and recalibrating our action plan each time the Monitor completes a measurement and assessment cycle.

The reader will quickly note that this action plan, even in its early stages, goes well beyond the issues contained in the eleven remaining NSA noncompliant items. This authority was specifically granted by Judge Henderson to insure that Oakland has a strong police department, well positioned for the future, at the end of our work here.

Very few of the items we list in this plan can be initiated easily and painlessly. The road ahead will certainly be rocky, and occasionally divisive. However, we feel confident that we can navigate these issues and produce a solid foundation for the future success of the Oakland Police Department.

A handwritten signature in black ink that reads "Thomas C. Frazier".

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INTRODUCTION

On January 3, 2003 Judge Thelton E. Henderson signed an order pursuant to a negotiated agreement by parties in the Delphine Allen case,¹ hereafter referred to as the Negotiated Settlement Agreement (NSA).² The NSA was a result of multiple Patterns and Practices claims against the City of Oakland and the Oakland Police Department (OPD) stemming from what has become commonly known as “The Riders Case.” A total of 119 plaintiffs were associated with the suit in 2000, and ultimately an award of \$10.9 million was paid by the City of Oakland. The NSA outlined major reforms required of the OPD, and the Department was to be in compliance within 5 years. The Compliance Director maintains the highest regard for the purpose of the NSA as outlined in the original 2003 Agreement:

“The City of Oakland...and the plaintiffs share a mutual interest in promoting effective and respectful policing. The parties join in entering into this Settlement Agreement...to promote police integrity and prevent conduct that deprives persons of the rights, privileges and immunities secured or protected by the Constitution or laws of the United States. The overall objective of this document is to provide for the expeditious implementation...of the best available practices and procedures for police management in the areas of supervision, training and accountability mechanisms, and to enhance the ability of the Oakland Police Department...to protect the lives, rights, dignity and property of the community it serves.”³

The NSA was updated in February 2004,⁴ and encompassed 51 Tasks. An Independent Monitoring Team (IMT), approved by Judge Henderson, was assigned the responsibility of monitoring the efforts and progress of the OPD toward compliance with all Tasks. At the end of the Court-ordered 5 year period, OPD was not in full compliance with the NSA, and thus Judge Henderson ordered that it be extended. The first IMT filed 14 quarterly reports with the court; the last was filed in January 2010.⁵

In 2010, a second IMT was approved by Judge Henderson. The second (and current) IMT has filed a total of 13 quarterly reports, commencing in April 2010.⁶ An Amended Memorandum of Agreement (AMOU) between all parties was also approved by Judge Henderson. The AMOU reduced the number of actively monitored Tasks from 51 to 22. In January 2012, the Court issued an order extending the authority and responsibility of the Independent Monitor.⁷

¹ Delphine Allen, et al., Master Number C00-4599 TEH (JL)

² <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/dowd022066.pdf>

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ <http://docs.justia.com/cases/federal/district-courts/california/candce/3:2000cv04599/41858/675/0.pdf?1327480915>

In 2012 plaintiff's attorneys filed a motion for the court to consider assigning a federally appointed receiver to the OPD, which would place the OPD into receivership. The motion was opposed by the City of Oakland, and ultimately the parties agreed to a concept titled "Compliance Director."⁸ Following an agreement by parties to pursue an alternative to a federally appointed receiver the Office of the Compliance Director was ordered by Judge Thelton E. Henderson on December 12, 2012.⁹

On March 4, 2013 Judge Henderson appointed Commissioner Thomas C. Frazier (Ret.) as the Compliance Director.¹⁰ On March 10, 2013 the Court issued an Order of Clarification regarding, in large measure, the authority and scope of the Compliance Director.¹¹ On March 17, 2013 the court issued an order approving the Compliance Director's staff.

The Compliance Director Court order dated December 12, 2012 addresses the reporting duties of the Compliance Director, and delineates the following requirements:¹²

1. "Within 30 days of his or her appointment, the Compliance Director will file a remedial action plan ("Plan") that both addresses deficiencies that led to noncompliance and explains how the Plan will facilitate sustainable compliance with all outstanding tasks by December 2013 or as soon thereafter as possible.

"The Plan will include:

- a. A proposed budget, to be included as part of the Oakland Police Department ("OPD") budget, that is mutually agreed to by the Compliance Director, the Mayor, the City Administrator, and the Chief of Police for the fiscal year based on proposed expenditures for task compliance.
- b. A plan for the oversight, acquisition, and implementation of a personnel assessment system ("IPAS") that provides a sustainable early-warning system that will mitigate risk by identifying problems and trends at an early stage.
- c. Strategies to ensure that allegations made by citizens against the OPD are thoroughly and fairly investigated.
- d. Strategies to decrease the number of police misconduct complaints, claims, and lawsuits.
- e. Strategies to reduce the number of internal affairs investigations where improper findings are made.

⁸<http://www.oaklandcityattorney.org/PDFS/Riders/Joint%20Submission%20of%20Proposed%20Order%20Regarding%20Receivership%20Motion.pdf>

⁹ <http://www.cand.uscourts.gov/pages/964>

¹⁰ Ibid

¹¹ <http://www.scribd.com/doc/135282991/Henderson-April-10-Order-on-Compliance-Director-s-Authority>

¹² <http://www.cand.uscourts.gov/pages/964>

f. A list of persons responsible for each outstanding task or specific action item.”

In addition, the court ordered, in part:

“The above list of requirements is not exhaustive. Likewise, the parties have agreed that tasks related to the following areas are key to driving the sustained cultural change envisioned by the parties when agreeing to the NSA and AMOU: collection of stop data, use of force, IPAS, sound management practices, and the quality of investigations by the Internal Affairs Division.....The Court agrees that the identified tasks are of utmost importance, but, unless otherwise ordered, expects full and sustainable compliance with all NSA tasks.”¹³

“The Compliance Director will have the power to review, investigate, and take corrective action regarding OPD policies, procedures, and practices that are related to the objectives of the NSA and AMOU, even if such policies, procedures, or practices do not fall squarely within any specific NSA task. The Compliance Director will have the authority to direct specific actions by the City or OPD to attain or improve compliance levels, or remedy compliance errors, regarding all portions for the NSA and AMOU, including but not limited to: (1) changes to policies, the manual of rules, or standard operating procedures or practices; (2) personnel decisions, including but not limited to promotions; engagement of consultants; assignments; findings and disciplinary action in misconduct cases and use-of-force reviews; the discipline or demotion of the OPD officers holding the rank of Deputy Chief and Assistant Chief; and the discipline demotion, or removal of the Chief of Police; (3) tactical initiatives that may have a direct or indirect impact on the NSA or AMOU; (4) procurement of equipment, including software, or other resources intended for the purpose of the NSA and AMOU compliance; and (5) OPD programs or initiatives related to NSA tasks or objectives. The Compliance Director will have the authority to direct the City Administrator as it pertains to outstanding tasks and other issues related to compliance and the overall NSA and AMOU objectives.”

Judge Henderson’s Order of Clarification¹⁴ affirmed, with examples, the information contained in the December 12, 2012 Compliance Director Order.¹⁵

At the time of this writing, the IMT 12th quarterly report states there are 11 NSA Tasks with which OPD remains out of compliance at various levels.

First and foremost, the Office of the Compliance Director considers of paramount importance the need to concentrate efforts on the remaining tasks which are out of

¹³ <http://www.cand.uscourts.gov/pages/964> page 5

¹⁴ <http://www.scribd.com/doc/135282991/Henderson-April-10-Order-on-Compliance-Director-s-Authority>

¹⁵ <http://www.cand.uscourts.gov/pages/964>

compliance. This process includes, but is not limited to, analysis of history, understanding of NSA-AMOU-IMT-Court requirements, factors impacting OPD's inability to come into full compliance, and a study of the future direction of the Department. In essence, where OPD has been, where they are now, and where they are going. The NSA tasks, as negotiated by the parties and approved by the court, shall always be considered a top priority with the Office of the Compliance Director.

Moreover, the Compliance Director has a clear understanding that bringing the tasks which are currently out of compliance (or ruled out of compliance in future IMT quarterly reports) into compliance will not, alone, establish the culture and the contemporary police services the community desires in their police department. Police organizations are complex, interwoven, sophisticated and demanding institutions which provide services at all hours every day of the week. As such, comprehensive principles, policies, practices and philosophies associated with concepts of training, accountability, supervision and administration must be affirmatively challenged to reflect preferred practices and Constitutional Policing.

This first iteration of the Remedial Action Plan ("the Plan") appreciates, and is dependent upon, a variety of sources to inform its contents as accurately as is reasonable.¹⁶ Those sources include, but are not limited to:

- Membership, supervisors, command and executive personnel of the Oakland Police Department.
- Independent Police Monitoring Team.
- Site visits.
- Community contacts.
- Inspections and analysis.
- Parties to the NSA.
- ACLU and National Lawyers Guild.
- City administrators and political leaders.
- Representatives at Partners Meetings.(Meetings of all stakeholders in the NSA.)
- Local media.
- Investigations conducted by the Internal Affairs Division and the Criminal Investigations Division.
- Civil claims, civil suits, and civil awards.
- Technical Assistance meetings with the Department and the IMT.
- Alameda County Civil Grand Jury reports and Department responses.
- Alameda County Office of the District Attorney.
- Internal Department audits.
- Executive Force Review Boards.
- OPD policies, orders and training bulletins.
- Frazier Group LLC report of Occupy Oakland events and the OPD response.

¹⁶ The Plan will be updated and revised as more information, through a variety of sources, becomes available.

The Compliance Director has a part-time staff of three individuals. Collectively, the Office has 162 years of full-time experience at all levels of law enforcement (Federal and municipal). The Director resides full-time in Oakland, and the Office is located in Oakland as well.

The Remedial Action Plan is a living document. The first iteration connects strategies (as ordered by the Court) with out-of-compliance NSA tasks, and with over-arching policies and practices that weave throughout the organization. The Office of the Compliance Director aspires to be clear that this document is preliminary in nature. Given the extensive time period required to conduct reviews, research and exploration of the Department, the Director believes the provision of strategies rather than finite objectives are most appropriate. As knowledge, discovery and awareness of the Department and of community concerns increase, commensurate revision of the Plan will likely occur. The Compliance Director Order makes clear that a document with substantially more specificity and benchmarking will be forthcoming 30 days after the due date of this Plan.

How the Plan facilitates Sustainable Compliance

The Court has ordered the Compliance Director to provide an explanation for how the Plan will facilitate sustainable compliance with the NSA tasks.

Understanding the organizational history, and the reasons for *why* the listed deficiencies have prevented the City and the Department from attaining compliance with the NSA tasks, are important. However, what is critical to the sustained compliance of the NSA tasks and of preferred practices in law enforcement are age-old, tried and true, fundamental principles. The Plan illustrates the necessity for sustained reform based on *training, supervising, accountability, and professional leadership and administration* in all facets of the Department; from recruiting, background investigations, and hiring of new officers to civilian support services to succession planning to community collaboration, these strategic principles will positively impact every component in the OPD. Policy, mandates, inexorable pride and ethics, quality assurance, performance auditing, and community oversight all aggregate to ensure that, once the OPD evolves to 21st century policing, it will sustain the achievement and continue to remain a contemporary and professional provider of law enforcement services.

INITIAL FINDINGS

This Plan has been produced after only six weeks of review of OPD by the Compliance Director and his staff.

This Remedial Action Plan is organized in a manner that identifies strategies necessary to address defined weaknesses. Strategies include those items from the NSA that are either non-compliant or partially compliant. Additional actions are also included that are deemed necessary to go beyond technical compliance with the NSA, to insure the future health and viability of the organization. Timelines and responsible parties are identified for each task. Finally, a budget estimate for implementation is provided, in accordance with the Court-ordered Tasking.

In preparing the action plan items that follow, we have remained cognizant that OPD is an organization stretched to the limit for both sworn and civilian personnel. Field commanders have told us that they recognize the need for improvements, especially in the training area, but are very reluctant to remove personnel from the street to attend training. This poses a difficult question: How “well” can OPD afford to get? Each officer receiving necessary training means one less officer on the street. We are encouraged that the City of Oakland is now seemingly committed to funding a series of police academy classes over the next two years. They will provide much-needed increases of sworn personnel. However, these increases will come slowly, and OPD has many immediate needs. Balancing these opposing forces will require careful planning and cooperation between the City, OPD, the Independent Monitor, the Compliance Director, and other involved stakeholders.

NOTE 1: “OPD PLAN TO ACHIEVE COMPLIANCE” discussions in the following have been quoted directly from the current undated OPD Task Compliance Plan, as provided to the Compliance Director in March, 2013.

NOTE 2: “MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:” discussions have been quoted directly from the Twelfth Quarterly Report of the Independent Monitor for the Oakland Police Department, dated January 30, 2013.

COMPLIANCE DIRECTOR'S FINDINGS:

Due to the evolving nature of this task recalibration of this Plan may occur subsequent to the publication of any Monitor Quarterly Reports or other significant developments. These Plan updates will include necessary adjustments to Compliance Director recommendations and budget adjustments. This will insure that the Plan remains current and aligned with the Court's desire for rapid progress.

The Compliance Director has divided the items identified by the Court into the following five topical areas:

TOPICAL AREA #1

While the vast majority of OPD Officers are dedicated, hardworking men and women doing an extraordinarily difficult job, a few behave in manners that result in citizen complaints and administrative investigations.

TOPICAL AREA #2

Supervisors fail to enforce Departmental policy by not intervening in or reporting unacceptable behavior that they are either informed of or witness.

TOPICAL AREA #3

Investigations fail to thoroughly and impartially seek the truth in reported allegations of officer misconduct.

TOPICAL AREA #4

Executive leadership has permitted members of the organization to believe that the behaviors articulated in Topical Areas # 2 and #3 are both tolerated and acceptable.

TOPICAL AREA #5

Executive leadership fails to act proactively on issues/processes within their ability to implement that, cumulatively, would have major impact on Departmental effectiveness.

Action Plan

TOPICAL AREA #1

While the vast majority of OPD Officers are dedicated, hardworking men and women doing an extraordinarily difficult job, a few behave in manners that produce citizen complaints and administrative investigations.

REMEDIAL ACTIONS:

GOALS:

- Change the culture of the organization to show that these kinds of actions are not tolerated at a peer level, by supervisors, or by executive leadership.
- Restructure Internal Affairs procedures to insure full, fair, and timely investigation of alleged misconduct.
- Insure that promotion, reassignment, and awards processes fully consider past instances of exemplary conduct, and/or misconduct.
- Insure that Departmental training programs stress the concepts of constitutional policing, and of a broad range of appropriate officer responses concerning use of force.

OBJECTIVES:

- **Bring Task 5: Complaint Procedures for IAD, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 88% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 18, or 72%, in compliance with *all* of these required elements.

In nine cases, investigators conducted follow-up interviews with officers or civilians to seek clarification. However, in three cases, we believe that additional interviews should have been conducted. In one, a union steward alleged that a supervisor interfered with an internal investigation. The investigator noted that the complainant, who is also an OPD employee, "...refused multiple requests to be interviewed by IAD or answer follow up questions." We noted a similar case during our last review process. IAD can – and *should* – compel employees to cooperate with an investigation, particularly employees who initiate the complaint process. In another case, a use of force allegation stemming from an Occupy Oakland protest, discrepancies between a sergeant's and an officer's statements regarding the actions of a complainant and the level of force used should have been explored in subsequent interviews. In the third case – a complaint of demeanor during a motor vehicle accident investigation – the complainant provided the names of two potential witnesses. These witnesses were not contacted before IAD reached a determination regarding the allegation. Consequently, we also determined that, in these latter two cases, inconsistent statements went unresolved.

In three cases, credibility assessments were problematic. In one, an Occupy Oakland case that was investigated by an outside contractor, credibility assessments simply were not completed.¹⁷ In another investigation involving an allegation of excessive force stemming from an Occupy Oakland protest, the Chief appropriately changed a not sustained finding to sustained, based on the officer's history and the fact that he appeared to intentionally turn his PDRD off several times during the incident. While the Department ultimately came to the correct conclusion, the officer's credibility should have also been questioned based on the evidence at hand. In another case, an investigator concluded that an officer became "obviously upset and appeared to take on a defeatist attitude; he was admitting to things that did not happen." We have repeatedly cautioned IAD about including such speculative comments in investigative summaries. However, if IAD elects to include statements like this, investigators cannot later deem the officer credible without any notation of this previous conclusion.

¹⁷ When we inquired regarding the lack of credibility assessments in this case, IAD advised that it also noted that the assessments were missing, and provided an updated investigation. IAD sent a two-page memo containing credibility assessments to the Chief on November 8, 2012.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 88% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 20 cases, or 80%. One of the noncompliant cases involved uses of force and their subsequent investigation, stemming from an Occupy Oakland protest. Two of the allegations were appropriately sustained. We believe another allegation – that a supervisor intentionally omitted certain details in his reports – could have also been sustained. The investigator wrote such phrases as, “there are circumstances to suggest that [] did so intentionally” and “may have intentionally omitted.” He arrives at his not sustained finding, however, because he believes there is no “clear evidence.” This standard is higher than the preponderance of evidence standard, which we believe was met as it pertains to this allegation.

In another case, an allegation was inappropriately administratively closed rather than adjudicated according to the preponderance of the evidence standard. It involved an allegation of inappropriate pointing of a firearm during the execution of a search warrant. A third-party complainant alleged that officers pointed an “infrared” dot at an infant while clearing the house. IAD administratively closed the case because OPD firearms are not equipped with laser sights, and since ATF agents were also on the scene, their firearms must have been involved. However, just prior to the case being closed, an IAD officer called ATF and learned that they also do not have any weapons equipped with laser sights. Despite having this information, IAD administratively closed the case as having no jurisdiction.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

We noted six cases in which the recommended findings of the investigator were overturned during the review process. In five cases, this was appropriate and resulted in compliant cases as it pertains to this task. However, in one, a case involving an allegation of a dispatcher failing to report to work after being medically cleared for duty, the investigator also laid out a convincing case for sustained truthfulness charges. The Chief changed the finding “after consulting with the OCA (Office of the City Attorney).”

OPD is not in compliance with Task 5.18.

OPD PLAN TO ACHIEVE COMPLIANCE

OPD RESPONSIBLE PARTY: Deputy Chief S. Whent

OPD will provide training to IAD (e.g., analyzing statements and evidence, interviews and interrogation, and POST Internal Affairs training, interview techniques, investigative analysis, etc.). This training is on-going.

Providing similar training to newly promoted investigators.

OPD has made appropriate staffing changes at the investigative and command level and will continue to monitor staff performance.

OPD to provide continued training on investigation process and protocols to ensure that investigations and findings are based on thorough, fair, unbiased, and timely.

We expect to return to a level in compliance or near to it once the vast numbers of Occupy investigations are complete. This task will likely never be 100% due to the subjectivity involved.

COMPLIANCE DIRECTOR'S COMMENTS:

The OPD has commented that they have been in compliance with Tasks 5.15 and 5.16, as documented in many previous IMT quarterly reports. OPD believes the organization is presently out of compliance with Task 5.18 in large measure due to the Occupy Oakland events of 2011 and 2012. The volume, nature, and challenges of the complaints alleged against Department members and Department policy/actions was an anomaly.

Regarding credibility assessments, a variety of methods were analyzed to determine which were most appropriate to the NSA Task, e.g. standard jury instructions regarding weighing credibility of testimony. At the present time, the overwhelming numbers of statements are automatically deemed credible unless provable information to the contrary is known. In addition, Internal Affairs has recognized possible disparity when evaluating citizen versus officer credibility, and they have also determined to assess and emphasize

the officer's history. The Department has also recognized that noncompliance can be attributed, in part, to administrative investigations which are completed outside of the Internal Affairs Division, at what is called the "Division level." Division level investigations are typically done within the division where the Department member works, such as patrol. The Division level administrative investigations are often lower-tier allegations.

OPD has indicated the efforts to come into compliance with the Task have included reorganization of the entire command staff and a substantial amount of internal training. Efforts have included holding supervisors accountable for their responsibilities, and providing scenario-based training to all Department supervisors and command personnel. Current focus within the Department is on diligence and thoroughness when interrogating and interviewing Department personnel. Due to their training emphasis, the OPD believes they have demonstrated an approximate 30-40% increase in their capacity to conduct appropriate IAD investigations.

Executive Leadership must send a clear message to the rank and file that misconduct by one reflects poorly on all. Community support is contingent on mutual respect, and must be a key component of everyday interaction at the individual officer level. Positive discipline begins with executive leadership, i.e., leadership by example and appropriate behavior modeling. Negative discipline must be as lenient possible and still effect the desired change in behavior, yet severe enough that others will recognize that this type of misconduct is not worth the imposed sanction.

Selection, Training, and Supervision of Internal Affairs members will take months, if not years to accomplish. Sergeant promotional list members are prime candidates for assignment to Internal Affairs. These candidates will get invaluable experience not available in any other assignment or any other time in their careers. Thoroughness and the ability and need to probe deeply and effectively are requisite skill sets for future commanders and executive leaders.

- **Bring Task 16: Supporting IAD Process – Accountability, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 16.1 requires that supervisors and commanders, as well as other managers in the chain of command, are held accountable for supporting the IAD process (compliance standard: Yes/No); and **Task 16.2** requires that if an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, the supervisor or manager is held accountable, through OPD's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene (compliance standard: 90%).

To assess Task 16 during this reporting period, we examined 95 Daily Incident Log entries from July 1, through September 30, 2012; a random sample of 84 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between July 1, through September 30, 2012; and the 20 sustained Class I investigations that were approved by the Chief between July 1, through September 30, 2012.

During this reporting period, there was an increase in the number of sustained Class I investigations, compared to previous reporting periods. However, only nine (45%) of the 20 investigations sufficiently addressed the role of the subjects' supervisors or managers in the sustained misconduct. Task 16 requires, in part, that a supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.

Of the remaining 11 cases in our review, seven involved Occupy Oakland and related protests. In each of these, officers were sustained for their improper use of force. However, despite the requirement that investigations include a member/employee accountability section, the investigations contained limited or incomplete analyses of the actions of the supervisors who should have supervised the officers, intervened in the use of force, and reported the actions. During protests, OPD assigns squads of officers to interact with the crowd, and each squad is supervised by a sergeant. However, none of the seven Occupy Oakland-related cases included an analysis of the accountability of any supervisor above the rank of sergeant, leading us to question where the other

officers, supervisor, or commanders were while the sustained misconduct occurred. In one case, a lieutenant was found to have made improper command decisions during a protest; however, the investigation did not include any review of the demonstration response planning by OPD command. In more than one case, high-ranking supervisors – including captains – were involved in the situations that lead to the sustained use of force. In these situations, if citizens had not made complaints, the misconduct would not have been reported or investigated; and officers would not have been disciplined for their misconduct.

The remaining four investigations that did not sufficiently or completely analyze the role of the supervisor involved: the improper detention of a subject and (sustained) allegation of racial profiling; a vehicle pursuit where the officer intentionally struck the subject; the use of a canine where improper commands were given; and the use of a force in striking a mental patient. In each of these cases, OPD did not sufficiently analyze the role of the supervisor in the misconduct. It was not until each of the four cases made it to the Force Review Board that the Chief of Police identified the supervisors' misconduct.

Based on our review, OPD is not in Phase 2 compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

OPD PLAN TO ACHIEVE COMPLIANCE

OPD RESPONSIBLE PARTY: Deputy Chief S. Whent

The Department has consistently done a good job at holding people accountable where necessary. Occupy was a challenge to the Department in every possible aspect, including IA investigations. The Department will give additional scrutiny to any lingering Occupy investigations. It is expected that compliance will improve to pre – Occupy compliance levels.

As with Task 5, the OPD believes they are out of compliance with Task 16 due to the volume and challenges of complaints made as a result of Occupy Oakland events of 2011 and 2012. Prior to the necessity to investigate the hundreds of complaints, the OPD had

been in compliance for many quarters. OPD believes they have consistently done a good job at holding people accountable where necessary, as it relates to this particular task. Occupy Oakland was a challenge to the Department in every possible aspect, including IA investigations.

The Department acknowledges that IAD struggles with making determinations about the role of a sergeant as it relates to the alleged misconduct of an officer. This was especially applicable with the Occupy Oakland complaints, in that the volume of complaints has made it difficult to 'explore' the burden that sergeants should have borne. In addition, the IAD has been challenged to develop a preponderance of evidence to sustain allegations involving supervisors.

The Department will give additional scrutiny to any lingering Occupy investigations. It is expected that compliance will improve to pre - Occupy compliance levels going forward.

COMPLIANCE DIRECTOR'S COMMENTS:

The Department historically has not consistently held members accountable for their actions, both in terms of effective disciplinary investigation, proper finding, and appropriate discipline. Several cases are being reviewed by the Office of the Compliance Director at this time, and appropriate findings and recommendations are forthcoming.

"Occupy" is not a blanket excuse for lingering NSA-related or other issues. However, the Compliance Director does acknowledge that the events of "Occupy" placed a significant burden upon an already ineffective IAD system.

- **Bring Task 40: Personnel Assessment System (PAS) into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Comments:

In the last two reporting periods, we found OPD to be in partial Phase 2 compliance – following two reporting periods of non-compliance – as a result of persistent problems in accurately recording the number of arrests made by individual officers.

Although the specific problems were identified, the Department “resolved” this issue through a process of entering data by hand. As noted in our previous reports, this temporary fix is significant, but it does not stabilize the system to assure ongoing quality in data collection and storage. The Department is moving toward implementing a new computer system that will address these problems. The new system should support achieving compliance with this requirement.

Discussion:

General Order D-17, Personnel Assessment Program, which incorporates the requirements of Tasks 40 and 41, was recently revised (July 11, 2012), supporting continuation of a finding of Phase 1 compliance with this Task.

As noted in our last report, major data problems were addressed by reverting to entering arrest data manually rather than automatically from the Alameda County data feed. Plans exist to automatically enter data into the County system from electronic reports completed by officers but have not yet been implemented, although that had been expected. When they are, Oakland will join most other police departments in the County that have reliable systems for automatically uploading arrest data. The issue of continuing instability of the system, therefore, remains. OPD again reports that the problem is expected to be resolved soon. We will continue to review the status of change in data collection and storage processes.

Tasks 40 and 41 are divided into 33 practice-related subtasks that include 12 additional lower-level provisions. As with all previous reviews, we requested and received material for each of the Tasks and subtasks. Our data request allowed for the replication and extension of the data analysis reflected in our earlier reports.

PAS records for the quarter of July 1, through September 30, 2012 indicate that data were entered for all of the fields required by Task 40 – including the arrest data. The required data for the quarter included reports of 776 uses of force. This is a decrease of 23% from the last reporting period. The data for the current reporting period indicate that there were 3,516 arrests – down slightly from 3,639 the previous reporting period.

A further breakdown of the types of use of force shows that, for this reporting period, there was one Level 1 (down from three in the last reporting period); five Level 2; and 29 Level 3 uses of force. The table also shows a decrease of 23% in Level 4 uses of force, to a total of 741. This is on top of a 9% reduction in the prior quarter and represents the lowest level since this our tenure began. The data count for the current reporting period and the five prior reporting periods is presented in the table below.

OPD Performance Activity Comparison by Quarter						
Performance Activity	April 1 to June 30 2011	July 1 to September 30 2011	October 1 to December 31 2011	Jan 1 to March 31, 2012	April 1 to June 30, 2012	July 1 to September 30, 2012
Level 1 Uses of Force	4	6	3	4	3	1
Level 2 Uses of Force	21	19	48	28	14	5
Level 3 Uses of Force	37	38	108	50	31	29
Level 4 Uses of Force	1154	1066	797	1034	962	741
Unintentional Firearms Discharge	0	0	0	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56	12734.56	11229.36	9634.3
Line of Duty Injuries	40	52	43	47	50	46
Narcotics Related Possessory Offenses Arrests	426	482	445	641	452	508
Vehicle Collisions	15	11	7	13	15	15
All Vehicle Pursuits	82	117	89	77	99	83
All Arrest	3374	3470	3402	3656	3649	3516
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61	58	72	58
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24	38	24	8
Awards	160	70	65	66	99	121
Assignment History	9498	9498	9498	9414	9588	9720
Case Evaluation Reports	629	321	193	209	191	453
Report Review Notices--Positive	2	0	1	6	7	12
Report Review Notices--Negative	0	0	0	1	0	0
Canine Deployments	92	112	71	96	93	63
Financial Claims	0	0	3	0	0	0
Internal Affairs Complaints	286	386	316	404	375	465
In-Custody Injuries	70	56	97	75	39	24
Civil Suits (Tort Claims)	32	7	22	11	7	11
Criminal Cases Dropped	0	0	0	20	87	300
O.C. Checkouts	42	41	34	55	29	15
Officer Involved Shootings	7	4	2	4	3	2
Rank / Class History	2336	2336	2336	2286	2272	2338
Training History	14159	21017	21084	26100	11255	5182
Supervisory Notes	3589	3338	3281	3568	3139	3072
Arrest Made Against OPD	0	0	0	0	2	1

The PAS Administration Unit continues to audit the database to assure its accuracy on a nearly daily basis. That has allowed the Department to identify and rectify data problems on a regular basis.

Undoubtedly, those functions will increase in number and complexity as system use expands. The audit function is important since risk management data comes from several sources. The function will be especially important as the Department moves forward with new technology. With that, we will focus attention on assuring that audits take into account the original recording of data in the field and not simply on summary reports moving forward into the database.

OPD continues to pursue significant upgrades, including new software, to its early warning system database. We look forward to this long-awaited progress. We noted in our previous reports that, along with the Department, we recognize that the current approach to data management is not a permanent fix, as it leaves the system fragile and unstable. Additional work needs to be done. OPD is in partial Phase 2 compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief S. Whent

A new technology database with servers and licenses necessary.
Cost: \$2-3 million.

An RFQ was completed in May 2012.

City Council approved contract amount in December 2012.

Completion of RFP by fall 2013 (tentative).

Financing, selection, contract negotiation, and Council action completed by January 2014.

Expected full completion and operation system in 2014 –15.

Concurrently, OPD will continue to evolve its use of the IPAS data for risk management factors, identifying problem officers, and take necessary action if needed (e.g. discipline, counseling, etc.).

COMPLIANCE DIRECTOR'S COMMENTS:

The Compliance Director Court Order, dated December 12, 2012 requires: "A plan for the oversight, acquisition, and implementation of a personnel assessment system (IPAS) that provides a sustainable early-warning system that will mitigate risk by identifying problems and trends at an early stage."

OPD acknowledges this NSA Task has been challenging. At the present time, efforts are underway to effect improvements in the IPAS system. The first effort is to attach use-of-force (UOF) reports to the system. At the present time, the IPAS system allows access to "pointer" information about a Department member's UOF; however, no information is available beyond compressed summary data. The effort is to allow the user—typically a supervisor or command officer—to access the actual written reports as well. The Department will also try to enter archived reports into the system. This aspect of Task 40 has been discussed with the IMT subject matter expert, who seems to be comfortable with the effort. In the end, if UOF reports can be attached and accessed within the IPAS system, then other categories of reports will also be included.

The second effort regards permitting access by a supervisor to all subordinate personnel in the Department. At the present time, a supervisor may only access the personnel assigned to them, e.g. perhaps 6 officers on a patrol team. This prohibits temporary, interim, or relief supervisors from accessing or entering information necessary to perform their duties.

OPD believes that, if these two efforts are successful, they should be in compliance with the Task. However, one substantial obstacle is the procurement of UOF/arrest reports. The county jail facility at Santa Rita utilizes a process that does not assure OPD timely and complete transmission of copies of arrest reports, and thus, some are misplaced or lost. Audits are currently in progress, and if the loss of this data is significant, it is highly likely the IMT will not find OPD in compliance.

The City and the OPD are in the process of seeking a vendor to begin the process of implementing an IPAS2 technology system. In addition, OPD anticipates that reports will be authored in patrol cars and the concern about lost or misplaced UOF/arrest reports will be negligible.

The proposed OPD timeline is very optimistic, and contract issues with Sierra Systems are still preventing contract signing. Failure to reach agreement on this contract will substantially delay the process.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

One of the recurring themes throughout the remaining non-compliant issues is the City's/OPD's acquisition and integration of new technologies. There are three main areas of concern: (1) the radio system, (2) The Mobile Data Terminal (MDT) system, and the integrated Stop Data program, and (3) the PAS system acquisition and use. During the next month my office will be looking to identify a subject matter expert that has strengths across the wide range of issues from system design and contracting to specific hardware and software issues to help us through these complex and interwoven issues.

The City has been in lingering negotiations with Sierra Systems for the design of the new IPAS system for well over a year. We will work with the city to develop a reasonable decision date for the Sierra negotiations. If no contract is negotiated by that date, we will press the City to cease these efforts and begin talks with an alternate vendor.

- **Bring Task 41: Use of Personnel Assessment System (PAS), into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Discussion:

As noted above, OPD revised and issued Departmental General Order D-17, Personnel Assessment Program. The risk management process is operating under the revised policy. Based on the policy and the related training that is ongoing, we again find OPD in continued Phase 1 compliance with this Task.

For this reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of July 1, through September 30, 2012. This included a review of peer-based

threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, 64 officers were initially identified as meeting a total of 89 PAS thresholds. In all, 44 of the thresholds exceeded dealt with complaints, and 29 involved use of force. Twenty-seven of those involved Level 4 uses of force. Consistent with established practice, some were not selected for review based on recent review history. That left 49 officers for notification for review. We reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in select OPD units, including IAD and the Training Section.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed the reports that were completed during the current reporting period. Our examination included reviews of dispositions or follow-up reports on 42 officers. These meetings all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

Our reviews of the risk management process focus on the selection of officers for review and the process of review by supervisors, and then the consideration of those reviews up the chain of command. For this reporting period, we examined the reports of 71 officers completed and/or signed during the quarter under review. In all, 22, or 31%, of those reviewed resulted in monitoring or intervention. Of those, 10 involved recommendations by the first line supervisor for "no action" were overturned in subsequent reviews up the chain of command.

As we have noted in the past, the important issue here is the degree of tolerance of risk by management in the Department. The reviews up the chain of command and the resulting changes in outcome, and returns for further consideration, suggest a significant effort is being

made to reduce risk and hold supervisors, and the officers they review, to high standards. During and after the current site visit we held productive discussions with OPD regarding continuance assessment and reassessment of risk using PAS. The review outcomes discussed here are consistent with those discussions and should also come to be reflected in the first level reviews by supervisors. The work on a new database provides another opportunity for the Department to examine these issues.

For the reporting period ending September 30, 2012, OPD concluded a total of 113 PAS reviews. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The table below tracks the review process and shows that supervisors recommended that no action be taken in 100, or 88%, of the 113 reviews for the current reporting period. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in 5% of cases. Deputy Chiefs also disagreed with the commanders' decisions in almost 10% of their decisions, and the PAS Review Panel suggested revisions in 6% of the findings of the Deputy Chiefs. These figures suggest increased scrutiny of reviews across the levels and show adjustments in level of tolerance over time. This is desirable direction for movement in the risk management process, and is consistent with discussions with OPD. The value of the data in the chart below is in tracking data over time, and using it to increase the rigors of the review process as it serves the goal of risk reduction.

	PAS Reviews Completed	Supervisor Rec- no action	%	Recognition	%	Supervisor Rec - Monitoring	%	Supervisor Rec- Intervention	%	Commander rec Concurs w Supervisor	%	Dep. Chief Concurs w Commander	%	PAS Panel Concurs w DC	%	Pending	Number of personnel that exceeded a threshold
2011																	
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14
Total	149	109		2		29		10		142		137		142		9	201
Average	12.4	9.1	77%	0.2	1%	2.4	0	0.8	6%	11.8	96%	11.4	94%	11.8	96%	0.8	16.8
2012																	
January	7	5	71%	0	0%	2	29%	0	0%	7	100%	7	100%	7	100%	7	14
February	5	4	80%	0	0%	1	20%	0	0%	2	40%	2	40%	2	40%	0	59
March	19	12	63%	0	0%	4	21%	3	16%	18	95%	17	89%	18	95%	33	7
April	25	17	68%	0	0%	5	20%	3	12%	25	100%	25	100%	25	100%	22	41
May	27	17	63%	0	0%	2	7%	0	0%	26	96%	25	92%	27	100%	14	58
June	43	41	95%	0	0%	2	5%	0	0%	41	95%	42	98%	43	100%	15	17
July	66	61	92%	1	5%	3	5%	2	30%	65	98%	65	98%	64	97%	0	18
August	32	29	90%	1	0%	2	6%	0	0%	27	84%	26	81%	27	84%	8	35
September	15	10	67%	1	0.1	3	20%	1	7%	15	100%	11	73%	13	87%	1	16
Total	239	196		3		24		9		226		220		226		100	265
Average	53.1	43.6	80%	0.7	0%	5.3	10%	2.0	10%	50.2	90%	48.9	90%	50.2	90%	22.2	58.9

In the last reporting period, we began reviewing the PAS histories of officers who had either a Level 1 use of force or been arrested for a criminal offense in the past year. For the period under review, only one officer met these criteria for examination by virtue of participation in an officer-involved shooting. The officer exceeded a threshold for complaints, but was not selected for review because most of the relevant activity had been considered at the review prompted by the OIS.

Our most recent report focused on three issues relevant to the functioning of the risk management system: the limited information used in reviews by supervisors; the extent to which reviewed cases resulted in monitoring or intervention; and the effectiveness of risk reduction efforts when officers continued to exceed thresholds. Regarding the first issue, we are aware of the efforts to make the complete use of force reports – rather than just summaries – available to supervisors, and we will continue to review the

effectiveness of that process. With regard to the frequency of monitoring or intervention resulting from reviews, this reporting period appears to reflect a positive direction that we will continue to monitor. Finally, we will also return to examining PAS histories of officers identified with major events such as Level 1 uses of force as cases become available.

The direction of the outcome of risk management reviews is encouraging – even though we recognize the need for strengthening the contributions of supervisors to this process. The clarity brought to the process as reviews move up the chain of command is also consistent with the Department’s efforts to improve its use of risk management as part of the routine function of organizational management. Sustaining these efforts and their results will continue to support movement toward compliance with this Task.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief S. Whent

The Department is in the process of revising DGO D-17 and its monthly Risk Management Meetings. Deputy Chief Whent went to Detroit and met with members of the monitoring team and Detroit PD’s early intervention system for technical assistance. The new policy will alter the thresholds that trigger review. Additionally, many simplifications will be implemented in the policy. The bureaucracy of the current system contributes to minimizing its effectiveness. The new Risk Management Meeting will help insure commanders are monitoring high risk activities and those persons under their command who are engaging in those activities at significantly higher, or lower rates than their peers.

COMPLIANCE DIRECTOR’S COMMENTS:

Executive staff at OPD has visited the Detroit Police Department, in the company of the IMT, to study their use of an electronic system as it relates to a risk management strategy. One particular area of concern has been the use of hard thresholds when identifying OPD personnel who may require remedial supervision. It has been

agreed to with the IMT and the OPD that thresholds should be based on percentages when measured within a Department member's peer group, e.g. patrol teams, undercover personnel, investigative personnel. A beta test of the new methodology using percentages is in-progress. As Risk Management meetings commence in the month of April, much discussion about establishing and utilizing valid threshold measurements will be discussed.

The OPD has expressed the need for funding as IPAS2, CRIMS, and RMS continue to mature in the Department.

The Monitor has questions about the hard numbers versus standard deviations on reported misconduct. The statistical variances are in dispute at this time, and will require future discussion, analysis, and agreement. Of particular concern are Sergeant's recommendations of "no action" that are overturned by Command.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

In the near future the Compliance Director will host a meeting involving the Monitor, OPD and the OPOA to discuss this issue of appropriate threshold methodology. The result will hopefully be consensus on this issue.

TOPICAL AREA #2

Supervisors fail to enforce Departmental policy by not intervening in or reporting unacceptable behavior that they are either informed of or witness.

REMEDIAL ACTIONS:

GOAL:

- Executive leadership in the Department must clearly demonstrate to first line supervisors and middle management that their responsibilities to lead and supervise their subordinates is their first and most important responsibility, that they will be held strictly accountable for intervening in prohibited behaviors they observe, and for timely reporting all such infractions whether observed or reported to them.

COMPLIANCE DIRECTOR'S COMMENTS:

The Compliance Director Court order dated December 12, 2012 addresses the reporting duties of the Compliance Director, including the following:

“Strategies to decrease the number of police misconduct complaints, claims, and lawsuits.”

This is a classic “three legged stool” of policy, training, and accountability. From the Chief down through the Command ranks, these requirements must be articulated, trained, modeled, and enforced. Institutionalization will occur only after a lengthy period of time with all components effectively implemented and enforced.

Accountability will be addressed later in this report by increasing numbers of Sergeants to meet span of control criteria. Training at all levels of the Department will similarly be addressed in multiple areas of this Plan.

OBJECTIVES:

- **Bring Task 20: Span of Control for Supervisors, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 20.2 requires that relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – are actually supervised by their primary, or assigned, supervisors (compliance standard: 85%); **Task 20.3** requires that a supervisor’s span of control for the Department’s relevant squads – that is, Patrol squads, Problem-Solving Officer units, Crime Reduction Teams, Neighborhood Enforcement Team, Gang/Guns Investigation Task Force, and Foot Patrol – does not exceed a 1:8 ratio on a day-to-day basis (compliance standard: 90%); and **Task 20.4** requires that the Department’s Area Commanders make backfill decisions and that these decisions are

consistent with policy and operational needs (compliance standard: 90%).

In February 2012, OPD implemented a new, tiered system of supervision in the Bureau of Field Operations (BFO), using relief sergeants; this change will affect significantly the way in which we assess Tasks 20.2, 20.3, and 20.4. For this reason, we did not assess these subtasks in the ninth and tenth reporting periods.

During the last reporting period, we were prepared to examine the available data, but the Department did not provide materials we requested that were required to conduct our assessment. Thus, we continued to withhold our compliance findings for these subtasks.

During this reporting period, we are again deferring our assessment for these subtasks because of the Department's plans to restructure BFO (in February). As a result, OPD again maintains our compliance findings from the eighth reporting period. Therefore, OPD is not in compliance with Task 20.2; and is in compliance with Tasks 20.3 and 20.4.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief E. Breshears

The Department will promote the necessary number of sergeants and commit to staffing sufficient sergeants in patrol so as to adequately meet the requirements of our tiered supervision system. OPD to continue to monitor Task compliance daily, during the observation period, with monthly reports generated for broader review by the Monitor and Assistant Chief.

Despite three planned police academies in FY 12-13 and 13-14, due to non-discretionary time off requirements and staffing levels, we require the need to maintain the tiered model to sustain compliance and ensure that there is a consistency of supervision.

The Department does not believe compliance is possible using the Monitor's new methodology unless a significant number of new sergeants were promoted. Even if that were to occur, employee leave makes it unlikely that every squad would always be in compliance.

The Department further believes acting sergeants should count toward compliance when the following conditions are met:

- The acting sergeant is eligible for promotion because he/she is on an active promotional list, or
- When a commander (with bureau chief approval) is mentoring/developing an officer by placing him/her in an acting sergeant assignment – this is an effective way to cultivate future leaders.

COMPLIANCE DIRECTOR'S COMMENTS:

The OPD has had exceptional difficulty coming into compliance with this NSA Task. Efforts are in progress, whereby police officers are selected as "acting sergeants" and are responsible for the direct supervision of patrol officers. Some acting sergeants are assigned to the same personnel long-term, while others serve on a short-term basis. The IMT measures compliance against the requirements of the NSA, whereby full time sergeants should be utilized to supervise Department personnel on a consistent basis. OPD believes that additional 8-10 sergeants would likely allow the Department to establish a deployment structure that would meet the requirements of the NSA.

After much discussion for many quarterly reporting periods, the OPD and the IMT agree that, unless more sergeant full-time-equivalent (FTE) positions are approved by the manager and council, OPD will likely remain out of compliance.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

Full time Sergeants must be promoted to ensure the level of accountability necessary to maintain adherence to policy and gain

compliance with the NSA requirement. The City must recognize this fact and authorize an appropriate number of Sergeant promotions. Experienced supervision is key to long term stability and policy adherence.

Rotation of Sergeants through key positions in the Department (Internal Affairs, Investigations, and Special Operations) is necessary to ensure career development for future leadership and effective management of the agency.

- The current Sergeants Promotion List contains persons qualified for promotion. Promote qualified persons ASAP. OPD will never fully satisfy the requirements of this Task until all available Sergeant positions are filled with qualified, full-time personnel.
- **Bring Task 24: Use of Force Reporting Policy, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Comments:

We found OPD in partial compliance with Task 24 during the last reporting period, as the Department was not in compliance with the requirements that OPD personnel on the scene of the incident report all uses of force on the appropriate form, and document every use of force and/or the drawing and intentional pointing of a firearm.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During our August 2012 site visit, we again met with OPD command personnel and OIG to discuss ongoing problem areas in use of force

reports and their supervisory reviews, and the Force Review Boards (FRB)/Executive Force Review Boards. We also reminded the Department of our continued concern with the lack of adequate justification in citizen encounters that lead to an investigated use of force. We continue to encourage OPD command personnel to pay close attention to these issues.

OPD is currently revising its confidential informant policy and process to address our concerns about how its members use confidential informants that lead to citizen encounters and the pointing of firearms. We are troubled that OPD officers are initiating stops and pointing their firearms at subjects based on information that has not been determined to be reliable. Most informants have issues with their own conduct and credibility. In our review of use of force reports, we have noted occasions where no further investigation was conducted to support the information provided by an OPD “confidential informant.”

OPD recently hired an external auditor to evaluate OPD’s search warrants and confidential informant files. The audit revealed seven areas for improvement involving search warrants, and 14 areas of concern involving the OPD’s use of confidential informants. The audit noted, among other points, that OPD does not mandate any experience or training requirements for managing confidential informants. It also recommended that no informant should be used before proper vetting, and that the Department should deactivate any informant who is deemed unreliable.

During this reporting period, the sample we requested for review (83 total) included: six Level 2; 19 Level 3; and 58 Level 4 reports completed between July 1, and September 30, 2012.¹⁸

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our

¹⁸ We requested 90 use of force reports, but determined that seven of the reports were completed outside of the current reporting period.

sample met these requirements. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with *the reporting requirements only* of Tasks 24.2 and 24.3.

Officers Pointing Firearms: During this reporting period, we reviewed a total of 83 use of force incidents, and 61 of those incidents involved officers pointing firearms. The 61 events included one Level 2, eight Level 3, and 52 Level 4 uses of force. The 61 incidents involved 158 instances of OPD officers drawing and pointing their firearms.¹⁹

Overall, we determined officers' pointing of their firearms to be appropriate in 129, or 82%, of the 158 instances we assessed.²⁰ We were unable to find the pointing of a firearm necessary or justified in 29 instances of the 158 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm. In addition, several events lacked justification for the initial detention that led to the pointing of the firearms.

The total racial breakdown for the 61 use of force events reviewed is as follows: Black, 70%; Hispanic, 22%; White, 3%; Asian, 2%; and Other, 3%. We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate and found the following: Black, 87%; and Hispanic, 13%.

In all cases, the supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases are troubling, the continued unquestioned

¹⁹ The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

²⁰ As in our more in-depth assessment of such incidents during the sixth reporting period, we gave the benefit of the doubt to involved officers whenever there was a question as to whether an officer's action was appropriate. We also assumed that the pointing of firearms was justified in cases where officers were responding to a burglary or criminal trespass involving an actual structure search, or when making a high-risk vehicle stop based on the legitimate belief that the vehicle was stolen.

supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies. This is the seventh consecutive reporting period we have found OPD out of compliance with officers pointing firearms. The numbers of unjustified gun pointing events and the statistical racial breakdowns have remained consistent for each quarter.

OPD is not in compliance with Tasks 24.2 and 24.3.

Task 24.4 requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). Supervisors responded to the scene in all 25 applicable Level 2 and 3 incidents in our sample. This represents a 100% compliance rate. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.²¹ Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). During this reporting period, there was no Level 1 use of force reports in our dataset. OPD is in compliance with these subtasks.

Task 24.9 requires OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS), now the Personnel Assessment System (PAS) (compliance standard: 95%). We previously noted that PAS contained only limited information about the use of force reports – namely, the report number, corresponding crime report number, the force level and type of force used, the incident date, and some other basic information. During the fourth reporting period, OPD began to enter narratives from the

²¹ Task 24.7 is no longer applicable.

use of force reports into PAS. Our review during this reporting period indicated that use of force data continued to be entered into PAS. OPD is in compliance with Task 24.9.

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief E. Breshears

The Department believes this task has been held out of compliance for reasons beyond what is required by this task. The Department is not attempting to minimize the significance of justifying its use of force, but believes that since there is a task specific to that requirement that compliance should be assessed with the relevant task. However, it is likely the Monitor will continue to audit this issue with this task. The Department has sought additional technical assistance from the Monitor to help achieve compliance and believes that once corrections are made by the Department that compliance will be achieved for this task, simultaneously with Task 25.4.

The Department has modified its policy for reporting the pointing of a firearm. The previous policy encouraged over-reporting which led to the appearance of some uses of force not being in compliance when they may not have technically been a use of force at all. It is also believed that the new reporting requirements are similar to what some other large agencies are using and will allow OPD to compare better with other agencies.

COMPLIANCE DIRECTOR'S COMMENTS:

The Department agrees that they are not in compliance with providing appropriate explanations for the reasons why force was used. They are also concerned that this is a duplicated task, in that the same issue is incorporated in Task 25, and if they are able to come into compliance with Task 25, Task 24 will naturally follow.

This is another example of policy, training, and accountability. The Department must focus on the legitimate effort to bring this issue into and remain in compliance. Monitoring methodologies are known, transparent, agreed upon, and should be well known to all parties concerned.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

While many areas of the NSA are very clear as to requirements needed to achieve compliance, some areas are less clear. OPD has represented that they are unsure how to proceed with the interrelated Tasks 24 and 25 to gain compliance. During the the months of May and June the Office of the Compliance Director will work with both OPD and the Independent Monitor to develop a clear set of remaining tasks necessary for compliance that are understood and agreed upon by both parties.

TRAINING: It is clear that greater levels of use of force training are necessary. I will task OPD to commence enhanced use of force training in two areas; (1) understanding OPD policies, and (2) scenario-based training. This enhanced training will commence in September, 2013. OPD will incorporate this training into existing training plans as an annual requirement.

TASERS: Modern policing requires officers to have a full range of less-than-lethal weapons ready for immediate use if necessary. OPD's deployment of TASERS is less than 100%. In addition to the 63 TASERS OPD intends to buy with Measure Y money, the department needs approximately 200 additional TASERS to achieve 100% deployment in Patrol. Purchasing these additional less-than-lethal weapons will become a priority budget item for this Plan.

- **Bring Task 33: Reporting Misconduct, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that

members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%).

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with the Deputy Chief of the Bureau of Risk Management; and queried the IAD database to identify any cases with sustained findings that were approved between July 1, and September 30, 2012, that were applicable to Task 33. We identified and reviewed 62 cases with 99 sustained findings that were approved during this reporting period. Included in this count were 26 cases with 48 sustained findings that were generated during the Occupy Oakland events. The Occupy Oakland matters included 12 cases and 18 allegations that were designated as Class I violations.

Many of the Occupy Oakland actions were conducted in view of other officers and the public. In fact, videos taken by the public were the source of many sustained findings. A common thread running through these investigations is that officers consistently refused to say that they saw, knew, discussed, or observed the actions of fellow officers who were often close by. One non-OPD investigator assigned to an Occupy Oakland case, commented, "...another theme that resounded throughout the interviews was the reluctance to view, ponder, assess, scrutinize or evaluate another OPD member's use of force." We agree.

In any one case, it would be difficult to prove that an officer dealing with a provocative crowd that included people who were pelting officers with rocks, bottles, and worse, did not observe an action that occurred next to him/her. Taken as a whole, however, OPD officers consistently avoided commenting about the misbehavior – and sometimes, felonious actions – of their fellow officers. They apparently remembered seeing participants in the demonstrations and riots clearly, but often could not say which officers were next to them even when they viewed videos of the incidents. Particularly troubling were the failures of supervisors to lead their subordinates or to comment on their actions. We found instances where supervisors, even when viewing videos of clearly improper behavior, were evasive and reluctant to comment.

Undoubtedly, it is difficult after standing in a line with fellow officers while confronted by a large hostile and threatening crowd yelling the

vilest sort of insults and hurling all manner of dangerous missiles and projectiles, to later be called upon to offer evidence of your fellow officers' misconduct. That is, nevertheless, exactly what we expect of our police. It is, at times, an extraordinarily difficult job. While we are sympathetic to the difficulty of the position these officers were in, their failures to assess, report, or hold OPD members accountable in these circumstances were so systemic – and their widespread disregard for the conduct of police personnel and unwillingness to be forthright regarding it – clearly demonstrates non-compliance with Tasks 33.1 and 33.2.

Task 33.3 requires that OPD must maintain a functioning procedure that incorporates the NSA requirements related to establishing and maintaining confidential reporting of misconduct. These requirements include: **Task 33.3.1:** confidential reports of suspected misconduct may be made in person, by telephone, or in writing (compliance standard: Yes/No); **Task 33.3.2:** any OPD member/employee may report suspected misconduct confidentially to the IAD Commander, who shall document the report in a confidential file that shall remain accessible only to this IAD Commander (compliance standard: Yes/No); **Task 33.3.3:** confidentially reported cases are investigated without disclosure of the complainant's name, unless and until such disclosure is required by law (compliance standard: 95%); and **Task 33.3.4:** OPD informs all new and current employees of OPD's confidential reporting procedures (compliance standard: 95%).

As we have reported previously, OPD has established procedures as required by Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4. Confidential reports of suspected misconduct may be made by various means to the IAD Commander; cases are investigated without identifying the complainant; and documentation of the report and investigation are kept in a confidential file maintained by the IAD Commander. Since monitoring began under the NSA, OPD has received only three such confidential reports. No new confidential reports were received during the current reporting period.

During this reporting period, OPD hired 65 new employees, including 56 police officer trainees and nine civilian employees. All were trained in confidential reporting procedures as required by Task 33.

Based on our review, OPD is not in Phase 2 compliance with Task 33.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief S. Whent

The Department has consistently done a good job at holding people accountable where necessary. Occupy was a challenge for the Department in every possible aspect, including IA investigations. The Department will give additional scrutiny to any lingering Occupy investigations. It was acknowledged by the Monitor in the 12th report that it is difficult in any individual case to say that a particular officer witnesses an event and then should have to report it. There were Occupy investigations where officers were specifically interrogated over a perceived failure to report an act. However, in the end, the Department did not believe that based on the nature of the circumstances that it could establish a preponderance of evidence on any one individual case. It is expected that compliance will return to pre-Occupy levels.

COMPLIANCE DIRECTOR'S COMMENTS:

A revised draft policy has been submitted to the IMT and the Compliance Director for review. The draft revision of IA policy addresses many policy concerns outlined in the NSA task and the IMT evaluation.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

The Office of the Compliance Director will identify and review individual Failure to Report specific misconduct cases, and their associated findings and disciplinary recommendations. This is particularly true in the case of Supervisors and Command level personnel.

- **Bring Task 34: Vehicle Stops, Field Investigation, and Detentions into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE

Task 34.2 requires that Stop Data Forms be filled out with the following information: 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction) (compliance standard: 85%). The entry of stop data into the Field Based Reporting (FBR) system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system does not allow the form to be completed.

As we have discussed for several reporting periods, we remain concerned that the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under “5) reason for the stop” clearly elicit or help to articulate an identifiable basis and/or authority for the stop. During the seventh reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate the totality of the circumstances focused on the officers’ articulation of the reasonable suspicion that existed *prior* to the detention that justifies the detention. Based on OPD’s continued failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last six reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period, and found that 92% identified the justification/reason for the stop. We will continue to monitor this issue closely.

Since the implementation of the combined Stop Data Form and Field Contact Card during the seventh reporting period, we have been concerned about two ongoing issues that significantly inhibit OPD’s data analysis. First, we found that OPD does not require officers to complete a Stop Data Form for each individual when a group is stopped on the street, which results in a significant distortion in basic stop data. In addition, officers often enter the result or final disposition of the stop as the *reason* for the stop. For example, a

consensual stop, or a stop based on *reasonable suspicion* that *results* in the discovery of narcotics, is often entered as a stop based on a criminal felony or misdemeanor, which of course, was discovered *after* the stop.

OPD continues to revise a Special Order that is intended to update DGO M-19, *Racial Profiling*. OPD has been working for a least four reporting periods on a simple revision to the policy to correct these identified deficiencies. During the current reporting period and our most recent site visit, we reviewed version 26 of the four-page Special Order, and again provided feedback on the policy's substance and language. We have also discussed with OPD command staff for at least three reporting periods the need to conduct training on the revised policy to ensure that the data that is collected is accurate and useful for purposes of analysis.

During the current reporting period, OPD began conducting internal audits of stop data forms, which we reviewed and noted were consistent with our findings. We look forward to continuing these reviews in future reporting periods. We again urge OPD to focus its attention on making and implementing applicable policy revisions, and developing necessary training, to ensure that the justification exists prior to the temporary detention of persons; that data is entered on each person who is detained; and that the reason for the encounter is properly identified. OPD represents that the implementation of the revised Special Order will sufficient address and clarify the collection of data issues; however, OPD is not in compliance with Task 34.2.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers "complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave." Data from the electronic Field Based Reporting system is automatically sent to the Department's Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers' stop data. During this reporting period, we continued to experiment with the Quicksearch program and found that the stop data is summarized and easy to review. As noted

above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, intending to provide one document for officers to enter stop data and providing them with a narrative portion for which they can articulate the factual support for the stop.

During our most recent site visit, we again met with OPD personnel responsible for this analysis, and discussed with them how and why the Department should conduct further analysis of its stop data. During the current reporting period, OPD did not produce any summary of data collection or analysis of data, noting a continuing issue with data collection (forms), specifically regarding the selections options for the reason for the stop. This problem significantly affects the value of the data, which we optimistically believed would be the basis for OPD compliance with this and related Tasks. We have discussed this issue in detail with Department personnel, and are hopeful that OPD will expeditiously implement corrective measures. While the Department continues to contend in recent Court filings that the NSA does not require analysis of the data, we disagree. In fact, the NSA requires the development of a policy that was approved by the previous monitor that governs the collection of stop data. The policy dated November 15, 2004 requires that the Racial Profiling Manager shall produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations. Based on our knowledge, OPD has not prepared such a report in the last 12 quarters; however, OPD has advised of its intent to analyze the collected data once the data is accurate.

We have a significant interest in OPD resolving the above issue so that it can conduct appropriate analyses and, where necessary, address the outcomes of its analysis to ensure compliance with this Task. While the ability to summarize, search, and analyze stop data is an important aspect of this requirement, it is not the purpose; rather, the results, intervention, and other strategies developed from the analyses are critically important to ensuring fair and equal treatment of all people with whom police officers interact. The Department is not in compliance with Task 34.3.1.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Interim Deputy Chief A. Rachal

OPD has implemented a new policy revision to address the issue of multiple person stops and fields to capture the officer's initial reason for the stop. Additionally, the new policy only captures information on self-initiated activity and not on dispatched calls for service. This will help ensure that the data is a more accurate representation of officer discretion and not who the public is calling the police about.

The Department is revising its monthly Risk Management Meeting. In the new version of this command meeting, stop data information will be displayed, broken down by patrol squads. This will allow commanders to look for outliers or other patterns that appear to need further investigation. The new Risk Management Meeting will start on a limited scale in April of 2013.

COMPLIANCE DIRECTOR'S COMMENTS:

The OPD drafted a policy regarding Task 34. The draft was reviewed and approved by the IMT. The policy is being trained to and tested in one geographic area of the city. As the testing advances, the IMT and Compliance Director will be working with OPD to ensure valid data is obtained, analyzed, and acted on.

The Monitor should review and approve any changes to reporting protocols. Outliers may exist in Unit or Shift differentials, as well as Patrol Squads. Data capture of multiple members of a group involved in person stops, or vehicles subject to a car stop may affect group totals, whether they be made by patrol squads or special units.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

There are several Compliance Director areas of interest within Task 34:

- 1) We will closely review the Special Order updating DGO-M-19, Racial Profiling. We will engage a subject matter expert if we feel that Departmental efforts in this area are insufficient.

2) OPD continues to contend that the NSA does not require analysis of the stop data. The Monitor disagrees. OPD's Racial Profiling Manager is required to produce a written report to the Chief of Police at least twice a year that includes an analysis of the data collected, and appropriate policy recommendations. We understand that OPD has not prepared such a report in the past 12 quarters. I do understand that OPD states that five stop data analysis reports were prepared for the Chief of Police in 2011. I will require OPD to resume the compilation of the required reports immediately.

OPD represents that recently implemented policy changes that went into effect March 15 have resolved the policy issues and the data elements to be collected on issues surrounding this Task. However, these changes were implemented so late in the reporting period that they will not be reflected in Monitor Report #13.

While policy issues may have been resolved, the workings of the OPD MDT system are still very problematic regarding the gathering and transmitting of the data to the required database. OPD represents that the software vendor (Vision - Tek) providing system software has been unable to remedy the deficiencies that cause the system to frequently crash for up to several hours. Since this software also serves as the search engine for the whole MDT system, these problems extend to other areas of MDT operation and reliability beyond the stop data requirements. OPD states that they are not losing data, but that entry becomes more time consuming as a result.

With other Information Technology issues that are considerably impacting OPD's operational abilities, and ability to achieve compliance, this Office will move to require hiring of a technical consultant with proven skills and experience across the technology spectrum of issues, both hardware and software, to expeditiously resolve these issues.

TOPICAL AREA #3

Investigations fail to thoroughly and impartially seek the truth in reported allegations of officer misconduct.

REMEDIAL ACTIONS:

GOAL:

- Administrative investigations will be held to the highest standards of objectivity, fairness, thoroughness, and timeliness.

OBJECTIVES:

- **Bring Task 2: Timeliness Standards and Compliance with IAD Investigations into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 2.1 requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between July 1, and September 30, 2012, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

As noted above, Departmental policy requires that investigations be completed within 180 days. Of the 154 Class I cases we reviewed, 124, or 81%, were in compliance with established timelines – a notable decrease from the 88% we found during the last reporting period. In addition, 24 of the Class I cases were completed in

exactly 180 days, and 80 cases were completed in between 170 and 179 days. Of the 131 Class II cases we reviewed, 124, or 95%, were in compliance with established timelines – a decrease from the 98% we found during the last reporting period. Fifteen of the Class I cases were completed in exactly 180 days, and 63 cases were completed in between 170 and 179 days. Of the 99 sustained findings that we reviewed, 97 (98%) were in compliance with established discipline timelines.²² During the last reporting period, 95% of sustained findings were in compliance with these timelines.

For the first time in over three years, the Department is not in compliance with Task 2.1.

Due to our placement of the Department as not in compliance with Task 2.1 – the essence of this Task – we find OPD to be not in Phase 2 compliance with Task 2.

Compliance Status:

Phase 1: In compliance

Phase 2: Not in compliance

OPD PLAN TO ACHIEVE COMPLIANCE:

RESPONSIBLE PARTY: Deputy Chief S. Whent

The Department has already completed the large number of cases that affected timeliness. In the 4th quarter of 2012, approximately 97% of cases were completed within the deadlines. Other than maintaining current operations, no action is necessary.

COMPLIANCE DIRECTOR'S COMMENTS:

The Compliance Director Court order dated December 12, 2012 addresses the reporting duties of the Compliance Director, and delineates the following requirements in this area:

c. "Strategies to ensure that allegations made by citizens against the OPD are thoroughly and fairly investigated."

²² We reviewed 62 cases involving sustained findings; several cases involved more than one sustained finding.

e. “Strategies to reduce the number of internal affairs investigations where improper findings are made.”

It is my understanding that OPD is nearly in compliance with the timeliness requirements of the NSA.

COMPLIANCE DIRECTOR’S FINDINGS AND ACTION ITEMS:

The Compliance Director’s Office is currently in the process of reviewing a number of Internal Affairs cases that appear to have arrived at questionable findings at both the investigative and executive decision-making levels. Reports of our findings will be included in future iterations of this Plan.

- **Bring Task 25: Use of Force Investigations and Report Responsibility, into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 25.4 requires that the investigations include required recommendations (compliance standard: 90%). Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstance permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped.

During this reporting period, we reviewed one Level 3 and eight Level 4 use of force incidents that involved the unjustified pointing of firearms. These nine reports did not comport with NSA-required elements; each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered.

In one case, during a search warrant, two officers pointed their firearms at a sleeping 19-month-old child who, of course, posed no

immediate threat to the officers or others. The crime being investigated, according to the reports, involved a misdemeanor offense.

In five separate cases, officers pointed their firearms at subjects when no additional investigation was conducted to support allegations made by persons contacting the OPD dispatch/911 center. In one of the incidents, the call amounted to an anonymous tip unsupported by independent investigation. In all five cases, citizens were subjected to facing OPD firearms when no crime had been committed.

In another case, an OPD officer received information that a wanted subject was driving a certain vehicle. The officer observed the vehicle, and noted that the wanted person was not the driver. The officer decided to conduct a felony car stop and subject the driver to a lethal seizure even though the "information" he received was unreliable. The officer detained the driver and searched his car – but released him after he did not find any evidence.

The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 89%. OPD is not in compliance with Task 25.4.

Task 25.5 speaks to the review process, which includes chain of command review, making assessments as required by the NSA and policy, and ensuring that any violation of policy results in the incident being referred to Internal Affairs to conduct additional investigations or analysis (compliance standard: 95%). During this reporting period, we found that the supervisors included the required details, and the chain of command conducted critical reviews. In all but nine of the Level 2, 3, and 4 reports we reviewed, the chain of command reviewed and commented on the quality of the investigations, any corrective action that was identified, and the appropriate documentation required for Supervisory Notes Files.

OPD's compliance rate for this subtask is 89%. OPD is not in compliance with Task 25.5.

OPD is in partial Phase 2 compliance with Task 25

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief E. Breshears

The Department has taken the following steps to address the use of force pointing of firearm issue:

Issued information bulletins and lineup training on articulation and the legal standard for using force;

Modified training scenarios to include multiple officer and situations where no display or use of force is needed;

Pointing of firearm perception issue added to academy training on cultural diversity; and

Added legal training on the subject into 2013 Officer Continuing Professional Training.

Policy and training changes will be reflected in a Monitor's 4th quarter of 2012 audit and reported in April of 2013 (13th Quarterly Report).

COMPLIANCE DIRECTOR'S COMMENTS:

OPD has explained they were in compliance for many of the quarterly reporting periods. The Department has focused on providing more contemporary force options training, which is a scenario-based curriculum.

The Department acknowledges that the IMT believes there were many instances whereby supervisors did not report their observations of misconduct as required by policy and the NSA during the Occupy Oakland events of 2011 and 2012. OPD feels the IMT has not provided specific examples as OPD would desire, but at

the same time they do not disagree with the IMT that more reporting of misconduct by supervisors should have occurred. OPD believes these allegations are very difficult to sustain when investigated by IAD, and that the Department will be in compliance once the Occupy Oakland events begin to diminish in IAD.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

The Monitor must review and approve curriculum, scenarios, and all other training methods, as well as attend and approve the training. Once this is accomplished, the Compliance Director will replicate that process and make further comments regarding modification and approval of the training.

- **Bring Task 30: Executive Force Review Board into compliance.**

MONITOR 12TH QUARTERLY COMMENTS AS TO REASONS FOR NON-COMPLIANCE:

Task 30.3 requires that OPD complies with the policies and procedures set forth in DGO K-4.1, *Force Review Boards* (compliance standard: Yes/No). This policy outlines several requirements, including who comprises the board, the material to be made available for the board, the conduct of the board, the information to be memorialized and follow-up actions, if warranted. We reviewed the reports that were prepared for the four incidents that were heard by the board during the current reporting period. The required attendees were present in both cases. After review and deliberations, the board determined that the subject officers' actions in all four cases were in compliance with Departmental policy. The Chief endorsed the EFRB findings within 60 days of the board's decision. The board identified the adequacy of equipment, tactics, and an analysis of each application of force, investigative concerns, and training issues that required the appropriate corrective action.

In the third incident described in Task 30.1, the EFRB determined that both the IAD and Homicide investigators could not determine which round(s) from the officers' firearms struck the suspect. The EFRB only noted this fact in its findings – and did not require supplemental investigative by IAD or Homicide that might have resolved the discrepancies between the subject's and officers' version of events. The subject alleged that he was discarding the

weapon, not pointing it at the officers, and that being shot by the police was excessive. The lack of a thorough analysis of all available evidence or information, including but not limited to, identifying the officers positioning, their distance from the subject, and an incomplete forensic examination formed the basis for a deficient EFRB analysis. Additionally, another officer documented in his report that he and two other OPD officers intentionally pointed their firearms at an uninvolved subject who was exiting his residence to see what was occurring. These three pointing events were not analyzed and included in the EFRB findings. The incident from the beginning involved one subject that was being handcuffed at the time the uninvolved person was subjected to lethal seizure.

OPD is not in compliance with this subtask.

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:

Phase 1: In compliance

Phase 2: Partial compliance

OPD PLAN TO ACHIEVE COMPLIANCE

RESPONSIBLE PARTY: Deputy Chief E. Breshears

The Department has created a Force Investigation Section in IAD. The Department believes that investigating Level 1 uses of force as a collateral assignment of an IA investigator is daunting and then becomes a challenge for timeliness and quality. By having a dedicated unit that is specifically trained for these investigations, the Department believes that both timeliness and quality will improve. Additionally, the Department has recently provided training to all CID and IAD investigators that investigate Level 1 uses of force. The training was provided by a retired commander from LAPD that created LAPD's Force Investigation Division and their Force Investigation Training. The class was well received by OPD staff. Members of the EFRB also participated in the training. Recent EFRB presentations by members of the new unit have shown an improvement in the quality of the investigations. The Department has also revised its policy for holding the EFRB's and has made changes to the makeup of the board.

COMPLIANCE DIRECTOR'S COMMENTS:

The Monitor must review and approve all curriculum, scenarios, training aids, and actual training for critique and approval. Once this is accomplished, the Compliance Director will replicate that process, review the General Orders pertaining to the specific duties of the Force Investigation Unit of IAD and CID personnel that investigate Level 1 uses of force. The revised policies of EFRB's are also subject to Monitor and Compliance Director review, observation and evaluation of actual boards.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

This is another area where OPD states that they are uncertain as to what exact steps remain necessary to gain compliance with this Task. During the upcoming months the Office of the Compliance Director will work with both OPD and the Independent Monitor to develop a clear set of requirements that are understood and agreed upon by both parties.

TOPICAL AREA #4

Executive leadership has permitted members of the organization to believe that the behaviors articulated in Topical Areas # 2 and #3 are both tolerated and acceptable.

REMEDIAL ACTIONS:

GOAL:

- Departmental leadership will reestablish a culture that all members understand will require they conduct themselves within established guidelines, intolerant of those who do not, and of supervisory and command personnel who do not completely fulfill their leadership responsibilities.

OBJECTIVES:

COMPLIANCE DIRECTOR'S COMMENTS:

Changing the culture of a police department is a multi- year and multi-faceted effort. Effective command, supervision, training, role modeling, reporting, and discipline are component parts of the cultural change efforts. The principles of community-oriented policing must be clearly articulated in a way that does not minimize enforcement of the law, and demands constitutional policing, dignity and respect.

COMPLIANCE DIRECTOR'S FINDINGS AND ACTION ITEMS:

It has become clear that OPD is in need of multiple training programs to increase knowledge of departmental policies, promote skill development, and increase its leadership capacity at all levels. We see these immediate needs as follows:

- (1) Patrol level use of force training, as detailed in Task 24 comments.
- (2) Patrol level Community Policing officer/citizen interaction training.
- (3) A "Precinct Commanders Academy" necessary to prepare promotable Lieutenants to effectively fill the expanding numbers of Precinct leadership positions.
- (4) A college-level leadership academy, designed to provide a select cross-section of OPD's most promising current and future leaders with the necessary skills to provide the type of enlightened leadership that will provide a pool of qualified candidates for the executive leadership of the future.

TOPICAL AREA #5

Executive leadership fails to act proactively on issues/processes within their ability to implement that, cumulatively, would have major impact on Departmental effectiveness.

GOAL:

- Identify and implement necessary procedures and programs.

OBJECTIVES:

- Prioritize those with most immediate impact in critical areas of departmental operations that can be implemented quickly, within constraints of existing resources.

COMPLIANCE DIRECTOR'S COMMENTS:

A number of recent cases (strip search, false imprisonment, use of force, shallow interviews) have been identified and are now being evaluated. Command must seize upon these recent lessons from civil liability and community concerns to remediate areas of criticism and vulnerability.

COMPLIANCE DIRECTOR'S ACTION ITEMS:

1. Acquire modern crowd control weapons/munitions.
2. Implement sequential double-blind photo lineup procedures.
3. Insure that existing MDT systems are in repair and in full operating condition in all vehicles.
4. Follow up on confirmed fingerprint identifications in solving robberies/burglaries.
5. Submit all DNA samples to the National DNA database (CODIS).
6. Identify common denominators in multiple cases of deadly force, and establish a proactive response to diminish those categories of shootings, e.g., shootings where a "furtive movement" or a gun was "thought to be seen" at the time the suspects were shot.

7. Adopt contemporary community policing philosophies and practices which have been employed by many police departments for nearly a generation.
8. Modify the existing recruit background check system employing sworn officers to do the investigations on an “overtime” basis. Consider hiring contract investigators to perform this function.

REMEDIAL ACTION PLAN

BUDGET ADDENDUM

Per the Compliance Director Court Order dated December 12, 2012, this Remedial Action Plan will include: “A proposed budget, to be included as part of the Oakland Police Department (“OPD”) budget, that is mutually agreed to by the Compliance Director, the Mayor, the City Administrator, and the Chief of Police for the fiscal year based on proposed expenditures for task compliance.”

NOTE: At this early stage of budget development, budget numbers that follow should be considered to be preliminary estimates only.

TOPICAL AREA #1

1. Hire a Technology SME to work through all tech issues; radios, PAS, MDTs/Stop Data database. Estimated cost: \$ 200.000.00

NOTE: The Compliance Director has been informed that the City is currently budgeting the position of Chief Information Officer (CIO) for the OPD. The Compliance Director endorses this initiative, and intends to review and approve the selection process/person prior to hiring. However, the Compliance Director strongly believes the need exists for an independent voice to review and advise on these complex and extremely important issues. At least four NSA non-compliant areas are affected by complex technology issues.

TOPICAL AREA #2

Task 24

1. Expanded Use of Force training for Patrol – to be funded by existing OPD training budget.
2. Purchase additional TASERs.

Purchase 200 to insure Patrol is 100% TASER equipped.

Cost: 200 @ \$1100.00 = \$ 220,000.00

TOPICAL AREA #3

Other Items

1. IAD Investigator(s) and Commander(s) training: \$ 50,000.00

TOPICAL AREA #4

1. Patrol level Community Policing officer/citizen interaction training. Costs should be marginal, but will require further refinement in later iterations of this Plan.
2. A "Precinct Commanders Academy" necessary to prepare Captains and promotable Lieutenants to effectively fill the expanding numbers of Precinct leadership positions. Cost: approximately \$ 50,000.00.
3. A college-level leadership academy, designed to provide a select cross-section of OPD's most promising current and future leaders with the skills necessary to provide the type of enlightened leadership that will restore the culture of the organization, and provide a pool of qualified candidates for the executive leadership of the future. Cost should be approximately \$150,000.00 per class.

TOPICAL AREA #5

1. Additional radio system assessment and repairs. Initial cost: \$ 250,000.00
Subsequent costs are anticipated to be greater.
2. Acquire modern crowd control weapons/munitions. Costs: approximately \$ 50,000.00.
3. Insure that existing MDT systems are in repair and in full operating condition in all vehicles where this equipment is currently installed. \$ 250,000.00 est.
4. Follow up on confirmed fingerprint identifications in solving robberies/burglaries. We are pursuing the possibility of hiring one civilian Automated Fingerprint Identification System (AFIS) expert to make this happen. \$ 100,000.00 est.
5. Submit all DNA samples to CODIS. Costs TBD.
6. Modify the existing recruit background check system which currently employs sworn officers to do the investigations on an "overtime" basis.

7. Purchase an additional 150 Patrol Digital Recording Devices (PDRDs) to insure that Patrol is 100% equipped.

Cost: 150 @ \$700.00 = \$ 105,000.00

8. SME Contracts:

Racial Profiling SME \$ 100,000.00

Personnel Management SME \$ 100,000.00

Use of Force SME \$ 100,000.00

Auditor/Investigator \$ 100,000.00

9. The Compliance Director has the authority to expend up to \$ 250,000.00 per contract. At this point in the budget development process there will most certainly be unanticipated future budget needs. We would strongly urge the City to establish a budget line item to cover these future needs. Amount TBD by City.