

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

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

Independent Monitoring Team

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I. INTRODUCTION

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement or NSA) resolving allegations of police misconduct raised by private plaintiffs in the civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* On August 28, 2003, Judge Thelton Henderson approved the appointment of Rachel Burgess, Kelli Evans, Charles Gruber, and Christy Lopez to serve as the Independent Monitoring Team (IMT). This is the thirteenth status report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from December 20, 2008, to July 31, 2009.

The NSA was scheduled to terminate on January 21, 2008. The Court extended the Settlement Agreement for two years, until January 21, 2010, because the City and OPD had not achieved substantial compliance with the material provisions of the NSA, as required under the terms of the agreement. As discussed throughout this report, OPD has continued to make significant progress in complying with the NSA. However, the City and Department will not be in substantial compliance with the NSA by January 21, 2010. The Parties agreed that "substantial compliance" requires OPD to come into compliance with the NSA's requirements and to have remained in compliance with the requirements for at least one year by January 21, 2010. OPD is in full compliance with 30 of the NSA's 51 tasks. OPD has been in compliance with 17 of these tasks for a year or more. OPD thus is not in substantial compliance with the NSA. Consequently, the Court has directed the parties to come to an agreement regarding how compliance will be assessed after January 2010. The Parties are currently meeting regarding this agreement. The second term of the Independent Monitoring Team also will expire on January 21, 2010. The IMT has informed the parties that it is not available to serve as the monitoring team for any further extension period and is assisting the parties to craft an agreement for completing the remaining reform work.

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

II. IMT MONITORING ACTIVITIES THIS REPORTING PERIOD

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

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

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

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

OPD revised several policies during this reporting period. The IMT continued to work closely with OPD to ensure that policy revisions meet OPD's operational needs and remain consistent with generally accepted best practices in policing as well as the Settlement Agreement's goals.

As discussed in this report, during this period, the IMT monitored OPD's progress on each of the 51 Settlement Agreement tasks. We completed actual practice compliance reviews of all or part of the following 17 tasks:

- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 4, Complaint Control System for IAD and Informal Complaint Resolution Process;
- Task 5, Complaint Procedures for IAD;
- Task 8, Classification of Citizen Complaints;
- Task 9, Contact of Citizen Complaints;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 16, Supporting IAD Process—Supervisor/Manager Accountability;
- Task 21, Members', Employees', and Supervisors' Performance Reviews;
- Task 27, Oleoresin Capsicum Log and Checkout Procedures;
- Task 28, Use of Force—Investigation of Criminal Misconduct;
- Task 29, IAD Investigation Priority;
- Task 33, Reporting Misconduct;
- Task 34, Vehicle Stops, Field Investigation and Detentions;
- Task 37, Internal Investigations—Retaliation Against Witnesses;
- Task 42, Field Training Officer Program;
- Task 43, Academy and In-Service Training; and
- Task 45, Consistency of Discipline Policy.

We are currently completing the “exit” process or conducting actual practice compliance reviews of all or part of the following 13 tasks:

- Task 3, IAD Integrity Tests;
- Task 5, Complaint Procedures for IAD;
- Task 12, Disclosure of Possible Investigator Bias;
- Task 20, Span of Control for Supervisors;
- Task 24, Use of Force Reporting Policy;
- Task 25, Use of Force Investigation and Report Responsibilities;
- Task 26, Force Review Board;
- Task 30, Firearms Discharge Board of Review;
- Task 35, Use of Force Reports—Witness Identification;
- Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process;
- Task 44, Performance Appraisal Policy;
- Task 46, Promotional Consideration; and
- Task 47, Community Policing.

The results of these compliance reviews will be reported in our next status report and discussed in detail in the assessment reports we provide OPD and the Plaintiffs’ Attorneys upon completion of each actual practice review.

OPD has made notable progress in all of the areas assessed. Since our last status report, OPD attained actual practice compliance with the following 11 tasks:

- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 4, Complaint Control System for IAD and Informal Complaint Resolution Process;
- Task 8, Departmental Classification of Citizen Complaints;
- Task 9, Contact of Citizen Complaints;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 21, Members’, Employees’, and Supervisors’ Performance Reviews;
- Task 27, Oleoresin Capsicum Log and Checkout Procedures;
- Task 28, Use of Force-Investigation of Criminal Misconduct;
- Task 29, IAD Investigation Priority;
- Task 42, Field Training Officer Program; and
- Task 43, Academy and In-Service Training.

It also attained actual practice compliance with portions of Task 5, Complaint Procedures for IAD, and portions of Task 33, Reporting Misconduct.

As detailed below, OPD currently is in full or partial actual practice compliance with 45 of the 51 Settlement Agreement tasks. It is in full compliance with 30 tasks and partial compliance with 15 tasks.

III. OPD ACCOMPLISHMENTS AND AREAS OF DISCUSSION

While progress is slower in some areas than in others and there have been setbacks, overall OPD continues to make significant progress in implementing the reforms required by the NSA. For the first time since the inception of the NSA, more provisions of the Agreement are in compliance than remain outstanding. This is no small accomplishment and one that many members and employees of OPD have worked hard to achieve. More importantly, NSA compliance reflects genuine change in the way OPD polices in Oakland. Over the past several years, OPD has enhanced or implemented a number of systems and processes that have been instrumental in bringing about this change. These include improving unity of command so that each officer has a clearly defined, single supervisor; implementing an early identification and intervention system that helps supervisors identify and respond to problematic conduct; conducting more timely and thorough misconduct investigations; and better investigation of OPD officers' uses of force. These measures help form the foundation from which a strong culture of effective, responsive, and accountable policing can be fostered and maintained.

A. OPD Accomplishment

IAD Investigation Timeliness

Since the beginning of the Settlement Agreement, OPD has worked steadily to improve the timeliness of investigations of allegations of officer misconduct. We are happy to report that, because of OPD's persistent efforts and an agreement by the Plaintiffs' Attorneys in this case to extend investigation deadlines, OPD is now completing internal investigations within the timeframes established by the Settlement Agreement. This achievement is significant. When investigations are initiated soon after the complaint, it tells the community that complaints are taken seriously and it improves the quality of the investigation because memories and evidence are fresh. When investigations are completed quickly, officers who were wrongly accused receive the quick resolution they deserve. Prompt investigations of officers who did commit misconduct allow OPD the opportunity to quickly administer appropriate discipline that may prevent future misconduct. Prompt investigations also help ensure that no officer evades accountability because the Department exceeds California's one year statute of limitations on disciplining officers for misconduct.

The Settlement Agreement requires that OPD complete investigations of officer misconduct within 180 days and, if the allegation is sustained, that it complete the disciplinary process within 30 days. For investigations of allegations of more serious misconduct (Class I allegations), OPD complied with these timeframes in 90% of the cases we reviewed. For investigations of allegations of less serious misconduct (Class II allegations), OPD complied with these timeframes in 94% of the cases we reviewed.

We are particularly gratified by OPD's improvement in investigation timeliness because it does not appear to have come at the expense of the quality of the investigations. The quality of OPD internal investigations has improved enormously since the inception of the Settlement Agreement, and continues to improve. While we continue to have substantial concerns about OPD's ability to consistently sustain valid allegations of misconduct and hold officers

appropriately accountable, this does not appear to be primarily caused by any faults in the investigations.

OPD's success in improving timeliness is also important because it provides an exemplar of how OPD can improve its operations (and Settlement Agreement compliance) more generally. After years of inconsistent achievements in timeliness, OPD began providing in-depth training to sergeants on how to conduct misconduct investigations and then began holding them accountable when investigations were not completed in a timely manner. This approach, while hardly novel, requires a level of resource and leadership commitment that is too often lacking. When it is employed, as OPD's success in this area demonstrates, it can be quite effective.

B. Areas of Discussion

Fair Discipline

Despite the reforms OPD has implemented under the NSA, the Department still faces significant challenges in ensuring that all OPD members are held equally accountable. While we have noted marked improvement in OPD's ability and willingness to impose discipline that is fair and consistent, we have continued to observe too many cases where this does not occur. OPD and the City are far better today than in the past at meting out discipline that fits the misconduct and is uninfluenced by the member's rank or connections with the Department and the City. Nonetheless, our recent reviews and monitoring make clear that illegitimate disciplinary decisions still do occur, lending credence to the perception among the rank and file and the community that OPD lets some officers get away with known misconduct with no discipline or little more than a slap on the wrist. These cases, even if few in number, send a powerful message that makes it difficult for the Department and City to gain the community's trust in the police department. Such cases also shake officers' confidence in OPD leadership and its commitment to the values it professes.

In our recent review of the NSA requirement that OPD discipline be fair and consistent, we observed a number of cases where sustained cases were overturned and/or the discipline was too low to start with or reduced during the appeals process for unpersuasive reasons. Some of these cases involved apparent favoritism. Such cases, although few in number, are of particular concern because actual or perceived favoritism fundamentally undermines both community and officer trust in the entire accountability system. Unfair disciplinary decisions may also embolden offending "favored" officers to commit misconduct again, sometimes with escalating severity and consequences.

A true culture of accountability requires unwavering effort and attention. It requires the recognition that inappropriate considerations of friendship, past ties, or popularity can infect a decision maker's analysis unless he or she guards against it. It requires the commitment to hold even good officers accountable when they violate the rules. It demands that OPD and the City work to ensure that the accountability systems are applied fairly and consistently to all OPD members and employees at every level, rank, and assignment, in every disciplinary decision that is made.

Status of In Car Video System

The Settlement Agreement requires OPD to explore the use and cost-effectiveness of camcorders in patrol vehicles. OPD met this obligation by conducting research and finding that the use of such cameras could help meet the following critical goals in a cost-effective manner: 1) improve officer conduct; 2) reduce litigation payouts; 3) reduce false allegations against officers; 4) increase the amount of evidence available for use in criminal cases; and 5) improve community/police relationships. We have previously lauded OPD's and the City's efforts related to this task, including their research efforts; purchase of in-car video equipment; and completion of a demonstration project regarding the efficacy of the cameras.

However, OPD's progress in implementing the in-car camera system has stalled. While OPD purchased approximately 101 cameras, only 45 of them were activated in OPD vehicles. Due to vendor installation problems and attrition, as of June 2009, only 30-35 cameras remained operational. Currently, the original vendor is no longer in business and OPD is negotiating with a new company to complete the installation of cameras. Completion of this process may take several months. While OPD has some minimal ability to repair camera equipment, it does not have adequate support for servicing cameras that malfunction or break.

As the City itself has determined, in-car video cameras are an important risk management and officer safety tool. They also promote transparency and community confidence. The cameras document officer interactions with civilians, capture video evidence of criminal conduct, and document whether officers are adhering to OPD policies and procedures. They are frequently used to resolve discrepancies between differing accounts of an interaction. This is why law enforcement agencies across the country are using them with increasing frequency and they are viewed by many agencies and officers as critical policing tools. Despite the small number of operational cameras in OPD, the cameras already have provided invaluable evidence to investigators, saving investigative time and money. In-car cameras have both corroborated allegations of misconduct and exonerated officers accused of wrongdoing. Actual footage from these cameras has been used for training purposes for OPD officers to demonstrate proper and improper police tactics.

In-car cameras have been demonstrated to save the public money and to promote police integrity, yet the City has not provided sufficient resources to fully implement in-car cameras. If OPD is unable to maintain the in-car cameras and replace them as necessary, the system will soon fall into disrepair and disuse. Although not a compliance issue, we urge the City to assist OPD in fully implementing and maintaining this important risk management and officer safety tool.

IV. COMPLIANCE OVERVIEW

Our discussion of OPD's compliance efforts and status is organized around the 12 Settlement Agreement sections from which OPD derived 51 "tasks." At the start of the

monitoring process, the IMT reviewed OPD’s task designations, found the task division to be workable, and in the interests of clarity and consistency, adopted the same designations.¹

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

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

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

Task	Task Name	Compliant Policy	Training Compliance	Actual Practice Compliance**	
				Partial Compliance	Full Compliance
1	IAD Staffing and Resources	√	√		√ (11/06)
2	Timeliness Standards and Compliance with IAD Investigations	√	√		√ (6/09)*
3	IAD Integrity Tests	√	√	√	<i>Under assessment</i>
4	Complaint Control System for IAD and Informal Complaint Resolution Process	√	√		√ (5/09)*

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

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
5	Complaint Procedures for IAD	√	√	√	<i>Under assessment</i>
6	Refusal to Accept or Refer Citizen Complaints	√	√		
7	Methods for Receiving Citizen Complaints	√	√	√	
8	Classifications of Citizen Complaints	√	√		√ (4/09)*
9	Contact of Citizen Complainants	√	√		√ (2/09)*
10	Procedure Manual for Investigations of Citizen Complaints	√	√		√ (11/06)
11	Summary of Citizen Complaints Provided to OPD Personnel	√	√		√ (3/09)*
12	Disclosure of Possible Investigator Bias	√	√	<i>Under assessment</i>	
13	Documentation of Pitchess Responses	√	√		√ (04/06)
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	√	√		√ (11/05)

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
15	Reviewing Findings and Disciplinary Recommendations	√	√		√ (11/06)
16	Supporting IAD Process-Supervisor/Managerial Accountability	√	√		
17	Audit, Review and Evaluation of IAD Functions	√	N/A		√ (12/05)
18	Approval of Field-Arrest by Supervisor	√	√	√	
19	Unity of Command	√	√		√ (2/08)
20	Span of Control	√	√	<i>Under assessment</i>	
21	Members', Employees' and Supervisors' Performance Reviews	√	√		√ (1/09)*
22	OPD/DA Liaison Commander	√	√		√ (6/07)
23	Command Staff Rotation	√	N/A		√ (11/05)

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
24	Use of Force Reporting Policy	√	√		√ (4/08)
25	Use of Force Investigations and Report Responsibility	√	√	√	<i>Under assessment</i>
26	Use of Force Review Board (UFRB)	√	√	√	<i>Under assessment</i>
27	Oleoresin Capsicum Log and Checkout Procedures	√	√		√ (5/09)*
28	Use of Force- Investigation of Criminal Misconduct	√	√		√ (7/09)*
29	IAD Investigation Priority	√	√		√ (7/09)*
30	Firearms Discharge Board of Review	√	√	√	<i>Under assessment</i>
31	Officer-Involved Shooting Investigation	√	√		√ (4/08)
32	Use of Camcorders	√	<i>N/A</i>		√ (10/03)
33	Reporting Misconduct	√	√	√	
34	Vehicle Stops, Field Investigation and Detentions	√	√	√	

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
35	Use of Force Reports-Witness Identification	√	√	√	<i>Under assessment</i>
36	Procedures for Transporting Detainees and Citizens	√	√		√ (12/08)
37	Internal Investigations-Retaliation Against Witnesses	√	√		
38	Citizens Signing Police Forms	√	√		√ (04/06)
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	√	√	<i>Under assessment</i>	
40	Personnel Assessment System (PAS) – Purpose	√	√	√	
41	Use of Personnel Assessment System (PAS)	√	√	√	
42	Field Training Program	√	√		√ (4/09)*
43	Academy and In-Service Training	√	√		√ (7/09)*

<u>Task</u>	<u>Task Name</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice Compliance**</u>	
				<u>Partial Compliance</u>	<u>Full Compliance</u>
44	Performance Appraisal Policy	√	√	√	<i>Under assessment</i>
45	Consistency of Discipline Policy	√	√	√	
46	Promotional Consideration	√*	<i>N/A</i>	√	
47	Community Policing Plan	√	√		√(c)(11/08)
48	Departmental Management and Annual Management Report	√	√		√ (6/08)
49	Monitor Selection and Compensation	√	<i>N/A</i>		√ (8/03)
50	Compliance Unit Liaison Policy	√	<i>N/A</i>		√ (8/03)
51	Compliance Audits and Integrity Tests	√	<i>N/A</i>		√ (10/05)

* Indicates that compliance was achieved during this reporting period.

(c) Indicates conditional compliance. Conditional actual practice compliance indicates that OPD has fulfilled the requirements of the task pending verification of outstanding documentation or completion of a discrete portion of the task that was not assessed.

A. Policy Compliance²

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

During this reporting period, the IMT continued to work with OPD to ensure that NSA-related policies undergoing normal revisions and updates remain consistent with the NSA. OPD's review and revision of policies after it has had the opportunity to assess their impact on actual practice is a positive aspect of the reform process and one that should be an ongoing part of all law enforcement agencies.

B. Training Compliance³

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

C. Actual Practice Compliance

During this reporting period, the IMT completed reviews of OPD's actual practices in the following 17 areas:

- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 4, Complaint Control System for IAD and Informal Complaint Resolution Process;
- Task 5, Complaint Procedures for IAD;
- Task 8, Classification of Citizen Complaints;
- Task 9, Contact of Citizen Complaints;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 16, Supporting IAD Process—Supervisor/Manager Accountability;
- Task 21, Members', Employees', and Supervisors' Performance Reviews;
- Task 27, Oleoresin Capsicum Log and Checkout Procedures;
- Task 28, Use of Force—Investigation of Criminal Misconduct;
- Task 29, IAD Investigation Priority;

² In order to attain policy compliance, OPD must publish a policy or other appropriate directive (e.g., General Order, Training Bulletin, Manual, etc.) that accurately reflects the requirements of the Settlement Agreement task.

³ In order to obtain training compliance, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy related to the task.

- Task 33, Reporting Misconduct;
- Task 34, Vehicle Stops, Field Investigation and Detentions;
- Task 37, Internal Investigations—Retaliation Against Witnesses;
- Task 42, Field Training Officer Program; and
- Task 43, Academy and In-Service Training;
- Task 45, Consistency of Discipline Policy.

We are currently completing the “exit” process or conducting actual practice compliance reviews of all or part of the following 13 tasks:

- Task 3, IAD Integrity Tests;
- Task 5, Complaint Procedures for IAD;
- Task 12, Disclosure of Possible Investigator Bias;
- Task 20, Span of Control for Supervisors;
- Task 24, Use of Force Reporting Policy;
- Task 25, Use of Force Investigation and Report Responsibilities;
- Task 26, Force Review Board;
- Task 30, Firearms Discharge Board of Review;
- Task 35, Use of Force Reports—Witness Identification;
- Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process;
- Task 44, Performance Appraisal Policy;
- Task 46, Promotional Consideration; and
- Task 47, Community Policing.

The results of these compliance reviews will be reported in our next status report and discussed in detail in the assessment reports we provide OPD and the Plaintiffs’ Attorneys upon completion of each actual practice review.

OPD has made notable progress in all of the areas assessed. As discussed below, since our last status report, OPD attained actual practice compliance with the following 11 tasks:

- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 4, Complaint Control System for IAD and Informal Complaint Resolution Process;
- Task 8, Departmental Classification of Citizen Complaints;
- Task 9, Contact of Citizen Complaints;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 21, Members’, Employees’, and Supervisors’ Performance Reviews;
- Task 27, Oleoresin Capsicum Log and Checkout Procedures;
- Task 28, Use of Force—Investigation of Criminal Misconduct;
- Task 29, IAD Investigation Priority;
- Task 42, Field Training Officer Program; and
- Task 43, Academy and In-Service Training.

It also attained actual practice compliance with portions of Task 5, Complaint Procedures for IAD, and portions of Task 33, Reporting Misconduct.

OPD currently is in full or partial actual practice compliance with 45 of the 51 Settlement Agreement requirements. OPD is in full compliance with the following 30 tasks (the 17 tasks that are followed by an asterisk have each been in compliance for a year or more):

- Task 1, Procedure Manual for Investigations of Citizen Complaints*;
- Task 2, Timeliness Standards and Compliance with IAD Investigations;
- Task 4, Complaint Control System for IAD and Informal Complaint Resolution Process;
- Task 8, Departmental Classification of Citizen Complaints;
- Task 9, Contact of Citizen Complaints;
- Task 10, Procedure Manual for Investigations of Citizen Complaints*;
- Task 11, Summary of Citizen Complaints Provided to OPD Personnel;
- Task 13, Documentation of Pitchess Responses*;
- Task 14, Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims*;
- Task 15, Reviewing Findings and Disciplinary Recommendations*;
- Task 17, Audit, Review and Evaluation of IAD Functions*;
- Task 19, Unity of Command*;
- Task 21, Members', Employees', and Supervisors' Performance Reviews;
- Task 22; OPD/DA Liaison Commander*;
- Task 23, Command Staff Rotation*;
- Task 24, Use of Force Reporting Policy*;
- Task 27, Oleoresin Capsicum Log and Checkout Procedures;
- Task 28, Use of Force-Investigation of Criminal Misconduct;
- Task 29, IAD Investigation Priority;
- Task 31, Officer-Involved Shooting Investigation*;
- Task 32, Use of Camcorders*;
- Task 36, Procedures for Transporting Detainees and Civilians;
- Task 38, Citizens Signing Police Forms*;
- Task 42, Field Training Officer Program;
- Task 43, Academy and In-Service Training;
- Task 47, Community Policing Plan;
- Task 48, Annual Management Report*;
- Task 49, Monitor Selection*;
- Task 50, Compliance Unit Liaison Policy*; and
- Task 51, Compliance Audits and Integrity Tests*.

OPD is in partial compliance with the following 15 tasks:

- Task 3, IAD Integrity Tests;
- Task 5, Complaint Procedures for IAD;
- Task 7, Methods for Receiving Citizen Complaints;
- Task 18, Approval of Field-Arrest by Supervisor;
- Task 25, Use of Force Investigations and Report Responsibility;
- Task 26, Use of Force Review Board (FRB);
- Task 30, Firearms Discharge Board of Review (EFRB);
- Task 33, Reporting Misconduct;

- Task 34, Vehicle Stops, Field Investigation and Detentions;
- Task 35, Use of Force Reports- Witness Identification;
- Task 40, Personnel Assessment System (PAS) Purpose;
- Task 41, Use of Personnel Assessment System (PAS);
- Task 44, Performance Appraisal Policy;
- Task 45; Consistency of Discipline; and
- Task 46, Promotional Consideration.

V. DETAILED COMPLIANCE REPORT⁴

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

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

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

During the seventh and eighth reporting periods, OPD completed and trained its personnel on several critical internal investigations-related directives, most notably General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy & Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T) and Discipline Matrix.

During the ninth reporting period, the IMT conducted an extensive assessment of OPD's internal investigations process and the Internal Affairs Division. This review included the assessment of hundreds of internal investigation files; interviews with complainants; listening to tapes of IAD investigator conversations with complainants; observing IAD operations; on-site testing of whether officers had complaint forms in their cars or on their persons; visits to locations throughout the city to see whether complaint forms and brochures were available to the public; and numerous interviews and conversations with IAD investigators, command staff, and other OPD personnel. Our observations and analysis revealed that OPD's system for investigating complaints of misconduct had vastly improved, although OPD was not yet in compliance with most of the NSA's tasks related to internal investigations. As discussed below, OPD continues to improve in these areas

During the tenth reporting period, the IMT met with IAD and OIG to discuss in more

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

detail the IMT's positive observations regarding more recent internal investigations, as well as some of the ongoing problems the IMT has observed in its continuing review of internal investigations.

Also during the tenth reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. In addition, OPD proposed a series of changes to General Order M-3 and to its internal investigations policies and procedures. The IMT committed substantial time and effort working closely with OPD and Plaintiffs' Attorneys to help them reach agreement on these policies and procedures as well as related modifications to the Settlement Agreement.

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

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

During this reporting period, the IMT completed actual practice reviews in a number of IAD-related areas. In particular, we completed assessments of the timeliness of OPD's misconduct investigations; whether OPD complies with required criteria when resolving complaints without conducting full investigations; whether supervisors and IAD are notified of complaints as required; how IAD classifies misconduct allegations; how promptly IAD contacts individuals who complain of misconduct; whether IAD notifies personnel who are the subject of misconduct complaints; whether OPD holds supervisors and managers accountable for supporting the IAD process; and how OPD responds to allegations of retaliation. As discussed in detail below, OPD has made significant progress in each of these areas.

Additionally, we are currently conducting actual practice reviews of the quality of IAD's investigations; and whether IAD ensures that investigations are completed by impartial investigators. We will report the results of these reviews in an upcoming status report.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. We found OPD in conditional compliance with Task 1, pending completion of scheduled training courses for several members. During the tenth reporting period, OPD completed training for these members. Accordingly, we moved OPD from conditional compliance to full compliance for Task 1. Also during the tenth reporting period, OPD published IAD Policy & Procedure 07-07, *Office Security*. This policy sets out procedures that facilitate the integrity of the investigative process by requiring that IAD offices and investigative files are maintained in a secure and confidential manner. During the tenth reporting period, the IMT confirmed that the Department has trained at least 95% of relevant personnel on this new policy. Also during the tenth reporting period, the compliance standards for Task 1 were lowered from 95% to between 85% and 90% depending on the particular provision.

During the current reporting period, the IMT assessed whether IAD continues to comply with the specialized training required by Task 1 for IAD staff. In particular, we assessed whether

the current IAD commanders, investigators, intake officers, case management officers, and Pitchess Motion officer attended a POST-certified Internal Affairs course as soon as possible following their assignment to IAD. OPD remains in compliance with this requirement. We found that, absent extenuating circumstances, OPD continues to provide the required training to relevant new personnel.

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

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must develop and, by July 1, 2004, implement, timeliness standards for the completion of Internal Affairs investigations, administrative findings, and recommended discipline.
- IAD command and the Department's command staff must regularly monitor compliance with these timeliness standards.
- If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing must be increased to maintain timeliness standards.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in July 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, the Internal Affairs Policy and Procedure Manual and the Departmental Discipline Policy. As discussed above, during the eleventh reporting period, OPD revised these policies and procedures.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. Our assessment determined that while OPD had made significant improvements in conducting timely internal investigations, it was not yet in compliance with its own timeliness requirements. During the tenth reporting period, the compliance standards for this task were lowered from 95% to 85% and the IMT revised its methodology for assessing investigation timeliness. In order to be considered timely, at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days. Class I investigations are those involving allegations of serious misconduct, including excessive force, false arrest, and lying. Class II investigations are those involving allegations of less serious misconduct, including rudeness, performance of duty, and tardiness. The compliance requirement for this task was also substantively modified by the Parties' agreement that an investigation of misconduct should be considered "timely" even if it takes longer than 180 days to complete, provided that the IAD commander approves the extension beyond 180 days and the IMT agrees. Extensions beyond 180 days are rarely acceptable or necessary.

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

During the current reporting period, the IMT conducted another audit of the timeliness of OPD's misconduct investigations. As discussed above, we found that OPD is in compliance with the timeliness requirements of Task 2 for both Class I and Class II investigations. OPD's current compliance level is 90% for Class I investigations and 93% for Class II investigations. This is a significant accomplishment and is particularly noteworthy because, in general, the improved timeliness does not appear to have caused deterioration in investigative quality. Indeed, in many cases, investigative quality likely was assisted by improvements in timeliness because evidence was less stale, making it easier to gather and more reliable.

During the upcoming reporting period, the IMT will continue to closely monitor investigation timeliness.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. Although OPD was not yet in full compliance with Task 3, the IMT was impressed by the commitment of IAD staff and by its decision to conduct particular tests for the express purpose of detecting retaliatory conduct. In conducting its integrity tests, IAD identified a number of resource deficiencies that prevented it from developing successful integrity testing. Based on our review of the tests conducted, we agreed with IAD's assessments. During the tenth

reporting period, OPD worked to address some of the resource constraints. As a result of its efforts, IAD was able to obtain some of its own surveillance equipment and has worked with Department and City sources to identify funding for covert vehicles, telephone equipment, and other needs as they may arise.

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

During the tenth reporting period, the compliance standards for this task were lowered from 95% to 90% and modified to include a more subjective pass/fail assessment. During the tenth reporting period, OPD proposed additional criteria for identifying members/employees who are the subject of repeated allegations. During the eleventh reporting period, the IMT worked closely with IAD to finalize these criteria. OPD created a working definition of "repeated allegations of misconduct" and developed a protocol for reviewing complaint histories of officers who reach a threshold of complaints of certain types.

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

During the current reporting period, OPD continued to identify officers who may be appropriate subjects for integrity testing. The IMT is presently conducting an assessment of whether OPD is conducting integrity tests of officers who have been deemed appropriate for testing and whether OPD is otherwise complying with the requirements of Task 3.

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

a. Settlement Agreement Requirements

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

requests to open investigations. The Settlement Agreement sets forth certain criteria that must be included in this central control system.

- By October 1, 2004, OPD must implement this central control system.

b. Status of Compliance and Assessment

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

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

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

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

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

the IMT previously sought to assess compliance with this provision, we were unable to do so because OPD did not have a reliable system for receiving or tracking complaints received outside IAD by field supervisors or other OPD members and employees.

Our review indicated that, with a couple of important exceptions, OPD's process for forwarding misconduct complaints made in the field to IAD generally is working and continues to improve. This system was designed to, and for the most part does: 1) track complaints that are received directly by the Communications Division or relayed to the Communications Divisions by supervisors or officers in the field; 2) ensure that when complaints are received directly by the Communications Division a sergeant is assigned to respond to the complainant to initiate the complaint process; and 3) ensure that IAD is promptly informed of complaints logged on the Daily Incident Log (DIL) by the Communications Division. As previously reported, the implementation of this process reflects a striking cultural shift from years back when complaints that were not received directly by IAD were often lost or ignored.

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

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

During the current reporting period, we assessed OPD's compliance in actual practice with the two remaining provisions of Task 4. One of these provisions requires OPD personnel to notify IAD and the Chief of Police as soon as practicable in cases likely to generate unusual interest. We determined that OPD remains in compliance with this requirement, having notified the Chief in every such case during the period reviewed. The final provision of Task 4 requires OPD to comply with criteria it has established when resolving complaints informally, through administrative closure, or through summary finding. This subtask is meant to ensure that OPD provides the proper level of investigation for each complaint and does not resolve meritorious complaints of misconduct without determining and documenting whether the OPD member or employee committed misconduct. We found that OPD's practices have improved significantly in this area. In contrast to its past practices, we found that OPD is providing the right type and level of investigation in the vast majority of cases. As a result of these improvements, OPD is now in compliance with all Task 4 requirements.

Our review reports contained a series of recommendations aimed at assisting OPD to address areas likely to cause it compliance problems and to ensure that the gains that have been made are maintained.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

The remainder of this task is incorporated into General Order M-3.1, *Informal Complaint Resolution Process*; General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; and Policy C-2, *Communications*

Division Policy and Procedure Manual. During the seventh and eighth reporting periods, OPD completed these policies and trained its personnel on them.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with part of Task 5. A complete discussion of our audit findings is included in our ninth status report. We found that while OPD had made extraordinary gains in nearly every aspect of this task, it was not yet where it needs to be and was not yet in compliance with Task 5. During the tenth reporting period, all but one of the compliance standards for this task were lowered from 95% to 85% or 90%.

Tasks 5.1 through 5.5 involve procedures related to OPD's response to complaints in the field. During the tenth reporting period, OPD developed a system to document compliance with these tasks. The IMT agreed to refrain from auditing these provisions of this task while that system was being developed. The new systems are incorporated in two new policies developed the tenth reporting period and finalized during this reporting period: revised Policy C-2, *Communications Division Policy and Procedure Manual (Receiving and Logging Complaints Against Personnel and Use of Force Incidents)*; and Special Order 8565 (*Update of General Order M-3*). The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Policy C-2 and Special Order 8565.

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

Tasks 5.6 through 5.14 relate to complaints by Oakland City Jail inmates. As reported previously, although OPD has closed its City Jail, it has published Special Order 8270 to ensure that OPD complaints made at the Alameda County Jail are handled properly. During the last reporting period, OPD worked with the IMT and the Plaintiffs' Attorneys to modify the Settlement Agreement to address the receipt of misconduct complaints by detainees regardless of which jail OPD takes them. This stipulation has been finalized and approved by the Court and the IMT revised its review protocol in light of these changes.

During the current reporting period, we also completed an assessment of Task 5.20. Task 5.20 requires the IAD Commander to review all "filed" cases (i.e., cases that are not under active investigation due to certain specified reasons such as pending litigation or the unavailability of a the subject officer) on a quarterly basis to determine whether the conditions that prevented investigation and final disposition have changed. We found significant improvement in this area and that OPD is in compliance with the Settlement Agreement. In the past, OPD often placed "filed" cases in permanent limbo, never reviewing or resolving such cases. This is no longer the

case. OPD now places such cases on its weekly IAD meeting agenda to help ensure that they are not lost or forgotten and no longer routinely delays cases because they are related to an underlying lawsuit. Our review report included several recommendations to help ensure that the gains made in this area are maintained and to help tighten up a few areas.

During the current reporting period, we have continued to work with OPD to explore ways to improve compliance with Task 5 and to maintain the significant gains it has made in this area. We are currently completing our assessment of OPD's compliance with other portions of Task 5 and will report the results during the next reporting period.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in June 2005. OPD has completed and trained its staff on *Manual of Rules* insert 398.76, incorporating the requirements of this task. During the tenth reporting period, the IMT agreed to change the required compliance standard from 95% to a more subjective Yes/No assessment.

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

For the period assessed, we identified 37 cases meeting the criteria discussed above. We found 26 (70%) of the cases in compliance with the requirements of Task 6. While OPD was not yet in compliance with Task 6, we saw substantial improvement compared to past practice. Moreover, we noted steady improvement over time in the investigations we reviewed, and during our review worked with OPD to further improve officers' and supervisors' intake of misconduct

complaints. We identified several areas OPD should focus on to ensure the proper intake of complaints in the field. OPD policy requires officers to contact a supervisor when learning that an individual wishes to make a complaint. We found many instances of officers not calling a supervisor or otherwise properly initiating the complaint process, and of supervisors not initiating the complaint process properly when they were called to the scene. While some of these deficiencies appeared due in part to a lack of understanding about what was required, in other instances, the refusals may have been more deliberate. We also found problems with the way complaints were being handled when they arose in connection with a use of force. While OPD supervisors routinely conducted investigations of uses of force, they often did not notify IAD when individuals complained of misconduct associated with a use of force or otherwise handle such allegations as misconduct complaints. Our audit report contained a series of recommendations to assist OPD in attaining compliance. A complete discussion of our audit findings is included in our twelfth status report

We will continue to work with OPD to improve its practices in this area and will report on OPD's progress in an upcoming status report.

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

a. Settlement Agreement Requirements

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy strengthening its procedures for receiving citizen complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy, including that OPD establish a staffed complaint hotline; make complaint forms, brochures and guidelines easily and widely available, including in OPD vehicles; translate those forms; and accept anonymous complaints.
- By October 1, 2004, OPD must implement the above referenced policy.
- By June 1, 2004, IAD must be located in a dedicated facility removed from the Police Administration Building.

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. As previously noted, OPD is in compliance with the requirement that IAD offices be located off-site from the Police Department. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); and the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04).

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

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

During the tenth reporting period, the IMT found OPD to be in compliance with Task 7.5, the requirement that OPD members/employees distribute complaint forms and informational brochures when a citizen wishes to make a complaint, and upon request. A complete discussion of this review is included in our tenth status report. Also during the tenth reporting period, several of the compliance standards for this task were lowered from 95% to 85% or 90% and modified to include a more subjective pass/fail assessment.

Task 7 also requires OPD to accept and investigate anonymous complaints to the extent reasonably possible. During the eleventh reporting period, we completed a compliance review of this aspect of Task 7. We found that OPD is not yet in compliance with the requirement related to anonymous complaints. Our review report for Task 7.3 made a number of recommendations for improving investigations of anonymous complaints and attaining compliance. Upon receiving our report, IAD's commander immediately developed and presented to investigators a training regarding anonymous complaints.

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

their vehicles at all times while on duty, but that OPD needs to ensure that they are always available in the necessary languages.

OPD will be in full compliance with Task 7 once it attains compliance with the requirements relating to anonymous complaints. We will report on OPD's progress in complying with this requirement in an upcoming status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies that comply with this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise General Order M-3. In addition, as described below, this task was modified by stipulation.

This task was initially modified by stipulation in December 2005, to permit supervisors discovering Class II violations during the normal course of supervision (i.e., not as the result of a citizen complaint) to address the misconduct through non-disciplinary corrective action, provided there is no pattern of misconduct. This task was further modified during the twelfth reporting period by stipulation allowing an Acting Chief, Assistant Chief, or Deputy Chief to direct that a Class I investigation be conducted by a non-IAD investigator. Previously, only the Chief could order this.

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

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During the tenth reporting period, OPD proposed changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise these policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Task 9 requires that complainants be contacted as quickly as possible by IAD or other OPD staff to begin gathering information regarding the complaint. One of the most striking and beneficial improvements we observed in the ninth reporting period is how quickly IAD contacts complainants to learn the details of their complaint and to begin the investigative process. IAD was diligent in its efforts to contact complainants; it was not uncommon for an investigative file to record repeated attempts to make initial investigative contact with complainants. The greatly improved quality of OPD internal investigations is in large part due to the quick contact of complainants by the IAD intake unit. Complainants in 74% of the cases we reviewed were contacted as soon as possible by IAD in accordance with this requirement.

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must, based on contemporary police standards and best practices, develop a policy requiring that complaint investigators:
 - provide the member/employee with a brief synopsis of any complaint alleged against them, but not allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee's interview;

- notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
 - upon completion of the investigation and issuance of a final report, provide subject members/employees with access to the underlying data upon which an IAD report is based, including all tape-recorded interviews, transcripts and investigator's notes.
- By October 1, 2004, OPD must implement this policy.

a. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its staff on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise these policies.

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

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

During the current reporting period, we conducted another actual practice assessment of Task 11. We found that OPD, and IAD in particular, have made significant progress since our last review and is now in compliance with Task 11. OPD has in place a well-functioning system for ensuring that officers and employees, and their chains of command, are notified of allegations of misconduct against the officer or employee. OPD emails each subject officer and his/her chain of command a copy of the Complaint Notification Report (CNR), which includes a brief synopsis of the complaint, and retains the CNR and the email documenting that it was sent in the

case file. Notification is also documented in the chronological log, which is accessible via the IAD database and a copy of which is included in each case file. This straightforward and simple system helps ensure that an officer is promptly notified when s/he is subject to an investigation and that the officer's supervisor knows what allegations have been made against persons under their supervision. By providing uniform information to each subject of a misconduct complaint, this system also helps ensure that officers are not provided *too much* information prior to being interviewed by the complaint investigator. This facilitates the integrity of the investigation process.

We found OPD in compliance with the requirement that it provide the subjects of misconduct allegations a brief synopsis of the complaint prior to interview, but not permit the subject to review complainant or witness statements prior to the interview. OPD also is in compliance with the requirement that it retain a copy of the brief synopsis that it provides to officers. We found OPD in conditional compliance with the requirement that it notify the subject's immediate supervisor and commander of misconduct allegations. Our finding was conditional because OPD's compliance rate of 75% fell short of the 85% compliance rate required for this task. However, because we believe that in at least some instances, notification occurred but simply was not properly documented, and because of OPD's performance on the remainder of the task, we found OPD in conditional compliance. We also found OPD in conditional compliance with the requirement that, upon completion of cases, it allow the subject member/employee to have access to the underlying investigative data including all notes and transcripts. Our finding is conditional because, while we believe that IAD has in place a system to ensure that this generally occurs, we are aware of one case in which the subject member alleges that information was inappropriately held from him. This case is currently under investigation and we will conduct our own assessment of it upon its completion.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1,

Internal Investigation Procedure Manual. As discussed above, during the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. During the eleventh reporting period, the IMT worked closely with the Department to revise these policies.

During the ninth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. Task 12 requires OPD complaint investigators to disclose relationships that might lead to bias or a perception of bias. OPD was not yet in compliance with this task. Following our audit, OPD began to make more routine use of recusal forms and trained its personnel that recusal decisions must be made before an investigation is initiated or at the time a potential conflict arises not at the completion of investigations.

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

During the eighth reporting period, the IMT conducted an actual practice audit of this task. A complete discussion of our audit findings is included in our eighth status report. The

IMT found OPD in compliance with this task. The Department has implemented additional checks to facilitate complete and accurate responses to Pitchess discovery motions.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and trained its personnel on the policy. This policy incorporates the requirements of this task. During the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise these policies.

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

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

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

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

a. Settlement Agreement Requirements

- Except upon written authorization from the Chief of Police, the investigator's first-level commander/manager and the IAD Commander or designee shall be responsible for reviewing recommended findings. The Discipline Officer shall be responsible for making disciplinary recommendations in sustained internal investigations.

b. Status of Compliance and Assessment

During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. This task was modified by stipulation in January 2007 to reflect changes to OPD's disciplinary process. During the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise these policies. Also during the eleventh reporting period, the Parties modified this task by stipulation so that investigative findings are reviewed by the investigator's first-level commander/manager and the IAD commander or designee. The new language is reflected in the iteration of Task 15 above. This change should streamline the internal investigation review process.

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

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

During the current reporting period, we conducted another actual practice assessment of OPD's disciplinary system. As part of this assessment, we evaluated the recommendations made by the Discipline Officer. OPD remains in compliance with the Task 15 requirement that the Discipline Officer make disciplinary recommendations in all sustained internal investigations. We found that the Discipline Officer made discipline recommendations in all of the sustained vehicle collision cases and in 97% of the sustained misconduct investigations reviewed.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the seventh and eighth reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. As discussed above, during the eleventh reporting period, the IMT worked closely with the Department to revise these policies.

During the ninth reporting period, the IMT began a compliance review of Task 16 and assessed several cases that had been identified by IAD as responsive to this task. We also reviewed additional cases we identified as responsive to this task during the course of our broader case review. It became apparent during the course of our review that there was not a mechanism to ensure that all cases responsive to Task 16 could be identified, absent extraordinary effort by IAD staff. In response, during the tenth reporting period, IAD developed a method for identifying Task 16 cases. It added a new Class I Manual of Rules provision specifically dealing with supporting the IAD process. The IMT elected to postpone its formal compliance review with this task to provide OPD the opportunity to ensure all Task 16 cases are identified. In the interim, the IMT met with IAD to discuss the Task 16 cases we did review to ensure that IAD and the IMT have a common understanding regarding how these cases will be assessed and to allow OPD to address any problems prior to the IMT's formal compliance assessment of this task. The IMT also worked with OIG and IAD to develop monitoring criteria that would minimize the problems identifying cases responsive to this task. During the tenth reporting period, both of the compliance standards for this task were lowered from 95% to 90%.

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

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

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

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

The IMT will continue to monitor and assess OPD’s accountability systems, to assist OPD in ensuring supervisors and commanders support the Department’s integrity and accountability measures.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

Section IV of the Settlement Agreement, Tasks 18–23, requires a number of measures to improve supervision of OPD officers and employees, particularly field supervision of OPD's patrol officers. In addition to the key requirement of a 1:8 supervisor to patrol officer ratio, this section promotes more consistent supervision by requiring the assignment of a single supervisor to each OPD member and employee. This section also requires mechanisms to improve the detection and communication of problems or potential problems, including regular performance review meetings and assignment of a liaison to the District Attorney's and Public Defender's Offices.

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

OPD has achieved policy and training compliance for all six of the tasks in this area.

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

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must develop and implement a policy requiring the approval of field-arrests by a supervisor in most cases. This policy necessitates that OPD develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates. The

Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field-arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in January 2004. OPD drafted a policy, General Order M-18, *Arrest Approval and Report Review in the Field*. The IMT determined that the policy complied with the Settlement Agreement. During the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy. On August 12, 2005, OPD published Special Order 8287 to assist it in tracking those instances in which sergeants disapprove arrests at the scene. The policy establishes a unique code to be provided to Communications by sergeants upon any arrest disapproval.

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

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

During the tenth reporting period, the compliance standards for this task were lowered from 95% to 90%. The IMT conducted its second audit of OPD's compliance in actual practice with Task 18 during the tenth reporting period. We found that, since our previous review of Task 18, OPD had made significant progress in ensuring that its supervisors respond to the scene of designated arrests and that required elements are reviewed and documented sufficiently. We found OPD in compliance with each requirement of Task 18 that was assessed (one provision was not assessed because the data was not reliable). The IMT did not assess OPD's compliance with the requirement that available witnesses be identified due to concerns raised by OPD, which we shared, regarding the reliability of the data. OPD reported widespread confusion regarding whether this provision required officers to document witnesses to the arrest or witnesses to the underlying criminal offense. As noted above, OPD published Special Order 8536, clarifying that the witness identification provision requires identification of witnesses to the criminal offense. Because OPD was in compliance with each provision of Task 18 that had been assessed, we found OPD in conditional compliance with the task.

During the eleventh reporting period, OIG conducted several assessments of OPD's compliance with Task 18. According to OPD, it was performing well in all areas of Task 18, with the exception of witness identification. An unacceptable number of reports were silent regarding the presence or absence of witnesses. Without this information, there is no way of determining whether there were no witnesses to an incident, or whether the witnesses were not identified. OPD has addressed this issue at several commander meetings.

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

During the current reporting period, OIG conducted another audit of Task 18. Consistent with its previous assessments and those of the IMT, it found the Department in compliance with all Task 18 requirements with the exception of the witness identification provision. OIG noted improvement but that the continuing lack of witness identification in arrest reports hinders OPD's ability to achieve full compliance with Task 18. As we have previously reported, witness identification in specified arrests has been required by OPD policy for years now. This is a simple requirement that protects suspects, officers, and the Department. If followed, it has the potential of strengthening OPD's criminal cases and streamlining any subsequent criminal or administrative investigative efforts that may be needed. The policy has been updated and clarified and officers have been trained on its requirements. We continue to recommend that OPD hold its officers and supervisors accountable for ensuring that witnesses are identified and documenting accurately when there are no known witnesses. We also recommended that OPD continue to conduct internal audits of compliance with Task 18 to ensure that officers and supervisors are identifying witnesses as required and accurately documenting when there are no known witnesses.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

During the ninth reporting period, the IMT initiated an audit of OPD's actual practice compliance with this task. We were unable to complete this audit due to significant delays in OPD's production of the core documentation necessary to assess compliance with this task and recent changes in the Department's Personnel records system. The Department acknowledged the deficiencies in its management of basic personnel data and undertook efforts to improve and modernize its personnel recordkeeping systems.

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

During the eleventh reporting period, we completed a compliance assessment of Task 19. We found that OPD was in 100% compliance with Task 19.1, requiring that each member or employee of OPD have a single, clearly identified supervisor or manager, and with Task 19.2, requiring that members and employees work the same schedules as the individuals they supervise.

In stark contrast to practice when the NSA first was implemented, our review showed that all OPD members and employees had a single, clearly identified supervisor or manager. Our report included the following recommendations for improving performance in this area and maintaining compliance: 1) improve organizational tracking to ensure that OPD can quickly and reliably ascertain where members and employees work; the hours they work; and to whom they report; 2) consider providing additional supervisory coverage, either uniformed or civilian, in the Communications Division to improve the efficiency and effectiveness of this critical interface between OPD and the Oakland community; and 3) formalize the system for ensuring that significant events and job performance information is communicated between officers' unassigned and assigned sergeants.

During the current reporting period, OPD continued its efforts to improve its systems for organizational tracking. It began implementation of a new automated scheduling and payroll system used by a number of other public safety agencies. If fully implemented and maintained, the system has the potential to strengthen OPD's personnel management. We will continue to

work with OPD to ensure that it maintains a structure that allows for appropriate supervisory oversight.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

The IMT conducted an actual practices review of Task 20 in September 2004. A complete discussion of our audit findings is included in our combined fourth and fifth quarterly report. That review showed that OPD had not reached actual practice compliance with Task 20 and remained out of compliance in part because of its continuing use of uncertified acting sergeants (who may not be adequately trained to supervise patrol squads).

During the tenth reporting period, OPD began the acting sergeant selection and training process and reported that with assignment of several additional sergeants to patrol it soon should be able to meet the requirements of this task. In addition, OPD reported that pending completion of the acting sergeant selection and training process, it was trying to limit the use of acting sergeants and when they are used to assign only experienced officers, including using Field Training Officers when possible. During the tenth reporting period, all of the compliance

standards for this task were lowered from 95% to 85% or 90% or modified to include a more subjective pass/fail assessment.

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

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

Based on the significant police officer hiring that it did last year, OPD's patrol division is now fully staffed and, as a result, was not always complying with span of control requirements for all units. The Department identified one problem-solving (PSO) squad that regularly exceeds the span of control requirements. OPD initiated discussions with the IMT regarding ways to resolve this issue, including requesting that PSO squads be exempted from the span of control requirements. The IMT advised OPD that it could not agree to this proposed solution due to the nature of the work engaged in by these squads and supervisory issues that have occurred in some of the squads. We encouraged OPD to come up with a plan to ensure adequate supervision of these squads.

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

During the current reporting period, in addition to evaluating span of control issues related to PSO squads, the IMT initiated a comprehensive actual practices assessment of OPD's compliance with Task 20. We intend to report on our findings in a subsequent status report.

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

a. Settlement Agreement Requirements

- By July 7, 2004, every OPD commander/manager must meet at least twice per year with each of his/her subordinates to coach them regarding their strengths and weaknesses.
- By July 7, 2004, supervisors must meet individually with members/employees in certain units at least twice per month for informal performance reviews.

b. Status of Compliance and Assessment

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

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

During the eighth reporting period, the IMT again audited OPD's actual practice compliance with this task. Despite several weeks of diligent efforts by OIG staff to locate the documentation necessary to demonstrate compliance with this task, OPD was unable to locate sufficient documentation of required meetings. Based on the information produced, OPD was only able to document that between 58% to 65% of meetings occurred. While more meetings may have occurred, OPD was unable to provide sufficient documentation. Accordingly, OPD remained out of compliance with Task 21.

During the tenth reporting period, the Parties reached a stipulation changing the bi-weekly meeting requirement so that it only applies to members and employees working in certain units or positions. Also during the tenth reporting period, many of the compliance standards for this task were lowered from 95% to 85% or 90%.

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

During the twelfth reporting period, we conducted another compliance assessment of OPD's actual practices, and during the current reporting period, we completed the reporting process for our assessment.

As noted above, Task 21.1 requires OPD commanders and managers to meet with their subordinates at least twice per year to coach them regarding their strengths and weaknesses. To assess OPD's compliance with this task, the IMT interviewed a sample of commanders, managers, and subordinates throughout OPD. Based upon our interviews, OPD is in compliance with Task 21.1. All of the commanders and managers interviewed consistently reported frequent and routine interaction with their subordinates for a variety of purposes, including coaching them on their strengths and weaknesses. According to the commanders and managers, such coaching occurs as part of the formal annual performance appraisal process but also occurs throughout the year. Without exception, each of the commanders and managers interviewed reported monthly, weekly, and, in some cases, daily interaction with their subordinate commanders ranging from *ad hoc* meetings to regularly scheduled meetings. Such meetings frequently involved providing feedback to subordinates regarding their performance and discussion of current or planned work activity. Subordinate commanders, members, and employees interviewed provided consistent information regarding interactions with their commanders and managers.

Task 21.2 requires OPD supervisors of designated units to meet with each of their subordinates at least twice per month for informal performance reviews. To assess OPD's compliance with this task, the IMT interviewed a sample of supervisors and subordinates in the designated units. Based upon our interviews, OPD is in compliance with Task 21.2. The IMT interviewed 79 supervisors and subordinates in the designated units, including 21 sergeants and 58 officers, evidence technicians, and employees. Additionally, during ride-alongs and other routine monitoring observations, we frequently ask officers about the nature and frequency of their interaction with their supervisors. Our interviews disclosed significant improvement in supervisory/subordinate contact and a stark contrast to a few years ago when officers reported having infrequent interaction with their supervisors. Officers, employees, and supervisors interviewed consistently reported having frequent contact with their supervisors on a range of performance issues. These issues include arrest approval, report review, and supervisory response to use of force incidents. The increased interaction between supervisors and subordinates is due, in part, to other changes OPD has implemented as a result of the NSA. These changes include requiring sergeants and the officers they supervise to work on the same days and during the same hours and requiring sergeants to respond to the field to approve arrests and evaluate uses of force.

Our audit report noted that proactive supervision and early correction of problems are critical from a risk management perspective and help ensure successful and lengthy careers for individual employees. Consequently, we encouraged OPD to build upon its efforts in this area and ensure that supervisors are taking a proactive role in other important areas, including, for

example, meeting with officers to review and discuss in-car videos, interactions with citizens and co-workers, and preparation of reports, search warrants, and court testimony.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

During the current reporting period, we continued to review the monthly reports produced by the MLL, to discuss MLL-related issues with the stakeholders, and to provide OPD with recommendations for improving the reports. The MLL has continued to contact the District Attorney's Office and the Public Defender's Office on a monthly basis. As discussed in our last status report, in light of recent serious allegations related to OPD officers' representations to the courts, DA's Office and Public Defender's Office, it is more imperative than ever that the MLL

maintain close communication with these entities. The IMT will continue to closely monitor the MLL function during the upcoming reporting periods.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

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

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

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

investigations of personnel if a criminal proceeding is potentially viable.

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

During the ninth reporting period, OPD completed several critical subsidiary use of force policies associated with these primary policies. During the tenth reporting period, OPD and the Plaintiffs' Attorneys agreed to a series of stipulations revising several of the NSA's use of force sections in order to streamline the requirements. As a result, during the tenth reporting period, OPD revised General Order K-3, General Order K-4, and General Order K-4.1. The IMT has confirmed that OPD has trained at least 95% of relevant personnel on these revised policies.

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

In addition to the revised K-series policies, during the tenth reporting period, OPD published Training Bulletin V-K, *Excited Delirium*; and General Order B-12, *Firearms Range Program*. The Department also published Training Bulletin III-S, *In-Custody Ingestion of Narcotics*. Though this policy is not required by the NSA, it provides critical instruction to officers regarding a frequently encountered high risk activity. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Training Bulletin III-S.

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

The Department also has trained at least 95% of relevant personnel on Training Bulletin III B.1, *Wrap Restraint Device*, a policy that is not required by the NSA. According to the Training Division, the Department has trained over 95% of relevant personnel on Training Bulletin V-K, *Excited Delirium*. Although this policy is not required by the NSA, it involves high-risk activities. The IMT has confirmed that the Department has trained over 95% of relevant personnel on General Order B-12, *Firearms Range Program*.

Updating and drafting the new use of force policies was a significant undertaking by OPD. In addition to updating or drafting the policies required by the Settlement Agreement, OPD also reviewed and updated its other use of force policies to ensure that they are consistent with and reinforce one another, and that they represent contemporary policing practices. The IMT and the Court have commended the Department for completing this important work. As we have previously discussed, OPD has started to reap the fruits of its labor. As a result of the new policies and procedures and the consistent oversight and leadership in this area, there have been significant improvements in OPD's use of force reporting and investigations.

During the eleventh reporting period, the IMT conducted detailed compliance assessments of several of the use of force tasks. During the twelfth reporting period, the IMT completed an assessment of Task 30 regarding OPD's Executive Force Review Board.

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

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy for reporting use of force that requires:
 - all members/employees to notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force;
 - all members/employees at the scene to report all investigated uses of force on the appropriate form in every investigated use of force incident, unless otherwise directed by the investigating supervisor;
 - OPD personnel to document any use of force and/or the drawing and intentional pointing of a firearm at another person;
 - a supervisor to respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable;
 - OPD to notify the Alameda County District Attorney's Office, the City Attorney's Office and Departmental investigators in certain use of force incidents; and
 - OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS).

b. Status of Compliance and Assessment

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

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

During the tenth reporting period, OPD and the Plaintiffs' Attorneys agreed to a series of stipulations revising several of the NSA's use of force tasks in order to streamline the requirements. The IMT worked closely with OPD and Plaintiffs' Attorneys on these revisions to ensure they continue to meet the language and intent of the NSA. In conjunction with these stipulations, OPD revised General Order K-3, General Order K-4, and General Order K-4.1. During the tenth reporting period, OPD also published Training Bulletin V-K, *Excited Delirium*; General Order B-12, *Firearms Range Program*; and Training Bulletin III-S, *In-Custody Ingestion of Narcotics*, though these policies are not required by the NSA. According to the Training Division, the Department has trained over 95% of relevant personnel on Training Bulletin V-K, *Excited Delirium*. Although this policy is not required by the NSA, it involves high-risk activities. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on Training Bulletin III-S, *In-Custody Ingestion of Narcotics*. The IMT has confirmed that the Department has trained over 95% of relevant personnel on General Order B-12.

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

The new use of force reporting policies represent a significant improvement over prior policy which did not require officers to report most uses of force. Consistent with contemporary law enforcement practices, the new policies require OPD officers to report all significant levels of force, including, for example, hand strikes, use of tasers or OC spray, pointing firearms at an

individual. The new policies also require officers to summon their supervisors to the scene when certain levels of force are used or there is an allegation that such force was used.

Until the eleventh reporting period, the IMT refrained from conducting a formal audit of OPD's compliance with the new use of force reporting and investigation provisions in order to provide the Department an opportunity to adjust to the new policies and procedures. During this learning period, OPD identified a number of ways to improve the policies and procedures. As a result, as discussed above, it negotiated several changes to the NSA's use of force provisions and further revised its use of force reporting and investigation policies. During the eleventh reporting period, we continued to work with OPD to fully implement its new use of force reporting and investigative process. In addition, the IMT provided a day-long training to OPD supervisors and commanders regarding use of force investigations.

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

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

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

During the twelfth reporting period, OIG evaluated the Department's compliance with Task 24 and found that supervisors were being notified of uses of force; were responding to the scene as required; and that officers were documenting their own uses of force appropriately.

However, according to OIG's audit, officers were not always documenting the force that was used by other officers as required by OPD policy. In response, OPD issued two Information Bulletins: *Use of Force—Common Mistakes* and *Use of Force Preparation Format*, to reinforce use of force reporting and investigation requirements. If followed, these Information Bulletins should help improve OPD's use of force reporting and investigation system.

During the current reporting period, we continued to review OPD's use of force reports and to provide the Department feedback on tactical, training, and investigative issues related to force issues. Despite the issuance of the Information Bulletins noted above, at the beginning of this reporting period there appeared to the IMT to be a lower than expected number of reports regarding the drawing and pointing of firearms from certain units and squads. OPD commanders have made similar observations, expressing concern that, in violation of OPD policy, some officers may either be failing to report when they point their firearms, or that they may not be pointing their firearms when they should as a matter of safe and appropriate tactics. Consistent with generally accepted law enforcement practices, OPD officers are trained that in high risk situations where officers reasonably believe that a suspect is or may be armed, officers shall point their firearms at the suspect. In an effort to address the observed deficiencies, in April 2009, OPD issued a Special Order dealing with several force issues, including the pointing of firearms and officers' reporting responsibilities. Special Order 8977 explicitly reiterates the Department's use of force reporting requirements related to drawing and pointing firearms. The policy also states that officers shall not compromise officer safety and directs supervisors to monitor officers' performance to ensure proper officer safety techniques are utilized. OPD has continued to work on these issues and reports that it has seen improvement during the latter part of this reporting period.

We will continue to monitor OPD's use of force reporting practices and will report on the same in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. OPD's commitment to this project enabled it to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force*, and General Order K-4.1, *Force Review Boards* incorporate the Settlement Agreement's requirements for this task. OPD had previously published a compliant

policy, Special Order 8066, *Use of Force Reports-Witness Identification*, relating to one discrete component of this task. OPD incorporated the provisions of this Special Order into the use of force policies.

During the tenth reporting period, OPD negotiated several changes to the NSA's use of force provisions and revised the K-series policies to reflect these changes and streamline its use of force reporting and investigation process. In addition, some of the compliance standards for this task were lowered from 95% to 90%. As noted above, the IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure that these revisions addressed OPD's operational and efficiency concerns while continuing to facilitate the proper reporting and investigation of use of force.

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

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

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

In addition to requiring that force be reported, Task 25 requires OPD to conduct timely investigations into the force used by its officers. We found that this is an area in need of significant improvement. The compliance standard for this requirement is 90%. However, only 21% of the investigations reviewed were completed within the Department's deadlines and none of the most serious use of force cases were completed on time. During the current reporting period, OIG assessed the timeliness of use of force investigations and found that only 26% were completed and reviewed within required timelines. It thus appears that timeliness of force investigations continues to be a problem.

To help ameliorate the problem of untimely force investigations, when OPD's initial assessment of a critical incident reveals training, tactics, or officer safety issues, it has started to

provide the involved officers with timely feedback rather than waiting several months for the Executive Force Review Board (EFRB) to occur. This stop-gap measure is a good one, but does not negate the need for timely completion of use of force investigations and EFRB review, particularly since the use of force investigation and review, if functioning properly, provides additional insights into any training, tactical, or policy deficiencies related to the use of force incident.

Our review during the eleventh reporting period also found that OPD has had difficulty tracking the timeliness of its use of force investigations. OPD has taken steps to address this issue.

In addition to requiring that OPD conduct timely use of force investigations, Task 25 requires OPD to include certain information in each of its use of force investigations. The compliance standard for this requirement is 90%. We observed significant improvement in a number of areas but found some areas still in need of improvement. Overall, we found that 80% of the investigations reviewed included the information required by Task 25. During the twelfth reporting period, OIG audited OPD's compliance with these requirements and found that 87% of the investigations included the required information.

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

We also found OPD in compliance with the requirement that it train all patrol and Internal Affairs supervisors on how to conduct use of force investigations.

Our review of OPD's use of force investigations included a number of recommendations to assist OPD in achieving compliance with all of the requirements of Task 25. OPD has already implemented some of these investigations. A full discussion of our findings is included in our eleventh status report.

During the current review period, we continued to attend Executive Force Review Boards and Force Review Boards and routinely talk with presenters, FRB/EFRB members, and commanders overseeing the use of force reporting and investigation process to learn their perspectives and offer any insights. We also continued to review OPD's use of force reports and to provide the Department feedback on tactical, training, and investigative issues related to force issues. During the current reporting period we provided the Department with detailed feedback regarding tactical issues and use of force investigations related to canines. Completing timely use of force investigations, particularly of officer-involved shootings and other serious uses of force, has continued to be a significant challenge for OPD. The IMT has provided OPD with recommendations for how to improve timeliness and will continue to work with OPD on this issue.

We will continue to monitor OPD's use of force investigation practices and will report on the same in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During the eleventh reporting period, the IMT conducted a compliance assessment of Task 26. Task 26.1 requires OPD's Force Review Board (FRB) to review all Level 2 Use of Force Investigations following the completion of the investigation of the incident by a supervisor.⁵ We found OPD in compliance with Task 26.1, although we noted a wide variance in the quality of the reviews conducted. While some of the FRBs did a good job identifying important issues and making remedial recommendations, we found that other FRB reviews were perfunctory, failing to address significant tactical or training issues, including the effective use of tasers; the need to take cover when threats are presented; dealing with mentally ill offenders; improperly closing the distance on potentially armed suspects; command and control issues; and poor foot pursuit tactics. It appeared that some of the variance in the quality of the reviews was due to the lack of a consistent high-level command presence at the FRBs. In a number of the cases we reviewed, the highest ranking commander attending the Board was a lieutenant. During the course of conducting our review, we informed the Department's use of force subject matter expert about our concerns in this area. In response, OPD began requiring that a deputy chief attend each FRB and if one is not available, that a patrol captain or other experienced captain

⁵ Under OPD's current policies, the following types of force are considered Level 2 uses of force: any strike to the head (except for intentional strikes with an impact weapon which are considered Level 1 uses of force); carotid restraints that do not result in the loss of consciousness; uses of impact weapons where contact is made; unintentional firearms discharges that do not result in any injuries; police canine bites; and any use of force which results in injuries to the subject requiring emergency medical treatment or hospital admittance. During the time period for the cases we reviewed, use of a taser was also considered a Level 2 use of force subject to review by the FRB.

attend the board. OPD has continued this positive practice during the current reporting period.

Task 26.2 requires the FRB to make a recommendation regarding whether the use of force was in or out of policy for every Level 2 use of force. We found OPD in compliance with this requirement. Task 26.3 requires the FRB to forward to the Internal Affairs Division any determination that a use of force is not consistent with OPD policy. Since the FRB did not find any of the uses of force reviewed for our audit out of policy, it did not forward any cases to IAD. Task 26.4 requires the FRB to make recommendations to the Chief of Police regarding additional use of force training; changes in policies or tactics, additional standards, investigatory policies, or training for use of force investigations. OPD is not yet in compliance with this requirement. OPD made sufficient recommendations to the Chief in only approximately one-third of the cases reviewed. In several cases where recommendations should have been made, the FRB did not make *any* recommendations to the Chief related to the incident. In other cases, while the FRB made at least one recommendation, the recommendations were not sufficient given the nature and seriousness of the issues requiring remediation.

Task 26.5 requires the FRB to conduct an annual review of the use of force cases it examines to identify any trends in use of force that may have policy or training implications. OPD is in compliance with this requirement although we recommended that the FRB include additional details an analysis in its annual reports in order to make them more useful risk management tools for the Chief and City. Task 26.6 requires the FRB to report its annual review findings to the Chief of Police. We found OPD in compliance with this requirement.

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

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

We will continue to monitor OPD's Force Review Board process and will report on the same in a subsequent status report.

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

a. Settlement Agreement Requirements

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

electronically accessible and OPD must regularly prepare and distribute usage reports.

b. Status of Compliance and Assessment

The compliance deadlines for this task occurred in July 2004. As previously reported, OPD published Special Order 8061, *Control of Oleoresin Capsicum*, well in advance of the due date. Special Order 8061 makes OPD's Property and Evidence Unit (PEU) responsible for issuing OC canisters to OPD officers and tracking their use. The IMT reviewed this policy and determined it to be in compliance with the Settlement Agreement. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy. During the tenth reporting period, on December 29, 2006, OPD published Department General Order C-8, *Oleoresin Capsicum*. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on this policy.

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

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

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

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

During the current reporting period, the IMT conducted another actual practices review of OPD's compliance with Task 27. We found that OPD continues to be in compliance with the requirement that it maintain a log of all OC canisters that are distributed to OPD personnel. In addition, we found that OPD has improved and clarified the categories listed on its log that explain the reason for the canister distribution. In addition to maintenance of an OC distribution log, Task 27 requires OPD to computerize the log and to prepare and distribute to OPD commanders accurate reports regarding OC control and tracking. OPD remains in compliance with the requirement that the log be computerized. As noted above, previous IMT and OIG audits of Task 27 found that the OC control and tracking reports did not provide an accurate assessment of OC usage by OPD members and employees. In our prior audit of Task 27, the IMT found a very large discrepancy between the number of OPD officers who received replacement OC Spray canisters and the number of those officers who actually reported using OC Spray. A review of OC sign-out logs, inventory tracking and use of Force reports involving OC spray between June 1, 2008, and March 31, 2009, shows that such discrepancies between OC replacements and reported use no longer exist.

Our audit, however, did find that for the first five to six months of the period reviewed there was a systematic failure on the part of OPD personnel to submit their OC canisters for replacement following a reported use of force involving OC Spray. This is required by OPD policy and is an important officer safety issue because officers who have used their canisters and not exchanged them for a replacement may find themselves on the street with insufficient spray remaining when the tool is next needed. As a result, officers may need to escalate incidents that otherwise could have been handled with the use of OC Spray. Failure to turn in the canisters following a use of force also undermined the accuracy of the monthly OC control and tracking reports. This is because the monthly reports only list those canisters that officers have turned in. When officers use OC spray during a force incident but do not turn the canisters in promptly or by the end of the month in which the OC spray was used, the canisters do not appear on the monthly report. Since OPD policy requires canisters to be turned in following a use of force, the absence of any such canisters on a monthly report gives the misleading impression to the report's reviewers that there were no OC uses of force during that month. Likewise, the appearance on a monthly report of OC spray canisters used during a force incident give the impression that an OC use of force occurred during the month. This may or may not be the case depending on whether the canister was submitted in a timely fashion.

We observed significant improvement in OPD's practices during the second half of the period audited. OPD has made a concerted effort to improve its practices. These efforts have included notifications through Daily Bulletins, an email sent by the Deputy Chief of the Patrol Division to all patrol personnel, and reinforcement of OPD policy at Management Assessment Program (MAP) meetings and line-ups. As a result, the Department has made significant strides in ensuring that OPD personnel abide by the requirements to submit their OC canisters following a use of force as set forth in OPD policy. As a result, all of the OC spray uses of force occurring during the second half of the period audited were reflected accurately on the monthly OC report corresponding to the month in which the OC Spray was used. OPD also implemented personnel and system changes to more effectively monitor OC uses of force and to ensure that monthly reports are accurate. These efforts include queries of the Use of Force Database twice a month to identify uses of force involving OC spray and comparing these incidents to entries captured in

the OC logs. Based on this information, OPD is able to reconcile any discrepancies between the Use of Force Database and the OC logs and, if necessary, contact the supervisors of OPD members who have a reported OC use of force, but have failed to turn in their OC canisters. Through proactive management efforts, OPD commanders now have a solid handle on when, how often, and which officers use OC spray during use of force incidents. Accordingly, OPD is in compliance with Task 27. Our audit report included a series of recommendations aimed at assisting OPD to address OC oversight and policy deficiencies we noted during the audit.

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

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy to report, as soon as possible, any use of force situation, citizen complaint, or other member/employee-involved action in which there is apparent evidence of criminal misconduct by a member/employee to the Alameda County District Attorney's Office.

b. Status of Compliance and Assessment

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

During the tenth reporting period, the IMT conducted an audit of actual practice compliance with this task. We found that OPD was not yet in compliance with Task 28. A discussion of our audit findings is included in our tenth status report.

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

During the current reporting period, we conducted another actual practices assessment of OPD's compliance with Task 28. In our previous audit of Task 28, we found that OPD did not yet have in place a system for ensuring timely notification of criminal misconduct. As a result,

many notifications were made too late to permit OPD and outside agencies to coordinate their efforts from the outset, and coordination of interviews and other investigative steps was lacking. This impacted the quality of these cases. We found these problems were due in large part to a lack of knowledge about OPD's own policies in this area, or the reasons for those policies, even among those responsible for carrying out the policies. OPD subsequently placed BOI responsibility for these responsibilities at a higher level. As a result, BOI personnel and three consecutive IAD commanders have successfully implemented and maintained systems for ensuring that instances of apparent criminal misconduct are, for the most part, identified early and handled with alacrity.

Task 28 requires that the DA or relevant law enforcement agency be notified "as soon as possible" of all uses of force; citizen complaints; and other member/employee-involved actions in which there is apparent evidence of criminal misconduct by a member/ employee. We identified a total of 19 relevant cases occurring between January 1, 2008, and December 31, 2008. We evaluated each of these cases to determine whether the notifications occurred as required by OPD policy. We found that OPD timely notified the proper individuals in 17 of the 19 cases reviewed for compliance. The two cases out of compliance with Task 28 reflect some continuing misunderstanding about Task 28 requirements and the need for continuing close oversight by upper-level OPD management. However, OPD's compliance with this Task in most cases was quite good, and both BOI and IAD have in place dramatically improved systems for ensuring cases of apparent criminal misconduct by OPD members and employees are handled appropriately. The case files and other documents provided by OPD indicated keen recognition throughout the Department of the need to assess whether there is reasonable suspicion of criminal misconduct; to notify the appropriate authorities; and to coordinate criminal and investigative investigations to ensure each is effective and uncompromised.

Given this significant improvement and generally high level of achievement, as well as the small dataset, we found OPD in conditional compliance with Task 28, even though its compliance rate did not meet the stringent 95% threshold required by this Task. Both BOI and IAD should be commended for effectively addressing OPD's previous problems in handling criminal complaints against OPD members and employees.

Our audit report included several recommendations to assist OPD in its handling of criminal misconduct. Among our recommendations, we urged OPD to continue to assign high level commanders to monitor criminal misconduct cases due to their significance.

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

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy to coordinate its administrative investigation of a member/employee with the Alameda County District Attorney's Office if a criminal proceeding is potentially viable.

- By July 20, 2004, when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogation must be preceded by a Lybarger warning.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the seventh reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*; and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During the eighth reporting period OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During the tenth reporting period, OPD proposed a series of changes to General Order M-3 and to its Internal Investigations and Internal Affairs policies and procedures manuals. These changes did not materially alter the compliance requirements for this task. Also during the tenth reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

During the tenth reporting period, the IMT conducted an audit of actual practice compliance with this task. We found that OPD's handling of criminal misconduct allegations was evolving and improving but that OPD was not yet in compliance with Task 29. A discussion of our review findings is included in our tenth status report.

During the current reporting period, we conducted another actual practices assessment of OPD's compliance with Task 29. In our previous audit of Task 29, we found that OPD did not yet have in place a system for ensuring adequate coordination of investigative efforts. Due to the lack of timely notifications of possible criminal misconduct, OPD and outside agencies were unable to coordinate their efforts from the outset. As a result, coordination of interviews and other investigative steps was lacking which impacted the quality of these important cases. As noted above, we found these problems were due in large part to a lack of knowledge about OPD's own policies in this area, or the reasons for those policies, even among those responsible for carrying out the policies. OPD subsequently placed BOI responsibility for these responsibilities at a higher level. BOI personnel and three consecutive IAD commanders have since successfully implemented and maintained systems for ensuring that instances of apparent criminal misconduct are, for the most part, identified early and handled with alacrity.

Task 29 requires OPD to coordinate its administrative investigation of members/employees with the Alameda County District Attorney's Office, or relevant criminal investigators, if a criminal proceeding is potentially viable. There were thirteen cases in our dataset in which OPD found a criminal case potentially viable. We found OPD in compliance with the coordination requirement in all but one of these cases. As with Task 28, OPD's improvement in this area was dramatic. The relevant divisions within OPD have created a good system for working with each other when investigating criminal and administrative misconduct.

Their approach to conducting criminal and administrative investigations is a model one in many respects. As the one out of compliance demonstrates, there appears to be a need for better follow-up, or at least better documentation of follow-up, with outside law enforcement agencies investigating OPD members or employees for apparent criminal misconduct.

In addition to requiring coordination with prosecutors or relevant criminal investigators, Task 29 requires that when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogations be preceded by a Lybarger warning. We found that OPD used Lybarger warnings where appropriate in all cases we reviewed. This too reflects improvement since our last review, when OPD did not always properly administer Lybarger warnings. Accordingly, OPD is in compliance with Task 29.

Our audit report included several recommendations to assist OPD in its handling of criminal misconduct. Among our recommendations, as noted above, we urged OPD to continue to assign high level commanders to monitor criminal misconduct cases due to their significance.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. The IMT has verified that OPD has trained over 95% of relevant personnel on this policy. OPD's commitment to this project enabled it to complete both the policy and training by the court-ordered deadlines.

During the tenth reporting period, OPD revised General Order K-4.1 to reflect stipulations it reached with the Plaintiffs' Attorneys modifying several of the NSA's use of force provisions. As with the other use of policies modified during this reporting period, the IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure the language and intent of the NSA was reflected in the revisions. Also during the tenth reporting period, one of the three compliance standards for this task was modified to include a more subjective pass/fail assessment.

Even before the new policy was published, the Board began using many of the standards and guidelines set forth in General Order K-4.1, *Force Review Boards*, to shape deliberations.

OPD reviews under the new policy have resulted in more focused and complete incident assessments.

During the current reporting period, we continued to work with OPD in this area. The IMT continued to attend OPD's Executive Force Review Boards convened to evaluate officer-involved shootings, in-custody deaths, and other serious incidents, including police pursuits resulting in death or serious injuries. We also continued to have regular discussions with the presenters, Board members, and commanders overseeing this process to learn their perspectives and provide any insights about how to improve the EFRB.

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

We will continue to closely monitor OPD's oversight of its most serious uses of force and will report on our findings in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the eighth reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. OPD's commitment to this project enabled it to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force*, incorporates some of the Settlement Agreement's requirements for this task. As discussed above, OPD also trained relevant personnel on this policy. During the tenth reporting period, OPD revised General Order K-4 to reflect stipulations it reached with the Plaintiffs' Attorneys modifying several of the NSA's use of force provisions. The IMT worked closely with OPD and the Plaintiffs' Attorneys to ensure the language and intent of the NSA was reflected in the revisions. Also during the tenth reporting period, some of the compliance standards for this task were lowered from 95% to 90%.

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

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

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

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

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

During the eleventh reporting period, we continued to work with OPD in this area and completed a formal compliance assessment of Task 31. We found that OPD is in compliance with all of the requirements of Task 31. A discussion of our findings is included in our eleventh status report.

During the current reporting period, the IMT went on-scene to the investigations of officer-involved shootings; observed officer, suspect, and witness interviews; and continued to attend meetings of the Executive Force Review Board. We will continue to closely monitor OPD's investigation of officer involved shootings.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During the tenth reporting period, the Department issued Department General Order I-15, *In-Car Video Management System*, and began beta-testing the ICVMS. During the eleventh reporting period, the Department completed installation of the in-car video systems into approximately 101 police cars. Due to a number of technical difficulties, however, none of the cameras were made operational until the twelfth reporting period.

During the twelfth reporting period, OPD continued to work with the City's Information Technology Department to address the technical difficulties and partially launched the system in Areas 1 and 2 of the City. OPD worked on resolving the remaining technical issues so that it could activate the system in Area 3 as well. Additionally, during the twelfth reporting period, OPD installed kiosks in the report writing room and Internal Affairs that can be used to reviewing in-car video footage. OPD also started to use the footage to review misconduct complaints and critical incidents such as vehicle pursuits.

During this reporting period, as discussed above, OPD's progress in implementing the in-car camera system has stalled. While OPD purchased approximately 101 cameras, according to OPD, only 45 of them were made operational in OPD vehicles. Due to vendor installation problems and attrition, as of June 2009, only 30-35 cameras remained operational. OPD is

negotiating with a new company to complete the installation of cameras. According to OPD, however, completion of this process may take several months. While OPD has some minimal ability to repair camera equipment, it reports that it does not have adequate support for servicing cameras that malfunction or break.

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

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

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

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

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

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

During the sixth reporting period, the IMT conducted an audit of OPD's compliance with Task 33 in actual practice. A complete discussion of our audit findings is included in our sixth status report. The IMT determined that OPD is informing members/employees of its confidential reporting procedures. OPD training logs confirmed that OPD informed at least 95% of current

employees and 100% of new recruits and lateral hires about OPD's confidential reporting procedures during the period covered by this review.

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

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

Our audit made several recommendations for improving Task 33 compliance, including: clarifying OPD's misconduct reporting requirements; clarifying for officers how OPD's confidential reporting system works; requiring that all sustained cases be reviewed within IAD to ensure that all potential reporting violations were addressed and resolved; and including the consideration of misconduct reporting issues in the investigation checklist. OPD implemented many of these recommendations and others they developed, including retraining officers about their reporting obligations and the consequences for failing to meet them.

During the ninth reporting period, OPD published Training Bulletin V-T.3, *Reporting Misconduct*, designed to give personnel concrete examples of their reporting responsibilities. The training bulletin appropriately discusses reporting misconduct as an act of integrity, not betrayal. Additionally, during the ninth reporting period, OPD published an informational bulletin instructing personnel on the differences between anonymous and confidential reporting. The bulletin was accompanied by a quiz that was administered to IAD staff to test their understanding.

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

During the current reporting period, we completed another actual practices compliance assessment of Task 33. While OPD is not yet in compliance with this task, Task 33 represents another task in which OPD, and IAD in particular, have made significant progress since our last review. Task 33 requires OPD personnel to report misconduct that they observe or learn of to their supervisor and/or the Internal Affairs Division. Generally, OPD policy requires that misconduct be reported to a supervisor within 24 hours or sooner if practicable. Accordingly, Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether other OPD personnel knew or should have known that the misconduct occurred, and, if so, whether it was reported as required by OPD policies. The compliance standard for Task 33.1 is 95%. We reviewed for compliance a total of 57 cases. We found that misconduct was reported appropriately or that OPD conducted an adequate assessment of whether misconduct was reported in 83% of the cases we reviewed. In our last audit of Task 33,

we found that OPD conducted an adequate assessment of whether misconduct was reported in only one of the 26 cases reviewed. OPD's practices in this area have improved dramatically.

We also noted a marked improvement in OPD's performance over time. OPD has shown steady and demonstrable improvement in its willingness and ability to assess whether its personnel are reporting misconduct that they knew or reasonably should have known occurred. Compared to our last review, the investigative files generally reflected improved questioning by OPD investigators regarding what other members/employees observed or understood about incidents resulting in sustained allegations of misconduct. However, we continued to find instances in which other members or employees may have observed or did observe misconduct but did not report it and such failures were not probed by OPD adequately or at all. Several of these cases included serious violations which severely hamper internal integrity. They included cases involving care of property; illegal searches; threats of violence against co-workers; failure to process a citizen's complaint; failure to document activities or make required arrests; violation of Miranda rights; and completion of accurate police reports.

Our audit revealed that OPD has implemented many of the elements of a confidential reporting system required by Task 33. OPD has continued to inform its sworn and civilian employees of OPD's confidential reporting procedures. Confidential reports of suspected misconduct may be made by any OPD member or employee and may be made in person, by telephone, or in writing as required. OPD, however, is not in compliance with Task 33 because it did not maintain confidentiality in the sole confidential misconduct report received during the period covered by this review. According to OPD, it did not attempt to mask the identity of the complainant upon conclusion of the investigation because the complainant's identity would have been obvious and the investigation concluded with sustained findings, entitling the subject employee to all materials upon which the sustained findings and subsequent discipline are based, including, in OPD's view, the identity of the complainant. The IMT is concerned that not protecting a confidential complainant's identity or even attempting to do so, especially in a case that is sustained undermines the purpose of having a confidential misconduct reporting process. In the future, prior to releasing such information, OPD reports that it intends to consult with the Office of the City Attorney.

We will continue to monitor OPD's progress in reporting misconduct and maintaining a confidential reporting system. We intend to report our findings in a subsequent status report.

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

a. Settlement Agreement Requirements

- By August 25, 2003, OPD members must complete a basic report on every vehicle stop, field investigation and detention. The Settlement Agreement sets forth particular information that must be included in this report.

- OPD must enter this report data into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.

b. Status of Compliance and Assessment

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

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

During the tenth reporting period, OPD published three report-writing manual inserts related to Task 34, RWM N-1, *Misdemeanor Citation*; RWM N-2, *Traffic Citations*; and RWM R-2, *Stop Data Collection Form*. The IMT has confirmed that the Department has trained at least 95% of relevant personnel on these policies.

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

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

During the eighth reporting period, the IMT audited OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our eighth status report. The IMT found that, although OPD had made tremendous progress in this area, it was not in actual practice compliance with the requirement that officers complete a stop data form for at

least 95% of field stops, field investigations, and detentions, as required by the Settlement Agreement. We found OPD in conditional compliance with the requirement that stop data forms be completed fully and accurately. We identified ambiguities in the SDFs that were likely the cause of substantial confusion among OPD officers about how to accurately complete them. We informed OPD of the deficiencies in the SDF form and notified it that we will not employ these conditional criteria during our next review and instead expected that OPD would correct the SDF and train its officers on its proper completion. Our audit also discussed the problems with SDF data entry and analysis. OPD recognized these problems and contracted with a third-party vendor to input SDF information into an appropriate database. We have encouraged OPD to ensure that this information is accurately and completely entered for all SDFs in a manner that permits the IMT and OPD to assess compliance with the Settlement Agreement and OPD policies. A complete summary of our audit can be found in our eighth status report.

During the ninth reporting period, OPD started rolling out field-based computerized reporting (FBR). Unfortunately, it did not include the stop data forms among the computerized forms which officers can complete electronically from their vehicles. During the twelfth reporting period, OPD reported that it has contracted with a vendor to update FBR to include stop data forms. As of the current reporting period, this update has not yet been completed.

Also during the ninth reporting period, OPD drafted new stop data forms. It remains to be seen whether these forms will decrease the confusion discussed above because OPD created two new forms, containing somewhat different fields. During the twelfth reporting period, OPD began requiring all officers to use the new forms. The Department is using one form for those stops that result in a citation and another form for stops not involving citations. The Department has reported that it intends revise its Field Contact Forms to incorporate the stop data forms, thereby decreasing redundant paperwork that officers are required to complete. We supported these efforts but encouraged the Department not to create a third version of the stop data form when it makes this change.

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

During the current reporting period, we conducted another actual practices assessment of OPD's compliance with Task 34. As in our previous audits, we found that OPD still is not in compliance with the requirement that officers complete a stop data form for at least 95% of field stops, field investigations, and detentions. We reviewed a sample of OPD stops and determined that, at most, stop data forms were completed for only 73% of the stops reviewed. OPD reports that it intends to start issuing corrective action, including discipline, to ensure that SDFs are completed for each stop. According to OPD, the Deputy Chief of the Bureau of Field Operations has reportedly asked supervisors to ensure that there are SDFs where appropriate when reviewing officers' reports. OPD currently has no internal audit mechanism to ensure that SDFs are completed for stops in which no other documentation was produced. OPD does not require officers to complete daily statistical sheets, which could be used for this purpose.

We found OPD in compliance with the requirement that stop data forms be filled out completely and accurately. Of the stop data forms reviewed, 92% of them fully captured the

criteria required by the NSA, including time, date, location, member identification, reason for the stop, apparent race/ethnicity of person(s) stopped, gender, outcome of stop, whether a search was conducted, and outcome of any search.

In addition to requiring that stop data forms be completed accurately for every stop, Task 34 requires that OPD maintain a searchable stop data database containing information from the stop data forms. OPD remains in compliance with this requirement. Task 34 requires that the data captured on the forms be completely and accurately entered into the stop form database. The compliance standard for this requirement is 85%. OPD is not in compliance with this task. Only 49% of the stop data forms reviewed were completely and accurately entered into the databases. A review of the records revealed various errors and omissions. Approximately half of the records in the database contained missing or inaccurate location information.

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

As previously reported, OPD still is not effectively analyzing the stop data its officers painstakingly gather. Although not required by the NSA, if OPD were to analyze stop data and act upon information regarding "hit rates," etc., more officers, OPD management, and the City, would likely see the value in collecting stop data. More importantly, the efficiency and effectiveness of OPD's detentions and searches might well improve, benefiting officers and the community alike. In recognition of these benefits, OPD recently arranged for a local university to assist it in conducting an analysis of OPD's stop data. This is a positive development and, if the partnership proves successful, may be a model that OPD wishes to use in the future.

We will continue to monitor OPD's adherence to stop data requirements and will report on OPD's progress in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

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

During the twelfth reporting period, OIG conducted a review of Task 35 and reports that OPD is now in compliance with all Task 35 requirements. We will continue to monitor OPD's compliance with Task 35 and will report on OPD's progress in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

During the seventh reporting period, the IMT determined that OPD was not complying with this task in actual practice, and made several recommendations for improvement including: establishing a communications protocol prompting dispatchers to elicit the information required by this task; providing officers with refresher training regarding what information they are required to provide when performing transports; and holding officers accountable where they do not comply with this OPD policy. On September 12, 2005, OPD published Special Order 8262, *Transportation of Persons in Police Vehicles*, incorporating the IMT’s recommendations. In addition, OPD conducted some internal audits and training to ensure compliance with Special Order 8262 and this Settlement Agreement provisions.

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

During the tenth reporting period, the IMT audited OPD’s actual practice compliance with this task. While OPD was not yet in compliance with Task 36.1, which requires that officers log in and out on the radio when transporting a detainee or any other civilian (unless the transport is done by wagon), it had made significant progress since our prior audit of this task when the overall rate at which members and employees logged both in and out as required was

63.0%. Based on the documentation we were provided for the audit, members and employees logged both in and out as required in 83% of the transports reviewed. We found OPD in compliance with the remaining requirement of Task 36. Members included the time, mileage, location, purpose of the transport, gender of the person being transported, and the identification of the transporting member in 84.8% of the transports we reviewed. A discussion of our review findings is included in our tenth status report.

During the eleventh reporting period, OPD's Communications Division commander worked to improve compliance with Task 36. In addition to assessing the Department's compliance, he conducted additional training for dispatchers and provided OPD personnel with reminders regarding the information that is required to be called in on each stop.

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

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

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

a. Settlement Agreement Requirements

- By August 25, 2003, OPD must establish a policy prohibiting retaliation against any member or employee of the Department who reports misconduct by any other member or employee, or serves as a witness in any proceeding against a member or employee. The Settlement Agreement requires that the policy acknowledge that retaliation may be informal and subtle. The Settlement Agreement further requires that dismissal be the presumptive disciplinary penalty for retaliation.
- By August 25, 2003, OPD must hold supervisors, commanders and managers accountable for retaliation committed by their subordinates. If supervisors, commanders, or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, OPD must subject them to the investigative and disciplinary process.

b. Status of Compliance and Assessment

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

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

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

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

During the ninth reporting period, the City Attorney's Office developed additional training, including a new policy, regarding retaliation. This policy was never adopted. Instead, during the eleventh reporting period, OPD revised its retaliation Manual of Rules (MOR) provision and drafted additional MOR provisions to further define OPD's rules regarding retaliation. The IMT reviewed and approved these MOR provisions, 398.73, *Retaliation*; 398.74, *Retaliation, Accountability*; 175.95, *Retaliation*; 175.96, *Adverse Actions*; 175.97, *Protected Activities*. These MOR revisions are contained in Special Order No. 8789, published on January 22, 2008.

During the current reporting period, OPD continued to provide quarterly reports to the Court listing the status of investigations into allegations of retaliation. The compliance standards for this task remain at the 95% level.

During the current reporting period, we completed another actual practices compliance assessment of Task 37. We found significant improvement in OPD's handling of retaliation cases. In our previous assessment of Task 37, we found that none of the retaliation cases were adequately investigated. In our most recent audit, we found OPD's investigation of retaliation allegations sufficient in 71% of the cases reviewed. OPD's investigations of retaliation cases, however, are not yet where they need to be. We continued to observe cases in which critical allegations were never addressed; cases closed without sufficient investigation; and an officer not held accountable for allegations that were investigated and sustained. One such case involved a complaint of retaliation related to one of the witness officers in the Riders case.

Our audit report included a series of recommendations aimed at assisting OPD to continue to improve its handling of retaliation cases. We will continue to monitor OPD's handling of retaliation cases and will report on OPD's progress in a subsequent status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

During an audit conducted during the second quarter reporting period, the IMT determined that OPD's actual practices in this area were not in compliance with the Settlement Agreement and made several recommendations to OPD to help achieve compliance. These recommendations included providing refresher training; explaining to officers the intent and importance of this Settlement Agreement provision; exploring the use of a single, uniform method for obtaining citizen statements; and improving supervisory review of citizen statements.

During the seventh reporting period, OIG conducted an internal audit of Task 38 and found OPD's current practices in compliance with the Settlement Agreement's requirement that

citizens who sign written statements on Statement Forms draw a diagonal stripe from the end of the written narrative to the bottom of the page and sign along the stripe. OPD did not audit whether citizen statements on offense reports were signed by the citizen immediately following the statement because the Department no longer allows officers to take citizen statements directly on offense reports.

During the eighth reporting period, the IMT conducted a second actual practice audit of this task and found OPD in compliance with this task in actual practice. A complete discussion of our audit findings is included in our eighth status report.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. OPD achieved policy compliance by publishing Special Order 8064, *Reporting Civil Actions Served*, on April 13, 2004, and *Manual of Rules* Section 314.28, *Notification*, on November 23, 2003. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

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

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

During the eighth reporting period, OIG conducted an audit of Task 39. According to OIG, OPD was not yet in compliance with this task, but has made progress. OPD reports that it has begun to implement some of the proactive measures that we recommended. OPD notes further, however, that there are several steps it could be, but was not yet, taking to detect and track arrests and lawsuits of its officers. During the tenth reporting period, OPD drafted General Order E-3.1, *Department Notification Compliance Verification*, to address these issues. During the eleventh reporting period, this General Order was published but not implemented due to objections from the OPOA.

The IMT intended to audit this task during the ninth reporting period, but OPD acknowledged that it had not yet implemented sufficient measures to attain compliance with this task. During the tenth reporting period, one of the two compliance standards for this task was modified to include a more subjective pass/fail assessment.

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

The IMT is currently assessing compliance with this task and will report our findings during the upcoming reporting period.

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

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

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

OPD's system, which is now referred to as the Personnel Assessment System (PAS), was due for completion in June 2005. Working closely with OPD, the City's information technology staff completed development of a computerized early identification and intervention system (IPAS) that includes all but one of the data fields required by the NSA. IPAS is available to OPD supervisors and commanders throughout the Department to assist them in managing their

subordinates. The system is an impressive accomplishment and garnered an honorable mention in a national technology solutions competition held by the Public Technology Institute. Now that OPD has this powerful tool at its disposal, the key will be to ensure that it provides supervisors and commanders throughout the agency with the training necessary to understand and use the system as intended, and that OPD hold them accountable for doing so. While IPAS is capable of quickly and efficiently providing OPD supervisors and commanders with an array of information about personnel, it is not a substitute for day-to-day supervision. The success of these NSA requirements will stand or fall on the Department's supervisors' and commanders' ability and willingness to identify employees who may be exhibiting at risk or exemplary behavior and to intervene as appropriate.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

During the tenth reporting period, OPD published Department General Order D-17, *PAS and IPAS – Supervisors, Commanders, and Managers*. While OPD trained at least 95% of its

supervisors, managers, and commanders on the policy, it did not provide training to the rank and file regarding the new Personnel Assessment System. The Department has since trained all personnel on the new system.

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

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

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

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

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

During our audit, we shared our observations, concerns, and recommendations regarding the system with OPD. OPD has responded energetically and constructively, showing a desire to resolve identified deficiencies. This is due in large part to the skill and dedication of OPD's PAS coordinator. The PAS Coordinator has continued to demonstrate exceptional organization,

leadership, and a firm commitment to ensuring that the PAS system functions effectively and consistently as a risk-management tool for OPD.

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

During the current reporting period, the IMT met again with the PAS Administration Unit and the PAS Activity Review Panel. We continued to be impressed by their thoughtfulness and commitment to the PAS program.

We will continue to closely monitor OPD's implementation and use of its PAS system and report on OPD's progress during the upcoming reporting period.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

This task was assessed in conjunction with the PAS database assessment. See "Status of Compliance and Assessment" under Task 40, Personnel Assessment System (PAS)-Purpose, for Task 41's status of compliance.

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

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

During the ninth reporting period, we conducted a second audit of the Field Training Program. A complete discussion of our audit findings is included in our ninth status report. We found that OPD had continued to make progress and was in compliance with nearly all of the task’s requirements.

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

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

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

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

During the last year, OPD continued to hire and train new officers. In order to keep pace with the new hires, OPD needed to increase the number of FTOs available to train the new officers. As discussed as an Area of Concern in our eleventh status report, it is critical that OPD not sacrifice the quality of field training it is providing to new officers by selecting unqualified FTOs and/or by otherwise lowering program standards. According to OPD, it shared our concern and had no intention of lowering standards in its field training program.

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

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

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

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

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

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

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

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

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

The compliance deadline for this task occurred during the sixth reporting period. On September 2, 2005, OPD graduated its 154th Basic Academy class. The class was the Department's first Academy class in several years. During the seventh reporting period, OPD also graduated seven officers from its Sixth Lateral Academy. During the eighth reporting period, OPD's 155th Basic Academy class graduated. During the ninth reporting period, the 156th, 157th, and 158th Basic Academies graduated, along with the Seventh Lateral Academy. During the tenth reporting period, the 159th and 160th Basic Academies graduated. During the

eleventh reporting period, the 161st, 162nd, and 163rd Basic Academies graduated. During the twelfth reporting period, the 164th, Santa Clara, and 165th Basic Academies graduated. The Eleventh Lateral Academy graduated during the current reporting period.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

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

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

During the ninth reporting period, the IMT intended to audit Task 43; however, OPD reported that it was not yet complying with the requirements of Task 43. OIG conducted an assessment of the Training Division during the ninth reporting period and found that OPD was

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

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

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

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

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

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

each of the areas. In our 2008 audit of Task 43, the IMT found that the Department's dispatchers and civilian evidence technicians received the required number of hours of training for their positions. However, the Department was not in compliance with the requirement that every 24 months, every officer and sergeant who routinely arrests criminal suspects, completes a minimum of 14 hours of certified perishable skills training in the following areas: tactical firearms (four hours); arrest and control (four hours); driver training (four hours); and tactical communications (two hours). Due to the critical nature of this training, compliance requires that at least 95% of officers and sergeants receive the training. In our last audit, we found that only 58% of the officers and sergeants received perishable skills training consistent with these requirements. In our current audit, we found that while OPD did not provide perishable skills training to all officers and sergeants within 24 months or less from their previous training, OPD provided the training to 100% of the officers and sergeants reviewed. OPD provided the training within 24 months or less from previous perishable skills trainings for 85% of the officers and sergeants reviewed. Accordingly, we found OPD in conditional compliance with this task.

Since our 2008 audit, OPD has made substantial strides in improving its methods for selecting, training, evaluating, and maintaining records for OPD training instructors. During this review period, the IMT found that the instructor files have improved significantly. Training Division personnel, particularly the most recent former Commander and the current Academy Sergeant, have worked diligently to ensure that the files are well-organized, complete, up-to-date, and contain the required documentation. In addition, the Training Division has made several new useful improvements to its instructor recordkeeping system.

In addition to these improvements, we also observed significant improvement in the manner in which OPD evaluates the qualifications and competence of its training instructors.

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

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

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

The Settlement Agreement's Consistency of Discipline section, Task 45, requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The timely and fair imposition of discipline is essential to ensure accountability. The compliance deadline for this task occurred during the combined fourth and fifth reporting period. With the publication during the seventh reporting period of the Departmental Discipline Policy (Training Bulletin V-T), OPD attained policy compliance with this task. During the tenth reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally crafted, it was overly punitive. These changes were reviewed and approved by the Parties and the IMT. As of April 15, 2008, the Department had not yet trained 95% of relevant personnel on the revised Discipline Policy and Discipline Matrix. In upcoming reporting periods, the IMT will review training data to determine whether OPD has trained at least 95% of relevant personnel on the revised Discipline Policy and Discipline Matrix.

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

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

a. Settlement Agreement Requirements (see also Task 21)

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

b. Status of Compliance and Assessment

The due date for this task occurred in July 2004. OPD developed a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, in advance of the due date. During the seventh reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task. During the ninth reporting period, OPD published a revised version General Order B-6 to provide additional guidance to supervisors and managers. The IMT determined that the

revisions comply with the Settlement Agreement, and verified that OPD has trained more than 95% of its personnel on the revised policy. As reported above, during the tenth reporting period, OPD published Special Order 8650, *Performance Appraisals*. The IMT has verified that the Department has trained 95% of relevant personnel on this policy.

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

We reported in our combined fourth and fifth quarterly report that OPD was not complying with the requirements of this task. We found that too few personnel files contained current performance appraisals and that the quality of the performance appraisals was deficient as well. In October 2005, OIG initiated an audit of the Department's performance appraisals and also found that OPD's actual practices did not comply with Task 44. OIG's audit found that current performance appraisals did not contain sufficient documentation of the criteria required by the Settlement Agreement. OIG further reported that OPD could not demonstrate that managers and supervisors were held accountable for writing poor quality performance appraisals. Consistent with the IMT's recommendations made as a result of its 2004 audit, OIG made several recommendations for improving the Department's compliance with this task.

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

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

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

We are currently completing another actual practice assessment of Task 44 and will report our findings in an upcoming status report.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The requirements of this task were modified by stipulation in June 2005 and again during the twelfth reporting period. The task now provides that the Discipline Officer may prepare a Discipline Recommendation without convening a Discipline Conference, at the Chief's direction. The requirements of this provision are incorporated into General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; the Departmental Discipline Policy; and General Order B-6, *Performance Appraisals*. OPD completed General Order B-6 ahead of schedule and, during the seventh reporting period, completed the remaining policies incorporating this Settlement Agreement task. During the eighth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this task.

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

During the tenth reporting period, OPD revised its Discipline Policy and Discipline Matrix based on concerns that, as originally revised and approved by the Department, it was overly punitive. These changes were reviewed and approved by the Parties and the IMT. During the current reporting period the Department completed made additional revisions to the Matrix that were reviewed and approved by the Parties and the IMT.

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

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

During the tenth reporting period, two of the compliance standards for this task were modified to include a more subjective pass/fail assessment. During the twelfth reporting period, the Parties agreed that OPD would track and maintain disciplinary and corrective action resulting from an IAD or Use of Force Board finding, as well as Performance Deficiency Notices and Letters of Discussion in the centralized supervisory notes file.

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

As discussed above, Task 45 requires that OPD impose discipline that is fair and consistent with the Discipline Matrix. The compliance standard for Task 45 requires that 95% or more of the cases meet applicable standards. The IMT evaluated all sustained investigations completed between June 2007, and October 2008. This date range was selected because the revised discipline policy and matrix were published on May 30, 2007. During this period, there

were a total of 200 sustained investigations resulted in 193 disciplinary decisions involving individual members and employees. Slightly over half of the sustained cases resulted from preventable vehicle accidents involving members and employees, not complaints of misconduct. We found that OPD is imposing discipline that is fair and consistent with its Discipline Matrix in the vehicle accident cases but is not yet in compliance with Task 45 for the misconduct cases. The Department has, however, made notable progress since our last audit.

During our last audit of Task 45, we found that while the discipline recommendations purported to list both mitigating and aggravating information, the recommendations generally recommended the lowest level penalty possible without regard to these factors. During this review, we observed a more rigorous assessment of mitigating and aggravating factors, including consideration of the member or employee's discipline history; the consequences of the misconduct; the member or employee's role in the misconduct; and their acceptance of responsibility and/or remorse. As noted above, since our last audit of Task 45, OPD published a revised version of its Discipline Matrix. According to OPD, revisions of the Matrix were necessary because a number of the penalties and formulas set forth in the original Discipline Matrix, if applied, would result in unduly harsh discipline. Consequently, the revised Matrix establishes lower presumptive penalties for many rule violations. These lower penalties have made it easier for OPD to recommend and impose discipline that falls within the parameters of the Matrix in most cases.

In our last audit of Task 45, we found that in 86% of the cases reviewed, OPD selected and/or sustained Manual of Rules (MoR) violations that did not fit the facts of the alleged misconduct. Without exception, this practice resulted in disciplinary recommendations and final disciplinary decisions that were less severe than called for had the MoR provisions listed in the Matrix been properly applied. During the current audit, we observed significant progress in this area. As discussed above, OPD has revised its Matrix to provide lower presumptive penalties for many rule violations. This has helped to minimize the selection of MoRs based upon the potential penalties rather than the underlying conduct. OPD selected and sustained the appropriate MoRs in all of the vehicle collision investigations and in 98% of the misconduct investigations reviewed. In the misconduct cases in which the MoRs selected and sustained were *not* consistent with the facts of the misconduct, OPD selected and sustained MoR provisions that carried significantly lower penalties than the applicable MoRs.

During our last audit of Task 45, only 10% of cases reviewed resulted in discipline consistent with the formulas set forth in the Matrix. We have observed substantial progress in this area. In all but one of the vehicle collision cases and in 88% of the misconduct cases we reviewed, OPD imposed discipline that was consistent with the formulas set forth in the Discipline Matrix. Each of the cases in which discipline was not imposed consistent with the formulas set forth in the Matrix resulted in no discipline at all being imposed or a downward departure from the Matrix's proscribed range of penalties.

During our last audit of Task 45, nearly all of the cases reviewed had penalties that varied outside of the proscribed discipline ranges due to improper charging practices and/or misapplication of the Matrix. There was no specific justification for these practices, each of which resulted in a downward departure from the Matrix's proscribed penalty ranges. During

the current audit, we found that substantially fewer cases had variances outside of the proscribed discipline ranges. Only two of the vehicle collision cases had variances and both of these cases included specific written justification for the variances. Eleven of the misconduct investigation cases concluded with discipline that varied from the proscribed ranges. Each of these cases resulted in no discipline being imposed or in discipline imposed that was below the discipline established by the Matrix. In compliance with Task 45, six (55%) of these 11 cases included specific written justification explaining the variances. This included several cases resulting in last chance agreements or retirement in lieu of termination.

As part of our assessment, we evaluated whether any inappropriate factors (e.g. favoritism, bias or conflicts of interest, political interference) appear to have played a role in the disciplinary system. During our last audit of Task 45, we found widespread misapplication of the Matrix. We were pleased to find that this is no longer the case. However, as discussed above, we continued to observe instances of inconsistent treatment that undermine OPD's efforts to establish a fair and consistent disciplinary system. While we have noted significant improvement in OPD's ability and willingness to impose discipline that is fair and consistent, we continue to observe cases where this does not occur, including several cases that fall outside of the period covered by this audit. The cases in which we continue to observe problems with fair and consistent discipline tend to fall into one or both of the following categories: 1) cases involving popular or well-connected officers or commanders including officers and commanders who are given leeway because they are regarded as strong performers or high producers; or 2) cases in which OPD selects and sustains MoR provisions that carry a lower penalty in order to decrease the maximum possible discipline that can be imposed and/or because OPD does not want to "stigmatize" officers with certain findings.

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

As discussed above, in the Areas of Discussion, cases of apparent favoritism, although few in number, are of particular concern because actual or perceived favoritism in the disciplinary process makes officers and the community lose trust in the entire system and make it more difficult to uphold disciplinary decisions through appeal and arbitration. Unfair disciplinary decisions also embolden the offending officers to commit misconduct again, sometimes with escalating severity and consequences. Further, in a number of instances, favoritism results not only in lax discipline but in officers not being sustained at all for misconduct (including serious misconduct) or having sustained findings overturned by OPD notwithstanding the strength of the objective evidence.

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

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

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

We will continue to monitor OPD's disciplinary system and will report our findings in an upcoming status report.

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

a. Settlement Agreement Requirements

- By July 8, 2003, OPD's promotion policy must be modified so that sustained misconduct cases against a member/employee are an important factor in determining promotability, including presumptive ineligibility for promotion for twelve months following the sustained finding of a Class I violation.

- The Settlement Agreement further requires the Chief of Police to consider the following criteria, in addition to other factors, in making promotional determinations:
 - Commitment to community policing;
 - Quality of citizen contacts;
 - Number of citizen complaints;
 - Instances of unnecessary use of force; and
 - Support for Departmental integrity measures.

b. Status of Compliance and Assessment

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

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

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

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

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

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

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

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

During current reporting period, OIG completed an assessment of Task 46, finding OPD in compliance with the task. The IMT is in the process of conducting an actual practices assessment and will report our findings in an upcoming status report.

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

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

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

a. Settlement Agreement Requirements

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

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

b. Status of Compliance and Assessment

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

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

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

During the ninth reporting period, OIG audited Task 47. According to OIG, OPD had fallen out of compliance with the community meeting requirement and is not yet in compliance with other requirements of this task. During the tenth reporting period, OPD pledged to identify its community policing and problem-solving methods and the mechanisms it uses for measuring them as required by the NSA. During the eleventh review period, this information was provided to the IMT. The IMT reviewed the information and provided comments to OPD.

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

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

We conducted a compliance assessment of Task 47 during the twelfth reporting period. We reviewed every requirement of the task except the requirement that OPD implement mechanisms to measure its community policing and problem-solving activities. We did not review this requirement in order to allow OPD sufficient time to implement it. We will review and report on it in a subsequent status report.

Our assessment of the remainder of Task 47 found that OPD is in compliance with each of the provisions reviewed. Accordingly, we found OPD in conditional compliance with Task 47. Task 47 requires OPD to host at least one community meeting per quarter in each Patrol Service Area. Based on the documentation we reviewed, OPD went well beyond the requirement to hold at least one meeting in each PSA each quarter. OPD held 150 community meetings in the first quarter of 2008, including at least one meeting in each PSA. The IMT commends OPD for continuing its practice of regularly hosting meetings in communities throughout the City. We also applaud the Department's efforts to increase meeting participation in parts of the City where community attendance has been low. These efforts have included calling a special community meeting to request greater community involvement in anti-violence efforts; requiring officers to spend more time walking their beats in order to meet community members and help prevent crime; and working with NSCs to conduct outreach to individuals to encourage their participation in police-community meetings. As a result of these and other efforts, OPD has reported new working partnerships in some Areas and the reinvigoration of NCPC groups that had become defunct.

Task 47 requires each patrol supervisor and officer assigned to a regular beat or geographic Area of the City to attend a minimum of one community meeting per quarter in the Area s/he is regularly assigned. Based on the documentation we reviewed, 395 (96%) of the 413 patrol supervisors and officers required to attend community meetings during the quarter did so. Additionally, based on the documentation we were provided, 375 (91%) of the 413 patrol supervisors and officers required to attend community meetings during the quarter attended meetings in the Area to which they were regularly assigned.

Task 47 requires OPD to incorporate positive statistics on community policing and problem-solving activities, and information on citizen complaints and use of force incidents into CrimeStop meetings. In our last review, we found that OPD was not in compliance with this subtask. With the exception of occasional *ad hoc* references to community policing or problem-solving, OPD's CrimeStop meetings did not include the elements required by this task, much less incorporate these elements as a regular part of the meetings. At the time of our audit, OPD was regularly including as a part of its CrimeStop meetings reports by commanders regarding the number of vehicle collisions, pursuits, uses of force, and Internal Affairs complaints generated by OPD personnel in various divisions. In addition to reporting raw statistics, commanders are required to discuss any positive or negative trends they may have identified. Each CrimeStop meeting also included a presentation regarding a different community policing or problem-solving project. Projects have resulted in a variety of positive impacts in various parts of the

City, including the remediation of a number of blighted properties and improving pedestrian and vehicle safety. These presentations are generally given by the officers who worked on the projects, and provide a unique opportunity for the officers to address a large group of OPD command staff, and for commanders to learn about community policing and problem-solving projects being conducted in other areas of the City. During the current reporting period, OPD shifted these presentations from its CrimeStop meetings to its MAP meetings.

The final provision of Task 47 requires OPD to meet within 60 days with representatives of established organizations active within Oakland, community groups, or church groups, if an organization communicates a concern regarding specific police personnel or practices. This requirement applies unless it is not feasible for OPD to meet with the organization within the designated time period. OPD was not able to produce documentation of any requests covered by this task for the period reviewed. In order to assess this requirement, the IMT interviewed staff persons at two community organizations active within Oakland, as well as 16 Neighborhood Service Coordinators to determine whether requests for meetings with OPD were held within 60 days except where not feasible. All interviewees indicated that requests for meetings with OPD occurred within the 60-day time frame, and that the Department was generally very responsive to meeting requests. Accordingly, OPD is in compliance with this requirement. These reports stand in stark contrast to the past in which community groups frequently expressed frustration about the Department's lack of responsiveness in general, including to requests to meet. The Department's continuing efforts to inject greater levels of transparency into OPD, and its outreach to community groups, including vocal critics of the Police Department, are encouraging signs of progress in this regard. The IMT commends OPD for these efforts, and encourages the Department to strengthen these ties and to build additional relationships throughout Oakland's diverse communities.

During the current reporting period we conducted an assessment of OPD's compliance with the outstanding Task 47 provision regarding measuring community policing efforts. We are completing the reporting process and will report our findings in an upcoming status report.

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

Section XII of the Settlement Agreement, Task 48, requires OPD to develop and implement a policy requiring each functional unit of OPD to prepare a management report every 12 months. The compliance deadline for the Departmental Management and Annual Management Report section of the Settlement Agreement occurred during the first reporting period.

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

a. Settlement Agreement Requirements

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

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

b. Status of Compliance and Assessment

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

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

During the ninth reporting period, the IMT assessed OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. While OPD did not meet the report submission deadlines set out in its policies, it remained in compliance with the requirements that each functional unit prepare a management report and that Division Commanders, Deputy Chiefs, and the Chief of Police meet to discuss the reports.

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

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

During the current reporting period, OPD completed its 2008 annual management reports. This year, like last, the meetings between Division Commanders were more formalized than during the years of our previous audits. Members of the IMT attended these meetings, which occurred over two days. The discussions we observed during these well-attended meetings were informative and included some probing questioning. However, similar to last

year, we continued to note that the quality of discussions was inconsistent. This may be due in part to the fact that, in violation of OPD policy, the commanders were not provided many of the reports sufficiently in advance to review them in preparation for the meetings. A number of the reports were provided to commanders only after prompting from the IMT. Such conduct weakens the management value of the annual reports and calls into question whether OPD will maintain compliance with this important process.

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in April 2003. OPD obtained and remains in compliance with this Settlement Agreement task. On July 15, 2003, the City Council approved the Parties' selection of a monitoring team. The Court approved that selection on August 28, 2003. During the eleventh reporting period, the City Council approved a contract for the IMT to continue to monitor OPD's compliance with the Settlement Agreement until the end of the extension period.

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

OIG's staff continued to perform a number of important tasks this reporting period, including: continuing to coordinate overall compliance efforts; conducting audits required by the Settlement Agreement and other Departmental objectives; and continuing to spearhead the compliance portions of the weekly MAP meetings. During the tenth reporting period, OIG staff re-tooled OPD's compliance assessment efforts by selecting and training new internal compliance assessors to spearhead OPD's compliance efforts for each task. During the twelfth reporting period, OIG staff met with the compliance assessors on a regular basis to assist them with compliance efforts. OIG staff also have continued to provide invaluable assistance to the IMT in collecting data and evaluating Department policies, procedures, and systems.

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

The NSA requires OPD to prepare semi-annual reports describing the steps taken during the reporting period to comply with the NSA. OPD published a semi-annual report, the Combined 8th and 9th Semi-Annual Report, in December 2007. OPD published its combined 10th and 11th Semi-Annual report in December 2008, covering the time period from July 2007 through June 2008. OPD reports that it is working on another report and that it anticipates completing it within the next several weeks.

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

a. Settlement Agreement Requirements

- By September 1, 2005, following the implementation of

policies and procedures required by the Settlement Agreement, OPD must conduct annual audits of: arrest and offense reports (including follow-up investigation reports); use of force incident reports and use of force investigations; complaint processing and investigation; Mobile Data Terminal traffic; personnel evaluations; and citizen accessibility to the complaint process and the availability of complaint forms.

- The Settlement Agreement further sets minimum requirements for these audits and requires that their results be reported in OPD's semi-annual compliance reports.

b. Status of Compliance and Assessment

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

During the ninth reporting period, the IMT assessed OPD's actual practice compliance with this task. A complete discussion of our audit findings is included in our ninth status report. OPD remains in compliance with Task 51. The NSA requires OPD to conduct six designated audits annually unless the timing of an IMT audit of the same area would make an OIG audit redundant or unnecessary. Due to lengthy delays in publishing directives related to internal investigations, citizen complaints, and use of force (policies in these areas were not published until December 2005 and February 2006), OIG was not able to audit the Department's conformance with these new policies last year. However, in 2005, OIG completed the following audits: Arrest, Offense and Follow-up Investigation Reports (September 30, 2005); Personnel Reviews and Appraisals (September 30, 2005); Field Training Program (November 22, 2005); and MDT Audit (December 31, 2005).

In 2006, OIG completed the following audits: OC Log and Checkout Procedures (March 30, 2006); Promotional Consideration (April 24, 2006); Personnel Arrested, Sued or Served (May 3, 2006); Transporting Detainees and Citizens (May 19, 2006); In-Service Training and Academy Training (August 29, 2006), and Community Policing Plan (November 17, 2006). Based upon the audits conducted, we found OPD in compliance with Task 51.1. It has audited the areas required by the NSA, has conducted, or is presently conducting an audit in an acceptable substitute area.

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

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

So far in 2009, OIG has completed the following audits: Personnel Practices (February 25, 2009); Promotional Consideration (March 16, 2009); Investigating Anonymous Complaints (April 29, 2009); Arrest Approval and Report Review (July 2, 2009); Complaint Procedures for IAD (July 14, 2009).

Task 51.2 establishes the minimum substantive requirements for the audits conducted by OPD. OPD remains in compliance with Task 51.2. OIG's audits have met and exceeded the minimum requirements and also have identified deficiencies and proposed thoughtful recommendations for improvement. Task 51.3 requires OPD to report the results of its audits in its semi-annual compliance reports. OPD's semi-annual reports discuss OIG's audits. However, as discussed above, OIG has not prepared an annual report for over a year.

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

OPD remains in compliance with this task. During upcoming reporting periods, the IMT will continue to monitor this area to ensure that the required audits are conducted and will review the quality and content of the audits.

VI. CONCLUSION

While OPD has not yet fully developed the culture of institutional accountability and community respect necessary to be fully effective, it continues to make important progress. We are optimistic that if a strong agreement succeeds the one currently in place, and OPD and Oakland leadership recognize the need for further reform and commit themselves to bring it about, OPD can become a model policing agency. With increasing frequency we are able to congratulate OPD for a job well done, but for the time being, there remains much work to be done.