Ninth Quarterly Report *of the* Independent Monitor *for the* Oakland Police Department

Robert S. Warshaw
Independent Monitor

Office of the Independent Monitor
Police Performance Solutions, LLC
P.O. Box 396, Dover, NH 03821-0396

April 30, 2012

Table of Contents

Section One

Introduction 2
Compliance Assessment Methodology 4
Executive Summary 6

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations 8
Task 3: IAD Integrity Tests 10
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process 12
Task 5: Complaint Procedures for IAD 16
Task 6: Refusal to Accept or Refer Citizen Complaints 25
Task 7: Methods for Receiving Citizen Complaints 26
Task 16: Supporting IAD Process - Supervisor/Managerial Accountability 28
Task 18: Approval of Field-Arrest by Supervisor 30
Task 20: Span of Control for Supervisors 32
Task 24: Use of Force Reporting Policy 35
Task 25: Use of Force Investigations and Report Responsibility 38
Task 26: Use of Force Review Board (UFRB) 42
Task 30: Firearms Discharge Board of Review 45
Task 33: Reporting Misconduct 48
Task 34: Vehicle Stops, Field Investigation, and Detentions 50
Task 35: Use of Force Reports - Witness Identification 54
Task 37: Internal Investigations - Retaliation Against Witnesses 55
Task 40: Personnel Assessment System (PAS) - Purpose 57
Task 41: Use of Personnel Assessment System (PAS) 61
Task 42: Field Training Program 67
Task 43: Academy and In-Service Training 70
Task 45: Consistency of Discipline Policy 73

Section Three

Conclusion: Critical Issues 76

Appendices

A: The Negotiated Settlement Agreement and Occupy Oakland 78
B: Cumulative Key Indicator Data 84
C: Acronyms 85

Section One

Introduction

This is the ninth quarterly report of the Monitor of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.,* in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). In this capacity, I oversee the monitoring process that began in 2003 under the previous monitor, and produced 14 status reports. The current Monitoring Team conducted our ninth quarterly site visit from February 13, through 17, 2012, to evaluate the Department's progress with the NSA during the three-month period of October 1, through December 31, 2011.

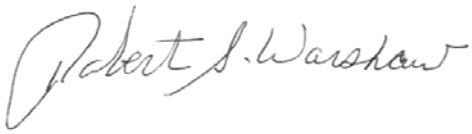
In the body of this report, we again report the compliance status with the remaining active Tasks of the Agreement. By the end of the seven-year tenure of the previous monitor, the Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional Tasks. As a result, the Parties agreed to reduce the number of Tasks under "active" monitoring to the current list of 22.

During this reporting period, we continue to find the Department in Phase 1, or policy, compliance with all 22 of the remaining active Tasks. With regard to Phase 2, or full compliance, we find that OPD remains in compliance with 12 of the remaining 22 Tasks; this is the same number as reported in our last two reports.

The time period covered in this report reflects the first full calendar quarter under the Department's new Chief. We are hopeful that, with the support of Mayor Jean Quan and City Administrator Deanna Santana, Chief Howard Jordan will ultimately lead the Department toward full compliance.

It has been noted by others that Chief Jordan took the reins of the Department at a tumultuous time. Chief Jordan and his executive team have shown dedication to the core principles relevant to the NSA. We look forward to supporting this effort. The Chief and his staff have demonstrated a commitment to enhanced communications with the Monitor and the full Monitoring Team regarding new processes and procedures that will better put the Department on the road to compliance. That said, communications alone will not assure a path to compliance. Action, disciplne and addressing core values must be addressed. During the Chief's tenure, progress has been made with regard to looking at innovative ways to bring about change. While these advances do not immediately lend themselves to compliance findings, they do help to chart the course for future progress in the reform effort. We look forward to this continued communication, and believe it will be a helpful step in the Department's road to compliance and sustainability.

At the end of this report, we include a discussion of the NSA-related issues associated with the police response during the beginning of the Occupy movement activities in Oakland. As we note, those activities resulted in significant number of uses of force and misconduct complaints. Internal and external investigations of the police activities are continuing, and therefore, our review of them at this time must be limited. As investigations are completed, the material will be incorporated into our regular quarterly reports.



Chief (Ret.) Robert S. Warshaw
Monitor

Monitoring Team:
Chief (ret.) Charles D. Reynolds
Deputy Monitor

Lt. Colonel (ret.) J. Rick Brown
Robin Busch-Wheaton
Eric P. Daigle, Esq.
Commander (ret.) John M. Girvin
John M. Klofas, Ph.D.
Assistant Director (ret.) Joseph R. Wolfinger

Compliance Assessment Methodology

The body of this report is comprised of our assessments of compliance with the individual requirements of the 22 active Tasks of the NSA. Each requirement is followed by information about the compliance status of the requirement during our previous reporting period, a discussion regarding our assessments and the current status of compliance, a summary notation of Phase 1 and Phase 2 compliance (see below), and our planned next steps in each area.

The Monitor's primary responsibility is to determine the status of the Oakland Police Department's compliance with the requirements of the 22 active Tasks. To accomplish this, the Monitoring Team makes quarterly visits to Oakland to meet with OPD's Office of Inspector General (OIG) and other Department personnel – at the Police Department, in the streets, or at the office that we occupy when onsite in the City. We also observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, with information about the status of OPD's compliance.

Our Team determines compliance through an examination of policies and implementation of practices that are relevant to each of the active Tasks. First, we determine if the Department has established an appropriate policy or set of procedures to support each requirement. Following this, we determine if the Department has effectively implemented that policy.

Based on this process, we report the degree of compliance with requirements on two levels. First, we report if the Department has met policy compliance. Compliance with policy requirements is known as **Phase 1 compliance,** and the Department achieves it when it has promulgated appropriate policies and trained relevant Department members or employees in their content. Second, we report on the extent to which the Department has implemented the required policies. Implementation-level compliance is reported as **Phase 2 compliance.** In general, to achieve full compliance, the Department must achieve both Phase 1 and Phase 2 compliance; that is, an appropriate policy must be adopted, trained to, and operationally implemented.

Our conclusions with regard to Phase 1 or Phase 2 compliance will fall into the following categories:

- **In compliance**: This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).

- **Partial compliance**: This is reported when at least one, but not all, requirements of a Task have achieved compliance, showing progress toward full compliance. Tasks will remain in partial compliance as long as we determine there is continued progress toward reaching substantial, or full, compliance.

- **Not in compliance**: This is reserved for instances where partial compliance has not been achieved and no progress has been made.

Many sub-requirements of the 22 active Tasks require the analysis of multiple instances of activity, cases, or observations. In these circumstances, our analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach our conclusions based on analyses of cases, the Department must meet a minimal standard. The Parties have agreed upon these compliance standards, which range from 85% to 95%, or a Yes/No standard.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the 22 active Tasks. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to determine fully the compliance status of a particular requirement due to a lack of data, incomplete data, or other reasons that do not support the completion of our work in a manner consistent with timely reporting. Under such circumstances, we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as **"Deferred."** This finding is not intended to reflect negatively on the Department or to otherwise imply insufficient progress. In such circumstances, we expect that a more complete assessment of compliance in the area in question will be determined in our next report.

Our compliance assessment methodology directs the Monitoring Team in our work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will be presented to the Parties and the Court.

Executive Summary

This is the ninth report of the Monitoring Team in the case of *Delphine Allen, et al., vs. City of Oakland, et al.* This Executive Summary is not intended to replicate the body of the entire report. Instead, it highlights the more significant findings, trends, patterns, or concerns that materialized as a result of our evaluation.

From February 13, through 17, 2012, we conducted our ninth site visit to Oakland. As we do during each site visit, we met with several Department officials, including the Chief and Assistant Chief of Police and Deputy Chiefs; as well as personnel from the Office of Inspector General (OIG), Bureau of Field Operations (BFO), Bureau of Investigations (BOI), Bureau of Services (BOS), Internal Affairs Division (IAD), Training Section, and Communications Section; OPD officers, managers, supervisors, and commanders – including sergeants, lieutenants, and captains. We also conferred with the Plaintiffs' attorneys, City Administrator, and the Office of the City Attorney (OCA). During and since the time of our site visit, we attended Department meetings and technical demonstrations; reviewed Departmental policies; conducted interviews and made observations in the field; and analyzed OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

For the current reporting period, there has been an outright stagnation in the overall compliance picture. We continue to find OPD in Phase 1 compliance with all 22 of the remaining active Tasks. The number of Phase 2 compliance findings remained the same as the last two reporting periods, preserving the Department's Phase 2 compliance with 12 (55%) of the 22 active Tasks. This results from the newly attained compliance of Task 45, which addresses consistency of discipline; and the now-partial compliance of Task 26, which addresses the Force Review Boards. The Department is in partial compliance with seven (32%) Tasks. The Department is not in compliance with two (9%) Tasks, both of which address PAS, the Department's risk management system. We again deferred a compliance determination with one Task (Task 42: Field Training Program).

During our most recent quarterly site visit, and in the weeks that surrounded it, the City of Oakland and its Police Department were again engaged in activities associated with what is now known as Occupy Oakland. Those activities are subject to the Task requirements of the NSA. Appendix A of this report addresses how the Monitoring Team reviews these activities with reference to NSA compliance.

Task	Phase 1: Policy and Training	Phase 2: Implementation			
	In Compliance	In Compliance	Partial Compliance	Not in Compliance	Deferred
Task 2: Timeliness Standards and Compliance with IAD Investigations	√	√			
Task 3: IAD Integrity Tests	√	√			
Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process	√	√			
Task 5: Complaint Procedures for IAD	√		√		
Task 6: Refusal to Accept or Refer Citizen Complaints	√	√			
Task 7: Methods for Receiving Citizen Complaints	√	√			
Task 16: Supporting IAD Process - Supervisor/ Managerial Accountability	√	√			
Task 18: Approval of Field-Arrest by Supervisor	√	√			
Task 20: Span of Control for Supervisors	√		√		
Task 24: Use of Force Reporting Policy	√		√		
Task 25: Use of Force Investigations and Report Responsibility	√		√		
Task 26: Use of Force Review Board (UFRB)	√		√		
Task 30: Firearms Discharge Board of Review	√		√		
Task 33: Reporting Misconduct	√	√			
Task 34: Vehicle Stops, Field Investigation, and Detentions	√		√		
Task 35: Use of Force Reports – Witness Identification	√	√			
Task 37: Internal Investigations - Retaliation Against Witnesses	√	√			
Task 40: Personnel Assessment System (PAS) – Purpose	√			√	
Task 41: Use of Personnel Assessment System (PAS)	√			√	
Task 42: Field Training Program	√				√
Task 43: Academy and In-Service Training	√	√			
Task 45: Consistency of Discipline Policy	√	√			
Total Tasks	22	12	7	2	1

Section Two

Compliance Assessments

Task 2: Timeliness Standards and Compliance with IAD Investigations

Requirements:
Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.

1. *On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
2. *Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

Comments:
We found OPD in compliance with Task 2 during all of the previous reporting periods. Per Departmental policy, 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.[1] During our last quarterly review, we found that 91% of Class I cases and 98% of Class II cases were in compliance with established timelines. Additionally, for those cases that involved at least one sustained finding, 100% were in compliance with established discipline timelines.

Discussion:
As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 2. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 2.1 requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD (compliance standard: 85%). To assess this subtask, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved between October 1, and December 31, 2011, and calculated the

[1] OPD classifies misconduct as either "Class I" or "Class II." Per DGO M-03, Class I offenses "are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution." Class II offenses include "all minor misconduct offenses."

number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Of the 73 Class I cases we reviewed, 68, or 93%, were in compliance with established timelines – an increase from the 91% we found during the last reporting period. Of the 83 Class II cases we reviewed, 81, or 98%, were in compliance with established timelines – the same percentage as the last reporting period. Of the 48 sustained findings that we reviewed, 100% were in compliance with established discipline timelines.[2] This is the seventh consecutive reporting period in which this was the case. OPD is in compliance with Task 2.1.

Task 2.2 requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards (compliance standard: Yes/No). The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the Division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors. During this reporting period, we received and reviewed copies of individual Bureau and Department-wide Open Investigation Reports, Cases Not Closed Reports, 180-Day Timeline Reports, and agendas for the weekly meetings between the Chief and IAD staff. The content of these documents demonstrates active monitoring of case timeliness. A Monitoring Team representative also attended many of these weekly meetings. The Department is in compliance with Task 2.2.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards (compliance standard: Yes/No). During this reporting period, IAD opened 403 cases, an increase from the 387 cases opened during the previous quarter. In addition, the Chief approved 336 cases, an increase from the 297 cases approved during the previous quarter. The overall numbers of complaints remain lower than the number of complaints received in 2010.

During this reporting period, there was not a proliferation of cases that would have triggered a staffing increase pursuant to the NSA. OPD is in compliance with Task 2.3.

OPD is in Phase 2 compliance with Task 2.
Compliance Status:

[2] We reviewed 29 cases involving sustained findings – several cases involved more than one sustained finding.

Phase 1: In compliance
Phase 2: In compliance

Next Steps:
During the next reporting period, we will again confer with IAD command staff regarding workload trends and staffing requirements – and, as discussed later in this report, we will continue to review carefully how the Department handles the proliferation of cases brought on by the Occupy Oakland events.

Task 3: IAD Integrity Tests

Requirements:
IAD shall be proactive as well as reactive.

1. *IAD shall conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.*
2. *IAD shall have frequency standards, among other parameters, for such integrity tests.*

(Negotiated Settlement Agreement III. C.)

Comments:
During the sixth reporting period, we determined that OPD had improved its integrity testing, and we found the Department in compliance with this Task. OPD has maintained compliance with this Task since that time.

Discussion:
As previously reported, OPD published Internal Affairs Policy & Procedures 07-01, *Integrity Testing,* which incorporates the requirements of this Task on January 25, 2007. The Department updated this policy in January 2009. The revised policy also incorporates the requirements of Task 3. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

Task 3.1 requires that IAD conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct (compliance standard: Yes/No); and **Task 3.2** requires that IAD's integrity tests be conducted in accordance with the frequency standards and other parameters IAD has established (compliance standard: 90%).

To assess the Department's Phase 2 compliance with these subtasks, we reviewed files – including operations plans, after-action reports, and supporting documents – related to the 16 integrity tests that were conducted from October 1, through December 31, 2011. Our review focused on the scope of the investigations, whether OPD conducted integrity tests on members/employees who were the subject of repeated allegations, and whether the selective integrity tests that OPD conducted complied with the parameters established by IAD.

Of the 16 tests conducted during this reporting period, seven were planned tests, in which the Integrity Testing Unit reviewed the records of OPD members and employees to verify that their vital information and records were current and therefore compliant with Departmental policy.[3] A review of these tests found that four focused on individual members and employees of OPD who had high numbers of allegations of misconduct over the prior 18 months; all seven planned tests passed.

The remaining nine integrity tests were selective tests, focusing on whether the officers who were subjects of the test failed to adhere to OPD policies.[4] We found that five of these tests were conducted on officers who were the subject of repeated allegations, and addressed the sources of the repeated allegations. As a result of these tests, the cases were referred to IAD for investigation, or the subject officers were assigned to receive additional training.

One selective integrity test involved monitoring the conduct of an officer who was allegedly violating the conditions of a court order. Surveillance by members of the ITU confirmed criminal conduct that was turned over to the agency within that jurisdiction for criminal investigation.

Another selective integrity test involved utilizing the traffic speed recorder radar units on marked and undercover OPD vehicles in different areas of the City. The ITU recorded 11 marked and unmarked OPD vehicles, and all were found to all be operating within reasonable speeds to the posted speed limits.

Another selective integrity test reviewed the use of portable digital recording devices (PDRD) by officers to determine if an officer who was the subject of repeated allegations was utilizing his PRPD when required. A review of the videos showed that the officers were in compliance with Departmental policy.

Five selective integrity tests involved monitoring the performance of officers and evidence technicians while on duty – including how they monitored radio traffic, documented stops, responded to calls, drove Department vehicles, and interacted with the public. Following the tests, three officers received entries in their Supervisory Notes Files; and were assigned to retraining on specific job tasks, including tactics and officer safety, report-writing, and the use of profanity. In one case, the officers being surveyed were observed failing to assist a fellow officer who needed a cover unit. This conduct was brought to the attention of the on-duty supervisor, who addressed it immediately.

[3] Planned integrity tests are designed specifically to test the compliance – with Departmental policies or procedures – of specific members or employees who are identified as the subject of the test.
[4] Pursuant to Internal Affairs Policy & Procedures 07-01, selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding specific members, employees, or units.

The final selective test focused on the possible abuse of workers' compensation benefits. Following a successful similar test of a few months ago, the Integrity Testing Unit worked with the Department's Medical Unit, the Office of the City Attorney, and the private vendor that manages the City's workers' compensation accounts to plan and conduct surveillance of subject members and employees. This test did not reveal any wrongdoing, but it uncovered a lapse in communication between the Medical Unit and the Personnel Section; neither maintained correct numbers of injured members and employees.

The types of integrity tests described above support the intended purpose of the Integrity Testing Unit.

During our most recent site visit, we again met with the IAD Commander and the sergeant who oversees the Integrity Unit, who informed us of their ongoing efforts to improve and expand the Department's integrity testing. We also reviewed the integrity tests that OPD recently conducted.

OPD is in Phase 2 compliance with Task 3.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Next Steps:
During our next site visit, we will again meet with the sergeant who oversees the ITU and the IAD Commander to discuss the Department's efforts to strengthen Integrity Unit and its testing. We will also verify OPD's compliance with established frequency standards for testing, as well as compliance with procedures specifically addressing officers or members who are the subject of repeat allegations of misconduct.

Task 4: Complaint Control System for IAD and Informal Complaint Resolution Process

Requirements:

1. *Within 90 days, OPD shall develop a policy regarding an informal complaint resolution process which may be used by supervisors and IAD to resolve service complaints and Class II violations that do not indicate a pattern of misconduct as described in Section III, paragraph H (2). This process shall document the receipt of the complaint, date, time, location, name or the person making the complaint, the name of the person receiving the complaint, how the matter was resolved and that the person making the complaint was advised of the formal complaint process with the CPRB. The documentation shall be forwarded to an IAD Commander for review. If the informal complaint resolution process fails to*

resolve the complaint or if the person making the complaint still wishes to make a formal complaint, the person receiving the complaint shall initiate the formal complaint process pursuant to Section III, paragraph E. An IAD Commander shall make the final determination whether the ICR process will be utilized to resolve the complaint. OPD personnel shall not unduly influence persons making a complaint to consent to the informal complaint resolution process.

2. *IAD shall establish a central control system for complaints and Departmental requests to open investigations. Every complaint received by any supervisor or commander shall be reported to IAD on the day of receipt. If IAD is not available, IAD shall be contacted at the start of the next business day. Each complaint shall be assigned an Internal Affairs case number and be entered into a complaint database with identifying information about the complaint. OPD personnel shall notify IAD and the Chief of Police, or designee, as soon as practicable, in cases likely to generate unusual public interest.*
3. *Criteria shall be established which must be met prior to moving, from "open" to "closed," any investigation in the complaint database.*[5]

(Negotiated Settlement Agreement III. D.)

Comments:
Only two provisions of Task 4 (4.7 and 4.10) are being actively monitored under the MOU. During all of the previous reporting periods, we found OPD in compliance with both of these requirements. Overall, we found that complaints received by any supervisor or commander were reported to IAD on the day of receipt or at the start of the next business day. We also found that OPD complied with criteria it has established when resolving complaints via informal complaint resolution, administrative closure, or summary finding.

Discussion:
There are four Departmental policies that incorporate the requirements of Tasks 4.7 and 4.10:

- **Department General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of these subtasks.

- **Department General Order M-3.1:** As previously reported, OPD published Department General Order M-3.1, *Informal Complaint Resolution Process,* which incorporates the requirements of these subtasks, on December 6, 2005. General Order M-3.1 was revised in February 2008, and August 2008. The revised policy also incorporates the requirements of these subtasks.

[5] The underlined requirements are the only provisions of Task 4 that are being actively monitored under the MOU.

- **Special Order 8552:** As previously reported, OPD published Special Order 8552, *Update of Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual*, on February 1, 2007. This policy incorporates the requirements of these subtasks.

- **Communications Division Policy & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents,* on April 6, 2007. This policy incorporates the requirements of these subtasks.

As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 4.7 requires that every complaint received by any supervisor or commander be reported to IAD on the day of receipt (compliance standard: Yes/No). If IAD is not available, the supervisor or commander shall contact IAD at the start of the next business day. To assess Phase 2 compliance for Task 4.7, we reviewed 92 Daily Incident Log (DIL) entries and a random sample of 69 IAD case files that were approved during the period of October 1, through December 31, 2011. The Office of Inspector General (OIG) forwards completed DILs to us on a daily basis. We found no evidence of unwarranted delay in the delivery of these complaints or in the intake process once IAD was made aware of them. OPD is in compliance with Task 4.7.

Task 4.10 requires that OPD comply with criteria it has established when resolving complaints through informal complaint resolution (ICR), administrative closure, or summary finding (compliance standard: 90%).[6] This subtask is intended 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.

During this reporting period, from a sample of IAD cases that were approved between October 1, and December 31, 2011, we reviewed 13 cases in which at least one allegation was resolved via administrative closure, 13 cases in which at least one allegation was resolved via informal complaint resolution (ICR), and nine cases that were resolved via summary finding.

In all of the ICRs we reviewed, the complainants agreed to the informal complaint resolution process. Where an agreement was secured in a telephone conversation, that information was contained in the case documentation and in follow-up letters to the complainants. The nature of the various complaints was appropriate for resolving informally. For example, four involved slow or no response to calls for service, all a consequence of higher priority calls taking precedence. Two cases involved rudeness or demeanor allegations. The complainants were satisfied with the Department's assurance that the involved officers would be counseled.

[6] Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

Supervisory Notes File (SNF) entries were prepared in these cases, as they were in cases involving an officer talking on a cell phone while driving and an officer applying handcuffs too tightly.

The administrative closures that we reviewed were investigated before IAD arrived at the determination that such a closure comported with policy. In two cases, it was determined that OPD personnel were not involved. One was linked to a phone scam, and the complainant assumed that the caller was an OPD officer. OPD was aware of similar instances of these fraudulent calls. In the other case, a complainant was upset with a picture showing an officer allegedly abusing a dog. When the picture was provided to IAD, it was clear that the supposed officer was not wearing an OPD uniform.[7]

In another case, an individual wrote to IAD from a correctional institution in Mississippi requesting two complaint forms. They were sent, but no complaints were ever received, and the case, which was probably prematurely opened, was administratively closed. The remaining allegations that were closed administratively complied with policy, in that the complaints either lacked specificity, claimed innocence of charges best left to appropriate adjudication venues to decide, or otherwise did not constitute MOR violations. Where they were accompanied by allegations that warranted a full investigation, these additional allegations were investigated in accordance with policy.

The cases resolved via summary finding were all approved for such designation as required by policy. In three cases, the complainants' versions of events corresponded to reports completed by the involved officers. In another case, the police/complainant interactions were captured on two officers' Portable Digital Recording Devices (PDRDs), negating the need for some interviews. In one case, a complaint of racial profiling, a request for a summary finding was not approved by IAD command and a full investigation was conducted. Summary findings are further discussed in Task 5.

OPD is in compliance with Task 4.10.

OPD is in Phase 2 compliance with Task 4.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

[7] The jurisdiction could not be determined from the photograph, and no referral to another agency was made.

Task 5: Complaint Procedures for IAD

Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
   a. *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*
   b. *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
   c. *Exonerated: The investigation disclosed sufficient evidence to determine*

that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.

d. *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*

e. *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*

f. *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*

1) *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*

2) *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*

3) *Subject not employed by OPD at the time of the incident; or*

4) *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*

5) *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*

6) *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).*

g. *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*

6. *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*

a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*

b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*

7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident*

when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.

(Negotiated Settlement Agreement III. E.)

Comments:

During all of the previous reporting periods, we found OPD in partial compliance with Task 5. Tasks 5.1-5.5 address the information gathered at the time a complaint is lodged and the notifications that are required. During the previous reporting period, we found OPD in compliance with all five subtasks in this group. In addition, we found that 80% of the cases we reviewed were in compliance with all elements of Tasks 5.15 and 5.16. We also found that the verification that all notes were contained in the file, as required by Task 5.17, was present in all of the cases we reviewed. In 12% of the cases we reviewed, the preponderance of evidence standard was not applied to some or all of the allegations, as required by Task 5.18. We also found OPD in compliance with Tasks 5.6 and 5.12 (jail complaints), Task 5.19 (proper dispositions), Task 5.20 (tolling and filed cases), and Task 5.21 (employee interviews).

Discussion:

There are several Departmental policies that incorporate the various requirements of Task 5:

- **Departmental General Order M-03:** As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 5.)

- **Communications Division Operations & Procedures C-02:** As previously reported, OPD published Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents,* on April 6, 2007.

- **Training Bulletin V-T.1:** As previously reported, OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual,* on June 1, 2006.

- **Special Order 8270:** As previously reported, OPD published Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility*, on June 24, 2005.

- **Special Order 8565:** As previously reported, OPD published Special Order 8565, *Complaints Against Department Personnel,* on May 11, 2007.

- **IAD Policy & Procedures 05-02:** As previously reported, OPD published IAD Policy & Procedures 05-02, *IAD Investigation Process,* on December 6, 2005.

In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

To verify Phase 2 compliance with Tasks 5.1 through 5.5, we reviewed 92 entries that appeared on the Daily Incident Logs (DILs) that were completed between October 1, and December 31, 2011. We identified these by randomly selecting 35 dates during this reporting period and reviewing the entries for each of those dates. (Some selected dates had no entries, but most had multiple entries.)

Task 5.1 requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene (compliance standard: 95%). During the last reporting period, we found OPD in compliance with this subtask. During the current reporting period, of the 92 DIL entries, 11 cases were received by IAD, which, in turn, notified Communications. In the remainder of the cases, either a supervisor in the field initially took the complaint and notified Communications, or the complainants called 911 to express their dissatisfaction. In these latter cases, IAD or field supervisors were notified, except when the complaints were against Communications personnel (these were handled by a Communications supervisor) or were clearly service complaints (e.g., slow response time with no specific officer complained of). We noted 39 such service complaints. During this reporting period, OPD has a 100% compliance rate with Task 5.1.

Task 5.2 requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay be documented (compliance standard: 85%). Of the 92 DIL entries we reviewed, we noted four cases in which there appeared to be greater than a three-hour delay in contacting the complainant. OPD has added a checkbox to the DIL to record such delays. In addition to reviewing this area of the logs, we also checked the times of complaint receipt and supervisor contact with the complainant (or attempted contact where the complainant was unavailable – see Task 5.3). In all four instances, the reason for the delay was documented. In one, the complaint was held because it was received during an in-progress Occupy Oakland protest. A supervisor was assigned to the complaint after the protest concluded. In another, the delay was attributed to a printer error. In still another, a dispatcher failed to notify the supervisor of the complaint. This failure was documented on the DIL, and the dispatcher was counseled. OPD is in compliance with Task 5.2.

Task 5.3 requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint (compliance standard: 90%). Of the 92 records in our dataset, we identified 10 instances in which the complainant "refused" interaction with a supervisor. In seven of these cases, the complainants did not answer a contact or callback number provided; and since OPD personnel had no advance notice of the refusal prior to the attempted callback, we removed these incidents from consideration. In another case, a sergeant was speaking with the complainant

when the line for disconnected for an unknown reason. The sergeant was unable to reestablish contact. In another, the complainant called a field sergeant and refused to identify himself, but complained about the conduct of an unknown off-duty officer. The complaint was forwarded to IAD. In the last case, "UTC" (unable to contact) was indicated in the box used to identify the time of complainant contact. There was no reason given for this indication. OPD is in compliance with Task 5.3.

Task 5.4 requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander (compliance standard: 85%). In order to achieve compliance with this subtask, the DIL should contain the identification of personnel; witnesses or identifying information, if known (the log should state "unknown" if not known); the date, time, and location of the incident; and the time of contact or attempt to contact the complainant by a supervisor.

During the last reporting period, OPD had a 100% compliance rate with this subtask. During this review, all of the logs we reviewed contained the required information ("unknown" was checked in 24 records). OPD has a 100% compliance rate during this review period, and is in compliance with Task 5.4.

Task 5.5 requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD (compliance standard: 95%). OPD had a compliance rate of 100% with this subtask during the last reporting period. The DILs are administered by the Communications Section and forwarded to IAD each business day. Additionally, the DIL contains a field to record the name of Area Commander notified and the time of notification. This field was properly completed in all of the records we reviewed. OPD is in 100% compliance with Task 5.5 during this reporting period.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. To assess Task 5.6 during this reporting period, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, or Juvenile Hall, and were approved between October 1, and December 31, 2011. We identified only two such complaints using the IAD database. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was "handled in the same manner as other civilian complaints."

One case did not meet the criteria for an immediate response by a supervisor. First, it did not involve allegations of Class I misconduct. Second, it was lodged in person in IAD six days after the incident occurred. The case involved allegations of false arrest and rudeness, and was handled appropriately. The demeanor allegation was ultimately sustained.

The other case did meet the criteria for an immediate response, and a sergeant did, in fact, respond to the North County Jail and take the complaint. The complainant alleged that he was

kicked by the arresting officer as he was taken into custody for violating a temporary restraining order, and also subjected to a racial slur. The complainant was highly intoxicated when he lodged the complaint, and during the investigation his claims were refuted by witnesses at the scene.

OPD is in compliance with Task 5.6.

Task 5.12 requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD (compliance standard: 90%). Since by definition these complaints must be made contemporaneous with the arrest, an on-duty supervisor must respond to the jail. Under current policy, the Communications Section must record on the DIL complaints that are received and/or handled by on-duty supervisors; the DIL is forwarded daily to IAD. As mentioned in past reports, we deem the DIL system as functionally equivalent to the requirements of Task 5.12, and the Department remains in compliance with this subtask.

To assess **Tasks 5.15 through 5.19**, and **Task 5.21**, we reviewed a random sample of 25 IAD cases that were approved between October 1, and December 31, 2011. This sample included investigations completed by IAD and Division-Level Investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.

As in our previous reviews, we treated **Tasks 5.15 and 5.16** as a single subtask with several elements, specifically that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements (compliance standard: 85%). During the previous assessment period, we deemed the Department in compliance with *all* of these required elements 80% of the time. Of the 25 investigations we reviewed for this reporting period, we deemed 22, or 88%, in compliance with *all* of these required elements. This is a notable increase, and marks the first time that OPD has reached the compliance standard for the requirements of these subtasks. While we found credibility assessments questionable in two cases, it appears that the past training offered on this topic, coupled with the review processes instituted in OIG and IAD, are starting to have the desired effect.

In all of the cases we reviewed, it appeared that OPD gathered and considered all relevant evidence.[8] Follow-up interviews were warranted – and conducted – in eight of the 25 cases. In five cases, the complainants were re-interviewed to obtain follow-up information or clarify details of the incidents resulting in the allegations. The complainant in one case – an allegation of conducting personal business on duty – was re-contacted at least eight times, primarily because he failed to provide documentation that he repeatedly promised would be forthcoming. In two cases, officers were re-interviewed. In another case, an allegation of false arrest, several potential witnesses were contacted based on information obtained from the complainant's

[8] For purposes of our review, we consider evidence to be physical evidence and/or photographs of same. We distinguish evidence from interviews, as does the subtask.

interview and the reports completed for the case. While the individuals were unable to provide additional information, the efforts to contact them were appropriate for the investigation. In the remaining 17 cases, we did not believe that follow-up interviews were necessary.

As mentioned in previous reports, OPD has conducted extensive training on what constitutes appropriate credibility assessments. During this reporting period, we found the assessments problematic in two cases – a notable improvement over previous reviews. In one case involving a domestic violence arrest, a complainant's credibility was questioned in part because she has filed several complaints, all in conjunction with arrests. Multiple complaints and/or arrests are not *de facto* challenges to credibility. (We note that despite the complainant being deemed not credible, appropriate not sustained findings were attributed to demeanor allegations in this case.) In another case involving alleged rudeness during the towing of a vehicle, the investigator speculates, "[the complainant's] motivation for making the complaint was to prevent her vehicle from being towed." Such conjecture is inappropriate in what is supposed to be a fact-based investigation. The investigator further questions the complainant's credibility for not knowing what is "common knowledge" about the Department of Motor Vehicles registration process, and for having a third-party advocate on her behalf in a telephone call. Neither are credibility issues.

In one case, credibility assessments were not made because the digital recorder malfunctioned during the complainant's interview, and it was later discovered that no recording of the conversation was made. We note that an assessment of credibility is not dependent on having a recorded statement, and the investigator could have made a determination based on a synopsis of his notes and recollections. However, we deemed the case to be in compliance because the investigator indicated, "the complainant is deemed credible based solely on his allegations." In essence, in this case, resolved via summary finding, all parties were considered credible.

As we have noted in the past, we do not assert that all complainants and witnesses are credible. (Nor do we automatically accord that determination to officers.) During this reporting period, we reviewed three cases in which the credibility of complainants was appropriately called into question. In one case, the complaint concerning conducting personal business on duty mentioned above, the complainant was deemed not credible based on his failure to produce evidence that he alleged he had, despite tenacious efforts on the part of the investigator to retrieve it. It became clear that he could not corroborate his claims as he asserted he could. In another case, involving an alleged use of force during an arrest, the complainant was extremely intoxicated, and his claims were in conflict with several credible witnesses at the scene. In the final case, which involved a two-year-old arrest, the complainant provided conflicting statements during his interviews. When a witness or a complainant is deemed not credible, we generally listen to the interviews if they are available. We suggest that in such cases, the investigators' supervisors also listen to the recordings before approving the investigation.

The NSA requires that "OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses." Where OPD makes such efforts and is unable to resolve inconsistent statements, the underlying charge would presumably, by definition, be not sustained. Therefore, in our review

of this subtask, we removed from consideration findings that were resolved as not sustained based on materially inconsistent statements. Nine cases contained not sustained allegations for this reason. In 13 cases, OPD was able to resolve inconsistent statements via the investigative process. In two cases, investigators failed to resolve inconsistent statements among complainants, witnesses, and officers. One case involved an allegation that officers almost struck an anonymous complainant during a vehicle pursuit. All parties were deemed credible, and the case should have been classified as not sustained rather than unfounded. The other case involved an arrest for violating a personal protection order. While the investigator points out the inconsistencies, they do not impact the finding, since the complainant alleged false arrest and there was probable cause to believe that the order was violated despite the inconsistencies. All parties were deemed credible, and this case does not affect compliance with the subtask.

OPD is in compliance with Tasks 5.15 and 5.16.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file (compliance standard: 85%). OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). During the previous reporting period, we found OPD in 100% compliance with this subtask. During this review, the form was again properly completed in all 25 cases we reviewed. OPD is in compliance with this subtask.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard (compliance standard: 90%). During the previous reporting period, OPD complied with this subtask in 88% of the cases we reviewed. During this reporting period, OPD complied with this subtask in 22 cases – also 88%. In one case, the pursuit case mentioned above, we believe that the finding should have been not sustained rather than unfounded. In another case, an officer was alleged to have posted inappropriate comments online. Although there was enough evidence to sustain the complaint, OPD determined that the case was unfounded. In another case, involving alleged off-duty conduct, we believe one of the allegations should have been not sustained rather than unfounded.

We noted three cases in which the recommended findings of the investigator were appropriately overturned during the review process. In one case, an allegation of baton strikes to the head, the Chief determined the case to be not sustained, overruling the investigator's unfounded finding. In another case, the Assistant Chief determined that not sustained was more appropriate than the recommended unfounded finding in a demeanor case. In the third case, the IAD Commanding Officer, at the direction of the Assistant Chief, changed a recommended administrative closure to an unfounded determination. Accordingly, we determined that these three cases were compliant with this subtask as a result of the review processes that produced what we determined to be appropriate findings. IAD should note, however, that the compliance rate would be lower had the final reviewers in two of these cases not intervened to overrule recommended findings.

OPD is not in compliance with Task 5.18.

Task 5.19 requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure (compliance standard: 95%). Excluding allegations that we deemed appropriately administratively closed (there were nine such allegations), our sample of 25 cases contained 51 allegations that received dispositions as follows: 18 exonerated; 18 not sustained; 15 unfounded; and none sustained. As noted in Task 5.18, we disagree with some of these findings. Specifically, we believe that three of the unfounded dispositions should have been not sustained, and one should have been sustained. Accordingly, OPD has a 92% compliance rate and is not in compliance with this subtask.

Task 5.20 requires that the IAD Commander review all "filed" cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed (compliance standard: 90%). A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. According to our review of the IAD database, OPD currently does not have any cases classified as filed. Cases categorized as "tolling" appear to fit this definition.[9]

During our most recent site visit, we met with the IAD Commander, who advised that as of that date, six cases were classified as tolling. Five involved civil litigation against the City and/or the Department; and one involved the unavailability of the subject officer. All cases appeared to be tolling according to policy. These cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. OPD is in compliance with this subtask.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken (compliance standard: 90%). However, with the approval of the IAD Commander, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Five of the 25 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. (These do not include the cases referenced in Task 4, for which summary findings were also appropriate.) In all cases, available documentation served negated the need for certain interviews. In one case, Communications records refuted a complainant's claim that he was held at the scene in a police vehicle for an inordinate period of time. In another case, interview logs and video confirmed the length of time individuals were held and questioned. Three cases alleged false arrest, and existing paperwork – including witness statements – supported probable cause for the arrests.

[9] OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304.

OPD is in compliance with Task 5.21.

OPD is in partial Phase 2 compliance with Task 5.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
As we have done previously, during our next site visit, we will meet with IAD and OIG personnel regarding specific cases of concern that are referenced herein.

Task 6: Refusal to Accept or Refer Citizen Complaints

Requirements:
Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD shall be grounds for discipline for any OPD member or employee.
(Negotiated Settlement Agreement III. F.)

Comments:
During the previous reporting period, we found the Department in Phase 2 compliance with Task 6.

Discussion:
As previously reported, OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 6, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 6. The requirements of this Task are also incorporated into Manual of Rules Sections 314.07, 398.70, and 398.76. As the Department has trained at least 95% of relevant personnel on this policy, we find OPD in continued Phase 1 compliance with this Task.

Task 6 requires that OPD members and employees who refuse to accept a citizen complaint, fail to refer a citizen to IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about IAD, are disciplined (compliance standard: 95%).

To assess Phase 2 compliance with this Task, we reviewed a random sample of 92 Daily Incident Log entries from October 1, through December 31, 2011; and a random sample of 25 IAD

investigations (conducted by both IAD and via Division-level investigation) that were closed during the same period. We found no cases in which an allegation of Failure to Accept or Refer a Complaint went unaddressed.

We also queried the IAD database to identify any allegations of MOR 398.70-1, Interfering with Investigations; MOR 398.76-1, Refusal to Accept or Refer a Complaint; and MOR 398.76-2, Failure to Accept or Refer a Complaint; that were investigated and approved during this same time period. We identified 15 such cases. Of these, four cases resulted in not sustained findings for the applicable charges. In four other cases, the allegations were unfounded, although we believe in one case, the appropriate finding should have been not sustained. One case was administratively closed. A citizen allegedly called to complain that the public was not alerted as to the areas affected by the Occupy Oakland protests, and also that excessive chemical agents were used during the Department's response. It was never determined with whom she lodged her initial complaint – it may have been with another City Department – and the complainant agreed to the informal complaint resolution process.

Six cases resulted in sustained findings, and in five of the six cases, the disciplinary process was administered. Four officers received counseling and training (per OPD policy, the lowest level of discipline), and one officer received a letter of reprimand.

In the remaining case, the subject officer separated from service with OPD before the investigation was concluded. IAD sent a letter advising him that the case was sustained, and that he would be subject to the disciplinary process should he return to the Department.

OPD is in Phase 2 compliance with Task 6.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Task 7: Methods for Receiving Citizen Complaints

Requirements:
On or before December 1, 2003, OPD shall develop a policy to strengthen procedures for receiving citizen complaints:

1. *IAD or Communication Division personnel shall staff a recordable toll-free complaint phone line, 24-hours a day, and receive and process complaints in accordance with the provisions of Departmental General Order M-3. The complainant shall be advised that the call is being recorded when a complaint is taken by IAD.*
2. *Guidelines for filing a citizen's complaint shall be prominently posted and informational brochures shall be made available in key Departmental and*

municipal locations.

3. *OPD shall accept anonymous complaints. To the extent possible, OPD shall ask anonymous complainants for corroborating evidence. OPD shall investigate anonymous complaints to the extent reasonably possible to determine whether the allegation can be resolved.*
4. *OPD personnel shall have available complaint forms and informational brochures on the complaint process in their vehicles at all times while on duty. Members/employees shall distribute these complaint forms and informational brochures when a citizen wishes to make a complaint, or upon request.*
5. *IAD shall be located in a dedicated facility removed from the Police Administration Building.*
6. *Complaint forms and informational brochures shall be translated consistent with City policy.*
7. *Complaint forms shall be processed in accordance with controlling state law.*[10]

(Negotiated Settlement Agreement III. G.)

Comments:
Only one provision of Task 7 (7.3) is being actively monitored under the MOU. During the past several reporting periods, we found OPD in compliance with this Task.

Discussion:
OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures,* which incorporates the requirements of Task 7, on December 6, 2005. General Order M-03 was revised in February 2008. The revised policy also incorporates the requirements of Task 7. As the Department has trained at least 95% of relevant personnel on this revised policy, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance with this Task, we reviewed all cases listed in the Internal Affairs Division database as originating from complainants who were "anonymous," "unknown," "refused," or any forms of those terms (such as "unk") and that were approved between October 1, and December 31, 2011. We also reviewed all complaints during this selected time period that were tagged by IAD as originating from an anonymous complainant, and complaints in which the complainant field in the database was blank, to determine whether any were made anonymously.

Based on the above-listed criteria, we identified 13 cases as potential anonymous complaints during this reporting period. After review, we determined that nine were true anonymous complaints, and the complainants were not identified during the course of the investigation. In one of these cases, while the complainant remained anonymous, other involved parties cooperated with the investigation. In the remaining four cases, the complainants were identified and cooperated to some extent with the investigations.

[10] The underlined requirement is the only provision of Task 7 that is being actively monitored under the MOU.

One complaint was sent to IAD in writing. Three complaints were received in person: two were taken by field personnel; and one was taken by a member who regularly worked in IAD but was assigned to the scene of a protest. Five complaints were received in – or started from – calls to Communications.

Where possible, complainants were asked to provide corroborating evidence. In seven cases, this was not possible given the manner in which the complaints were received (i.e., via letter) or because the complainant terminated the call. In one of the complaints taken in person, the complainant refused to provide specific details and walked away. In all cases, the complaints were investigated to the extent reasonably possible as required by this Task. Six cases were closed via administrative closure. Each met the criteria for such closure, and most lacked the details to identify the specific alleged misconduct and/or OPD personnel involved in the incidents. One was related to the Occupy Oakland protests, and involved a non-specific complaint about the sanitary conditions of the streets. This incident, while appropriately administratively closed, did not in our opinion rise to the level of a complaint. The three remaining cases received full investigations. We disagreed with the findings in one of these cases – a complaint that OPD vehicles almost hit a citizen during a vehicle pursuit. We believe the appropriate finding was not sustained rather than unfounded.

The Department remains in Phase 2 compliance with Task 7.3.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Task 16: Supporting IAD Process - Supervisor/Managerial Accountability

Requirements:
On or before December 1, 2003, OPD shall develop a policy to ensure that supervisors and commanders, as well as other managers in the chain of command, shall be held accountable for supporting the IAD process. If an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed or violated a Class I offense, then that supervisor or manager shall be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review, and/or failure to intervene.
(Negotiated Settlement Agreement III. O.)

Comments:
During the first reporting period, we found the Department out of compliance with Task 16 due to our concerns with the disciplinary hearing process. During subsequent reporting periods, our reviews showed that OPD had improved in this area, and we found the Department in compliance with this Task.

Discussion:
As previously reported, two Department policies, Department General Order M-03 and Training Bulletin V-T.1, incorporate the requirements of Task 16. OPD published Department General Order M-03, *Complaints Against Department Personnel and Procedures*, on December 6, 2005. General Order M-03 was revised in February 2008. (The revised policy also incorporates the requirements of Task 16.) OPD published Training Bulletin V-T.1, *Internal Investigation Procedure Manual,* on June 1, 2006. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

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

To assess Task 16, we examined 92 Daily Incident Log entries from October 1, through December 31, 2011; a random sample of 69 IAD cases (investigated by both IAD and via Division-level investigation, or DLI) that were approved by the Chief between October 1, through December 31, 2011; and the seven sustained Class I investigations that were approved by the Chief between October 1, through December 31, 2011.

Of the seven sustained Class I cases, we identified one in which a supervisor received a sustained finding for not properly using his/her authority and responsibility. In this case, a lieutenant failed to intervene to correct the inappropriate behavior of his subordinate. As a result of the investigation, the officer was sustained for Refusal to Provide Name or Serial Number; and the supervisor was sustained for Failure to Report Violations of Laws, Ordinances, Rules, or Orders.

The remaining six IAD investigations involved sustained Class I offenses; however, the supervisors were not found to have failed to properly supervise. Our review of the investigations found that OPD evaluated the actions of the supervisors, and the Department's conclusions were supported. We were concerned that the same supervisor was investigated in two separate investigations for failure to properly supervise. We will closely monitor that supervisor's involvement in future IAD complaints, and encourage IAD to do the same.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Next Steps:
During our next site visit, we will again meet with the IAD Commander to discuss any Task 16-applicable cases for the next reporting period, and we will assess the propriety of IAD's findings and actions.

Task 18: Approval of Field-Arrest by Supervisor

Requirements:
Within 260 days from the effective date of this Agreement, the Chief of Police shall, based on contemporary police standards and best practices, develop and implement policies to address the following standards and provisions:

Approval of Field-Arrest by Supervisor

1. *OPD shall develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates on calls for service. The policies developed in this Section shall require supervisors to respond to the scene of (at least) the following categories of arrest, unless community unrest or other conditions at the scene make this impractical:*
   a. *All Felonies;*
   b. *All drug offenses (including narcotics, controlled substances and marijuana arrests if the subject is taken to jail).*
   c. *Where there is an investigated use of force;*
   d. *Penal Code §§69, 148 and 243(b)(c).*

The responding supervisor shall review the arrest documentation to determine whether probable cause for the arrest, or reasonable suspicion for the stop, is articulated, to ensure that available witnesses are identified, to approve or disapprove the arrest in the field, and to log the time of the contact.[11]
(Negotiated Settlement Agreement IV. A.)

Comments:
Only one provision of Task 18 (18.2.2) is being actively monitored under the MOU. During all of the previous reporting periods, we found the Department in compliance with this subtask.

Discussion:
As previously reported, OPD published an arrest approval and report review policy, DGO M-18, *Arrest Approval and Review in the Field* (May 13, 2004; and updated October 1, 2005), which incorporates the requirements of Task 18. In December 2006, OPD published Special Order 8536, *Probable Cause Arrest Authorization and Report Review*. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 18.2.2 requires that supervisors review arrest documentation to verify that available witnesses are identified (compliance standard: 90%). To assess Phase 2 compliance with this subtask, we reviewed arrest documentation for all of the applicable arrest categories, as well as documentation for arrests resulting in an investigated use of force. Specifically, we reviewed a random sample of 69 arrest reports (65 adult and four juvenile) documenting felony arrests; drug

[11] The underlined requirement is the only provision of Task 18 that is being actively monitored under the MOU.

arrests; and arrests for Penal Code 69, 148, and 243(b)(c); as well as documentation for 19 arrests resulting in an investigated use of force; that occurred between October 1, and December 31, 2011. We reviewed these to determine if the reports listed witnesses or appropriately noted "no known witnesses," or referred to a canvass with no witnesses produced. In keeping with previous practice, if there was no mention of any witnesses in the crime report narrative, we accepted a "0" in the "witness" box on the cover sheet as sufficient documentation.

Of the 65 adult arrest reports, we excluded 44 from our dataset for one or more of the following reasons: the arrest involved a warrant or probation or parole warrant detention; the arrest occurred outside of our selected time period; the incident was, in fact, a psychiatric detention that did not involve an arrest; or the arrest involved a misdemeanor offense that was not one of the arrests applicable to Task 18.2.2. Of the remaining 21 adult arrests, one case did not document the presence of witnesses or no known witnesses. This represents a 95% compliance rate among adult arrests for this subtask.

Of the four juvenile arrest reports, we excluded three from our dataset for the following reasons: two incidents involved runaway children, and no charges were filed; and the remaining incident involved a misdemeanor offense that is not applicable to Task 18.2.2. The one remaining juvenile arrest was in compliance with Task 18.2.2. This represents a 100% compliance rate among juvenile arrests for this subtask.

Of the 19 arrests resulting in an investigated use of force, all were in compliance with Task 18.2.2.[12] This represents a 100% compliance rate among arrests resulting in an investigated use of force for this subtask.

Our review revealed an overall 98% compliance rate for Task 18.2.2. OPD is in Phase 2 compliance with this requirement during this reporting period.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Next Steps:
We will meet with OIG to discuss any completed or upcoming Departmental audits and training related to arrests made for probation and parole violations.

[12] This number includes only Level 1, 2, and 3 uses of force because per DGO K-4, the documentation of witnesses of Level 4 uses of force is not required.

Task 20: Span of Control for Supervisors

Requirements:
On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

1. *Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
2. *During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
3. *If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
4. *If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Comments:
During all of the previous reporting periods, we found OPD in partial Phase 2 compliance with Task 20. During the last reporting period, we found that 98% of the squads we reviewed met the 1:8 span of control. However, only 80% of the squads we reviewed were supervised by their primary – or assigned – supervisors; most of the remainder were supervised by "backfill" sergeants working overtime or certified acting sergeants who were not actually assigned to supervise their squads.

Discussion:
As previously reported, directives relevant to this Task include: Departmental General Order A-19, *Supervisory Span of Control,* issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification,* issued on June 17, 1999; and Special Order 8435, *Acting Sergeant Selection Process,* issued on July 26, 2006. Although Special Order 8435 updates the Department's policy on acting supervisors, we have previously encouraged OPD to update DGO D-13 so that it incorporates the updated information. We learned recently from the Bureau of Field Operations (BFO) Deputy Chief that these revisions are currently underway.

As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

Task 20.1 requires that sufficient primary sergeants be assigned at the draw board/master detail level to permit one primary sergeant for every eight officers under normal conditions (compliance standard: Yes/No).

During the first two reporting periods, we did not assess this subtask due to the Department's lack of reliable documentation. At that time, we reported that there was no official OPD "master detail" that both listed sergeants' assignments as of the time of the "draw" at the beginning of the year and was also updated throughout the year as loans, transfers, and other personnel changes alter supervisory assignments. During the third reporting period, we were granted access to Telestaff, the Department's electronic scheduling system. Telestaff continues to function as a "master detail" that is updated at least daily as loans, transfers, and other personnel changes alter supervisory assignments. OPD is in compliance with Task 20.1.

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

In February 2012, OPD implemented a new, tiered system of supervision in BFO, using relief sergeants; this will affect significantly the way in which we assess Tasks 20.2, 20.3, and 20.4. For this reason, we did not assess these subtasks during this reporting period. As a result, OPD maintains our compliance findings from the eighth reporting period. Therefore, OPD is not in compliance with Task 20.2; and is in compliance with Task 20.3 and 20.4.

Task 20.5 requires that the span of control for special operations is determined by an Area Commander and is reasonable (compliance standard: 90%). In addition, the Department requires that sergeants or certified acting sergeants supervise all special operations.
To assess this subtask, we reviewed a random sample of 25 special operations plans of the 129 total operations (excluding Occupy Oakland-related operations, which we discuss in Appendix A) conducted between October 1, through December 31, 2011, to determine whether the span of control for these operations was determined by the relevant commander and was reasonable. Specifically, we looked at the nature of the operations, the number of officers involved in the operations, and if any acting supervisors were certified acting sergeants. Our review found that all 25 of the special operations in our sample met these requirements.

OPD is in compliance with Task 20.5.

Task 20.6 requires that the Chief or his designee make decisions regarding any loans or transfers for long-term backfill (compliance standard: 85%). An Area Commander "backfills" a sergeant's slot when the primary, or assigned, sergeant is unable to supervise his/her squad on a short-term basis. However, the Chief or his designee (generally, the Assistant Chief or Deputy Chief) is required to determine any loans or transfers for *long-term* backfill.

We reviewed the Department's weekly Personnel Orders issued between October 1, through December 31, 2011, for the signature of the Chief or his designee. We found that all of the Personnel Orders during this time period contained such a signature, indicating the Chief's approval.

The NSA does not require written documentation of loans and transfers for long-term backfills – merely that the Chief or his designee approves such loans and transfers. However, OPD policy requires such documentation. Specifically, Departmental General Order B-4, *Personnel Assignments, Selection Process, and Transfers,* states, "A unit commander/manager who needs a loan of personnel shall submit a justifying loan request to his/her Deputy Chief/Director requesting the loan." As noted previously, 35% of loans and transfers reviewed by the Office of Inspector General (OIG) in a recent assessment were not included on the weekly Personnel Orders nor otherwise documented. Following these findings, Bureau of Field Operations (BFO) staff committed to improve its documentation of loans and transfers. Based on our recent discussions with the BFO Deputy Chief and other BFO personnel, as well as our review of Personnel Orders for other purposes (see above), it appears that OPD's practice comports with Departmental policy. OPD is in compliance with Task 20.6.

OPD is in partial Phase 2 compliance with Task 20.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
As part of Court-ordered technical assistance, we have continued to work closely with OPD to explore the Department's options to improve its consistency of supervision, or Task 20.2, so that it falls within the standards required by the NSA, Departmental policy, and best practices in policing. The Department has advised of its intention to transfer additional sergeants to Patrol, and plans to reorganize the division to implement a team supervision model. We continue to encourage the Department to undertake the bold steps that may be required in order to meet this requirement.

Task 24: Use of Force Reporting Policy

Requirements:

The policy shall require that:

1. *Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
2. *In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
3. *OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*
4. *A supervisor 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.*
5. *OPD notify:*
   a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
   b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
   c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

Comments:

We found OPD in partial compliance with Task 24 during all of the previous reporting periods. During the last reporting period, OPD was in compliance with all of Task 24 except for the requirements that OPD personnel on the scene of the incident report all uses of force on the appropriate form, and document every use of force and/or the drawing and intentional pointing of a firearm.

Discussion:

As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 24. OPD revised DGO K-4 on August 1, 2007. On April 15, 2009, OPD issued Special Order 8977, amending DGO K-4. The revised policy also incorporates the requirements of Task 24.

On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, the sample we requested for review (77 total) included: one Level 1; five Level 2; 13 Level 3; and 58 Level 4 reports completed between October 1, and December 31, 2011.[13]

Task 24.1 requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force (compliance standard: 95%). To assess this subtask, we reviewed the UOF reports, crime reports (when applicable), and Computer Assisted Dispatch (CAD) purges for all of the force incidents in our dataset. We found that the documentation for all of the incidents we reviewed was in compliance with this requirement.

Level 4 uses of force are self-reporting, and consequently, less documentation is required than for Level 1, 2, and 3 incidents. DGO K-4, Section VI A.1., states that involved personnel shall notify and brief their supervisors immediately or as soon as practicable. In all but four of the 77 incidents in our sample, a supervisor was promptly notified regarding the force incident. The four incidents included three Level 3 investigations and one Level 4 investigation. The supervisors in these cases were not notified for periods ranging from 51 minutes to one-hour-and-10-minutes following the incident. OPD has an overall 95% compliance rate with this subtask. OPD is in compliance with Task 24.1.

Task 24.2 requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor (compliance standard: 95%); and **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person (compliance standard: 95%). All of the use of force reports, crime reports, and supplemental reports for the incidents in our sample met these requirements. We found that for Level 1 deadly force incidents, this information was contained in the crime and Internal Affairs Division reports; for Level 2 and Level 3 incidents, this information was contained in the use of force reports; and for Level 4 incidents, the information frequently appeared in the actual use of force, crime, or offense reports. Accordingly, we find OPD in compliance with *the reporting requirements only* of Tasks 24.2 and 24.3.

Officers Pointing Firearms: During this reporting period, we reviewed a total of 77 use of force incidents, and 51 of those incidents involved officers pointing firearms. The 51 events included one Level 2, two Level 3, and 48 Level 4 uses of force. The 51 incidents involved 144 instances of OPD officers drawing and pointing their firearms.[14]

[13] We requested 90 use of force reports, but determined that 13 of the reports covered incidents that occurred outside of the current reporting period.

[14] The majority of the incidents we reviewed fell into one of the following categories: officers making high-risk

Overall, we determined officers' pointing of their firearms to be appropriate in 123, or 85%, of the 144 instances we assessed.[15] We were unable to find the pointing of a firearm necessary or justified in 21 instances, or 15%, of the 144 instances we assessed, due to the absence of any indication that the officer(s) or others faced imminent threat of harm.

The total racial breakdown for the 51 use of force events reviewed is as follows: Black, 76%; Hispanic, 11%; White, 7%; Asian, 4%; and Other, 2%. We also tabulated the racial breakdown of the subjects involved in the events where, in our opinion, the pointing of a firearm was not necessary or appropriate and found the following: Black, 88%; and Hispanic, 12%.

In all cases, the OPD supervisory review found the officers' use of force appropriate, objectively reasonable for a legitimate law enforcement purpose, and in compliance with OPD policy. While officers' actions in particular cases are troubling, the apparent unquestioned supervisory and command approval – of both the documentation of officers' actions and the actions themselves – is illustrative of a need to address supervisory deficiencies.

OPD is not in compliance with Tasks 24.2 and 24.3.

Task 24.4 requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such response impracticable (compliance standard: 95%). Supervisors responded to the scene in all 19 applicable Level 1, Level 2, and Level 3 incidents in our sample. This represents a 100% compliance rate. OPD is in compliance with Task 24.4.

Tasks 24.5, 24.6, and 24.8 require certain notifications in uses of force relative to officer-involved shootings and the use of lethal force.[16] Specifically, **Task 24.5** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the Alameda County District Attorney's Office immediately or as soon as circumstances permit (compliance standard: 95%). **Task 24.6** requires that following every use of lethal force resulting in death or injury likely to result in death, OPD notify the City Attorney's Office as soon as circumstances permit (compliance standard: 95%). **Task 24.8** requires that following every officer-involved shooting, OPD notify Homicide and Internal Affairs investigators (compliance standard: 95%). We reviewed one applicable Level 1 use of force report during this reporting period. OPD notified the Alameda County District Attorney's Office, the Office of the City Attorney, and the OPD Homicide Unit, as required, in the fatal shooting incident assessed. OPD is in compliance with these subtasks.

---

vehicle stops; officers searching and entering buildings or premises with or without search warrants; and officers were attempting to detain subjects, either by foot pursuit or by searching areas such as alleys and yards.

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

[16] Task 24.7 is no longer applicable.

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

OPD is in partial Phase 2 compliance with Task 24.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
We will continue to meet with OPD to assess how the Department is addressing the serious issue of pointing firearms – the act of which may not only be unnecessary and inappropriate, but which also elevates the risk for unfortunate and unjustified firearm discharges.

Task 25: Use of Force Investigations and Report Responsibility

Requirements:
An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
   - *a. Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
   - *b. Separating and separately interviewing all officers who were at the scene at the time of the incident;*
   - *c. A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
   - *d. Identification and interviews of non-Departmental witnesses;*
   - *e. Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
   - *f. Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
   - *g. Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation;*

and

h. Consideration of training/tactical issues involving the availability and practicality of other force options.

i. Supervisor's justification as to why any element of the policy was not documented; and

2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*

3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*

a. Whether the force used was pursuant to a legitimate law-enforcement objective;

b. Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;

c. Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;

d. Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;

4. *use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.*

The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division. Reviewers for Level 1-3 use of force investigations shall:

a. Make a recommendation as to whether the use of force was in or out of policy,

b. Order additional investigation and investigative resources when necessary, and

c. Comment on any training issue(s) when appropriate.

5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*

6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

Comments:
During the eighth reporting period, we found the Department in partial compliance with Task 25.

Discussion:
As previously reported, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which incorporates the requirements of Task 25. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 25. On November 23, 2010, OPD issued Special Order 9057, amending DGO K-4 to extend Level 1 and Level 4 reporting timelines. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

During this reporting period, we requested and reviewed 77 use of force reports, including: one Level 1; five Level 2; and 13 Level 3 use of force reports; and a sample of 58 Level 4 use of force reports; that were completed between October 1, and December 31, 2011.

Task 25.1 requires IAD to complete a use of force report for every Level 1 use of force, and an on-scene supervisor to complete a use of force report for every Level 2 and 3 use of force (compliance standard: 95%). To assess this requirement, we reviewed documentation for 19 Level 1, Level 2, and Level 3 incidents. In all incidents in our sample, a supervisor responded to the scene and completed a use of force investigation. In addition, eight Level 3 incidents in our sample were downgraded from a Level 3 to a Level 4 use of force incident by a supervisor who was at the scene; the changes were documented and comported with the governing documents. OPD is in compliance with Task 25.1.

Task 25.2 requires that use of force reports/investigations include NSA-required elements (compliance standard: 90%) and are timely pursuant to DGO K-4 (compliance standard: 95%). All of the reports we reviewed for this subtask included the NSA-required elements. To assess investigation timeliness, we used a 75-day time limit for Level 1 incidents (including IAD Commander approval) plus one documented extension approved by the Chief of Police in advance of the due date, and a 15-day time limit for Level 2 and Level 3 incidents. For Level 4 incidents, as of November 23, 2010, OPD requires a review of the report by the end of the reviewing supervisor's next scheduled workday. This is a change – which we supported – from requiring a supervisor's review by the end of the tour of duty; it became effective by Special Order 9057.

During this reporting period, one Level 2 and seven Level 3 reports were not submitted in a timely fashion. The remaining 69 completed UOF incidents were submitted within the time limits established by this subtask. As noted above, Level 2 and Level 3 force investigations are considered timely if they are completed (including Division Commander approval) within 15 calendar days of the incident, plus one documented approved extension by the Division Commander. Extensions are only considered if they were approved by the appropriate personnel prior to the pre-extension due date. The chronological report logs assessed for this reporting lacked adequate documentation to show that the extensions were properly requested and

authorized by command personnel. Once an extension is authorized, new dates must be established and the timelines must be met.

The reports we assessed addressed discrepancies in information provided by members, employees, and witnesses, and the use of "boilerplate" or "pat" language by UOF investigators. There was documentation of physical evidence and/or photographs, as well as an analysis of all relevant evidence gathered, consideration of tactical and training issues, and supervisors' justification as to why any element of the related policy was not documented. The completed reports also addressed training and tactical issues, equipment needs, the lack of use of the issued Personal Data Recording Devices (PDRD), and communication breakdowns during incidents between officers and dispatchers especially during high-risk incidents.

OPD's overall compliance rate for timeliness is 90%, and for NSA-required elements is 100%. OPD is not in compliance with Task 25.2.

Task 25.3 requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course (compliance standard: 95%). OPD is incorporating use of force training into its sergeants' continued professional training that is offered every 18 months to two years. We encourage OPD to continue to provide periodic refresher training to underscore to supervisors the importance of conducting complete, thorough, and impartial use of force investigations that are submitted in a timely fashion. OPD did not conduct any such training during this reporting period, but is in the process of identifying new trainers for future courses of UOF instruction. OPD is in compliance with Task 25.3.

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

During this reporting period, we reviewed 10 incidents that involved unjustified pointings of firearms. These 10 reports did not comport with NSA-required elements: Each of the incidents involved an unnecessary escalation to potentially using lethal force in situations where other less lethal force options were available to the officers or should have been considered. The remainder of the cases, however, contained information showing that the force was used for a legitimate law enforcement purpose, was reasonable to the resistance encountered, and was de-escalated when resistance decrease or stopped; and that verbal means were used to attempt to resolve the situation without force.

OPD's compliance rate for this subtask is 87%. OPD is not in compliance with Task 25.4.

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

OPD's compliance rate for this subtask is 100%. OPD is in compliance with Task 25.5.

Task 25.6 addresses the need to keep officers involved in use of force incidents resulting in serious injury or death, or involved in a shooting, be separated from each other at the scene, and kept apart until they have been interviewed and completed their reports (compliance standard: 95%). We found the applicable Level 1 and 2 reports in compliance with this requirement. OPD is in compliance with Task 25.6.

OPD is in partial Phase 2 compliance with Task 25.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Task 26: Use of Force Review Board (UFRB)

Requirements:
OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

1. *Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
2. *Require the FRB to review all use of force investigations;*
3. *Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
4. *Require the FRB to forward sustained policy violations to the Discipline Officer.*
5. *Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
6. *Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
7. *Require the FRB to conduct an annual review of use of force cases examined, so*

as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;

8. *Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
9. *Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Comments:
During all of the previous reporting periods, we found OPD in compliance with Task 26.

Discussion:
As previously reported, our review of Department General Order K-4.1, *Force Review Boards* (August 1, 2007), determined that this policy comports with the requirements of Task 26. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 26.1 requires that the Force Review Board (FRB) review all Level 2 use of force investigations following the completion of the internal investigation (compliance standard: 95%). DGO K-4.1 requires that the FRB chair convene an FRB to review the factual circumstances of all Level 2 cases within 90 days of receipt of the use of force packet from IAD. OPD provided documentation for all 10 incidents that were heard by the board during this reporting period of October 1, through December 31, 2011. We determined that nine, or 90%, of the 10 FRB reports were timely. The one late case was heard by the FRB 127 days past the 90-day due date (217 total days from the completion of the internal investigation). OPD is not in compliance with this subtask. [17]

Task 26.2 requires that for every Level 2 use of force investigation, the FRB make a recommendation as to whether the use of force was in or out of policy (compliance standard: 95%). All 10 of the FRB reports we reviewed contained a recommendation noting that the use of force was in compliance or not in compliance with policy. All 10 noted agreement with the recommendation of the FRB by the Chief or his designee. OPD is in compliance with this subtask.

Task 26.3 requires that all FRB determinations that a use of force is out of compliance with OPD policy be forwarded to IAD for investigation (compliance standard: 95%). There were no cases during this reporting period in which that determination was made. OPD is in compliance with this subtask.

[17] After we submitted a draft version of this report to OPD, the Department provided us with additional materials documenting a different, later date for the completion of the IAD investigation associated with this FRB. This later date, which was not included on the initial documentation we were provided, may have allowed OPD to be considered timely with this FRB. However, due to the initially limited documentation, we deem OPD to be not in compliance with this subtask during this reporting period.

Task 26.4 requires that the FRB 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 (compliance standard: Yes/No). During the current reporting period, the FRBs identified training issues; and discussed improper tactics, use of force reporting, and the need for corrective supervisory counseling. OPD is in compliance with this subtask.

Task 26.5 requires that the FRB conduct an annual review of use of force cases examined to identify any patterns of use of force practices (including K-3) that may have policy or training implications (compliance standard: Yes/No); and **Task 26.6** requires that the FRB issue an annual report to the Chief of Police reporting on its annual review (compliance standard: Yes/No). The FRB conducted its most recent annual review, which tracked 92 reports, on March 14, 2011. The review identified several patterns and practices, including: officers are continuing to chase suspects who they believed to be armed with handguns into yards; and are striking resisting suspects to the head with either their fists and/or palm-hammer strikes. In addition, the review found that many officers are documenting in their reports that they *had* to use force because of the risk that a suspect may be armed; and that they are not appropriately considering tactics during high-risk situations. The review also noted that canine officers, supervisors, and commanders need to consider modifying the canine announcement to fit the incident in question – for example, circumstances in which the warning announcement would jeopardize officer safety.

According to the annual review, the FRBs have been tasking supervisors to train their officers after the board has identified training issues. The supervisors are required to document this training in the officers' Supervisory Notes File and enter the information into PAS. More involved training is conducted by subject-matter experts, and a training roster is submitted to the Training Section. The involved officer(s) are directed to be present during the presentation to receive training from the board's voting members and subject-matter experts, and/or praise for any outstanding work. Additionally, as a result of the findings of the FRB, the Department revises or develops new information or training bulletins, which are distributed to OPD personnel via the Department's electronic PowerDMS system.

OPD is in compliance with these subtasks.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule FRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled one FRB during our most recent site visit. (We will discuss this in our next report.) The FRB was conducted in accordance with the requirements of the NSA. We again request that the Department schedule its FRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the FRB process.

Task 30: Firearms Discharge Board of Review

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Comments:
During the eighth reporting period, we found the Department in partial compliance with Task 30.

Discussion:
As previously reported, OPD published Departmental General Order K-4.1, *Force Review Boards* (February 17, 2006), which incorporates the requirements of Task 30. OPD revised DGO K-4.1 on August 1, 2007. The revised policy also incorporates the requirements of Task 30. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 30.1 requires that OPD convene an EFRB within 45 days of the completion of the use of force (UOF) report by IAD (compliance standard: 95%). The EFRB reviewed five incidents during this reporting period:

- In the first case, two patrol officers observed a bicyclist nearly get hit by a car. The officers stopped to talk to the cyclist, and noticed him manipulating his waistband area. The subject removed a shotgun from his waistband area, and one officer fired three rounds that did not strike the subject. The assisting officer used his patrol vehicle as an improvised weapon. The firearm discharges and the use of the patrol vehicle by the officers were found to be in compliance with policy.

- In the second case, an OPD officer shot at and missed an armed subject who was removing a loaded firearm from his waistband area. The officer apparently believed the subject was going to fire the weapon. The subject surrendered and was arrested. The firearm discharge by the officer was found to be in compliance with policy.

- In the third case, two OPD officers responded to an incident in which a woman was sitting in the middle of an intersection. A man assisted the woman to her feet as the officers arrived. The unknown man and woman began walking away. The officers caught up and separated both parties for interviewing purposes. During the interviews, a group of 5-6 men advanced on the officers. The group did not comply with the officers' orders to get back. One officer pointed his firearm at the group, and the other officer struck one of the men at his head with an ASP baton. The subject who was struck fled and was not captured. The application of deadly force to the head of the subject was determined to be out of compliance with policy. A MOR violation of Performance of Duty was sustained against the officer and referred to IAD for further administrative action.

- In the fourth case, two OPD officers observed a subject urinating in public. The subject was uncooperative and became combative with the officers. The subject punched one officer in the face. Both officers deployed their Tasers with no effect on the subject. The subject obtained a metal pole and began to swing it at both officers. One officer fired her pistol, striking the subject three times. The suspect survived and was charged with battery on a police officer with injury and related charges. The firearm discharges by the officer were found to be in compliance with policy.

- In the fifth case, an OPD officer located a carjacked car and began a pursuit of the vehicle. The stolen car crashed, and all four occupants fled on foot. As the officer followed two of the subjects, one of them turned around, brandished a firearm, and pointed it at the officer. The officer fired two rounds, missing the subject. The subjects were later captured, and a firearm was recovered. The firearm discharges by the officer were found to be in compliance with policy.

We verified that the five EFRBs held during this reporting period fell within 45 days of the completion of the use of force reports covering the incidents.

In addition to reviewing these reports, during our most recent site visit, we observed one EFRB on November 17, 2011, to verify the Department's compliance with the substance and intent of this Task. The EFRB deliberated, and determined that additional information – regarding the use of a police vehicle as lethal force, other available force options, and the lack of communications by an officer during the event – was required to complete its review; the board referred the information request to IAD for follow-up investigation. We were deeply troubled that the board made a finding that the officer was in compliance with policy – despite the board's indication that additional investigation was necessary to complete the review process. Accordingly, OPD is not in compliance with this subtask during this reporting period.

Task 30.2 requires that the EFRB has access to recordings and/or transcripts of interviews of all personnel on scene, including civilian witnesses, and is empowered to call in any OPD personnel it believes should testify (compliance standard: Yes/No). In the documentation we reviewed, recorded statements and/or transcripts were available from all officers on the scene and other personnel needed to testify. OPD is in compliance with this subtask.

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

OPD is in partial Phase 2 compliance with Task 30.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
Since the beginning of our tenure, we have requested – in meetings with OPD and in all of our quarterly reports – that the Department schedule EFRBs during our quarterly site visits, so that we may attend and observe the proceedings. The Department scheduled one EFRB – for an officer-involved shooting at an armed subject and the use of the police vehicle as a lethal application of force – during our November 2011 site visit. We again request that the Department schedule its EFRB hearings during our quarterly site visits; it is critical to our assessments that we be able to observe and evaluate the EFRB process.

Task 33: Reporting Misconduct

Requirements:
Within 154 days from the effective date of this Agreement, OPD shall establish policy and procedures for the following:

Misconduct
OPD personnel shall report misconduct by any other member or employee of the Department to their supervisor and/or IAD. The policy shall state that corrective action and or discipline shall be assessed for failure to report misconduct. OPD shall require every member and employee encountering a use of force that appears inappropriate, or an arrest that appears improper, to report the incident to his/her supervisor and/or IAD. OPD shall establish and maintain a procedure for a member/employee to report police misconduct on a confidential basis.

1. *Any member/employee of OPD may report a suspected case of police misconduct confidentially to the commander of IAD.*
2. *The member/employee reporting this conduct shall indicate clearly to the commander of IAD that the report is being made under these confidential provisions.*
3. *The report may be made in person, by telephone, or in writing. The IAD Commander shall document the report in a confidential file that shall remain accessible only to the IAD Commander.*
4. *The case shall be investigated without disclosure of the complainant's name, unless and until such disclosure is required by law.*
5. *This confidential reporting procedure shall be made known to every member/ employee of OPD and to all new members/employees of OPD within two (2) weeks of hiring.*

(Negotiated Settlement Agreement VI. A.)

Comments:
Since monitoring under the NSA began, OPD has received confidential reports of misconduct in only three cases. During the last three reporting periods, we found OPD in compliance with Task 33.

Discussion:
As we have noted previously, OPD has developed several policies that, in concert, incorporate the requirements of this Task. These include: *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. The Department has trained at least 95% of relevant personnel on these policies, and is in continued Phase 1 compliance with this Task.

Task 33.1 requires that in all sustained internal investigations, OPD conduct an assessment to determine whether members/employees/supervisors knew or should have known that misconduct

occurred (compliance standard: 95%); and **Task 33.2** requires that where OPD determines that members/employees/supervisors knew or should have known that misconduct occurred but did not report it as required, OPD is required to take appropriate action (compliance standard: 95%). The IAD Commander now requires investigators to specifically address whether members or employees or supervisors knew or should have known of the misconduct in a section of the investigative report entitled, "Member/Employee Accountability."

To assess OPD's Phase 2 compliance with these subtasks during this reporting period, we met with IAD personnel and queried the IAD database to identify any cases with sustained findings that were approved during October 1, through December 31, 2011, that were applicable to Task 33.

We identified and reviewed 33 cases with 51 sustained findings. The most significant Task 33-related matter that was investigated during this reporting period involved an officer who covered his name on his uniform with black tape during the Occupy Oakland demonstrations. (This incident is further described in Task 16.) The officer was sustained for a Class I violation; and his supervisor, who was on the scene, was sustained for failure to report a violation of law by his subordinate. The officer was suspended for 30 days, and the supervisor was demoted from lieutenant to sergeant.

One other case resulted in sustained findings that a supervisor had inappropriately interacted (touching and verbalization) with female subordinates. The female complainant reported discomfort with the supervisor's behavior; however, other members in the unit indicated that they did not find the behavior offensive. Even though the supervisor's behavior toward female members was widely known throughout his squad and work area, and it had been observed by his superior, OPD rendered a not sustained finding on the allegation that the supervisor's lieutenant had failed to prevent the harassment and discrimination. We do not concur.

The behavior, which was widely known, was found to be inappropriate. The lieutenant should have identified the problem early on, and appropriately intervened with corrective measures to prevent it from becoming a problem for both the supervisor and his subordinate(s). Lieutenants – and other supervisory and command staff, as well – are responsible for knowing what is occurring in their commands and identifying and correcting problems *before* they become serious. In this case, the lieutenant did not do so.

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

employees of OPD's confidential reporting procedures (compliance standard: 95%).

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

During this reporting period, OPD hired 17 new employees who were trained regarding the Department's confidential reporting procedures. The Department is in compliance with Tasks 33.3.1, 33.3.2, 33.3.3, and 33.3.4.

OPD is in Phase 2 compliance with Task 33.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:

a. Time, date and location;
b. Identification of the initiating member or employee commencing after the first year of data collection;
c. Reason for stop;
d. Apparent race or ethnicity, and gender of individual(s) stopped;
e. Outcome of stop (arrest, no arrest);
f. Whether a search was conducted, and outcome of search;
g. Offense categories (felony, misdemeanor or infraction).

2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

Comments:
During the last five reporting periods, we found the Department in partial compliance with Task 34. We noted that officers were increasingly entering the required stop data into the Field Based

Reporting (FBR) computer system; however, we were concerned that the "reason for the stop" was not being clearly identified to support a Constitutional basis and authority for the stops, and found OPD in partial compliance with Task 34. Also during the seventh reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate the totality of the circumstances supporting the stop.

Discussion:
As previously reported, General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing;* and Report Writing Manual (RWM) Inserts R-2, N-1, and N-2 incorporate the requirements of Task 34. As the Department has trained at least 95% of relevant personnel on the above-listed policies, we find OPD in continued Phase 1 compliance with this Task.

On June 12, 2010, OPD issued Special Order 9042, *New Procedures Regarding Stop Data Collection*, which updates DGO M-19 and RWM R-2; and used its electronic PowerDMS system to disseminate Special Order 9042 to the Department. During the sixth reporting period, OPD developed and began training on the definition and articulation of a consensual encounter and detention, along with training on how to complete Field Investigation Reports to adequately document investigative encounters. During the eighth reporting period, we verified that OPD trained at least 95% of relevant personnel on these subjects and Special Order 9042.

Task 34.1 requires that Stop Data Forms be filled out for every vehicle stop, field investigation, and detention (compliance standard: 90%). To assess Task 34.1 during this reporting period, we reviewed a random sample of 400 stops to match them with corresponding completed Stop Data Forms. This sample included 200 Computer Aided Dispatch (CAD) entries, 100 Field Contacts, and 100 traffic citations. Using the Department's Forensic Logic Quicksearch program, we were able to locate a corresponding Stop Data Form for 93% of the stops in our sample. OPD is in compliance with Task 34.1.

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

Despite OPD's progress in officers' completion of Stop Data Forms, we remain concerned that the reason for the stop is not clearly identified to support the Constitutional standards requirement. More specifically, none of the options available for officers to select under "5) reason for the stop" clearly elicit or help to articulate an identifiable basis and/or authority for the stop. During the prior reporting period, OPD combined the Stop Data Form with the Field Contact Card in order to provide officers with a section upon which they could better articulate

the totality of the circumstances supporting the stop. Our review of the implemented form during the current reporting period showed progress in the officers' articulation of the Constitutional standards requirement. The review focused on the officers' articulation of the reasonable suspicion that existed prior to the detention that justifies the detention.

Since the implementation of the combined Stop Data Form and the Field Contact Card, we have noted that officers are not accurately recording the "reason for the encounter." Officers have been found to classify this based on the final disposition for the contact, or their perception of the anticipated reason. During our review, we found 170 combined forms where we were able to analyze whether the stated reason for the encounter matched the narrative written by the officer. Eighteen were not accurately recorded. This is concerning, since we expect OPD to evaluate the data that it collects. We are concerned that the reason for the encounter is not accurately being captured, and we find that this failure is significantly inhibiting the analysis of the data by OPD. The ability to properly search data regarding activities related to the stop is severely inhibited by the manner in which they record, or do not record, data when a group is stopped. We encourage OPD to continue training and audits to ensure that the justification exists prior to the temporary detention and that the reason for the encounter is properly identified.

Based on OPD's failure to justify or adequately document the reasons for the stops in the samples we reviewed during the last four reporting periods, we again examined an expanded selection of pedestrian stops during this reporting period, and found that 96% identified the justification/reason for the stop. We will continue to monitor this issue closely.

We are also concerned that OPD's traffic stops are being conducted pursuant to valid allegations of traffic laws. Due to the manner in which stops were documented on the Stop Data Form, and our inability to view the traffic citations, we are unable to verify the basis for the stops. This is especially true when the officer selected "no action" or "warning" issued as the result of the encounter. With the merger of the Stop Data Form and the Field Contact Card, the officers have begun to enter citation numbers, and we encourage that practice to continue. The Department is not in compliance with Task 34.2.

Task 34.3.1 requires that OPD have a stop data database that can be summarized, searched, queried, and reported by personnel authorized by OPD (compliance standard: Yes/No). As per Special Order 9042, officers "complete an electronic FPR [Field Based Reporting] Stop Data Collection Form (SDF) for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave." Data from the electronic Field Based Reporting system is automatically sent to the Department's Forensic Logic Quicksearch program. Quicksearch allows Department personnel to search for and query officers' stop data. We experimented with the Quicksearch program and found that the stop data is summarized and easy to review. As noted above, in May 2011, OPD merged the Stop Data Form with the Field Contact Card, intending to provide one document for officers to enter stop

data and providing them with a narrative portion for which they can articulate the factual support for the stop.

On March 16, 2011, and on a number of subsequent occasions, the Department produced multiple draft stop data summaries of its stop data collected between July 1, and June 30, 2011. Our review of these summaries appeared sufficient to allow for a comprehensive analysis; however, we are concerned that the focus has been, to date, superficial. We have been convinced – based on our review – that the data is sufficient to draw some conclusions regarding disparate treatment, or the absence thereof, and design an appropriate action plan. As we have noted previously, OPD focuses on issues that do not help determine whether OPD officers are engaging in disparate treatment of minority groups – or, for that matter, any specific sub-population. For example, we noted the number of searches of persons within one sub-group is significantly higher than others and interestingly enough, also noted that these searches appeared to form the basis for an arrest less often than searches conducted in other sub-groups. While acknowledging that this raw data alone does not – and should not – form the basis to conclude that OPD officers are engaging in bias-based policing or racial profiling, it does clearly indicate the need for OPD command staff to conduct further analysis and appropriately address any appearance of disparate treatment with explanation or intervention.

During this reporting period, we again met with OPD personnel responsible for this analysis and discussed with them how and why the Department should conduct further analysis. We were provided an Information Bulletin identified as Stop Data Statistics that was produced and provided to OPD officers on December 30, 2011. This bulletin provided a cursory review of the data for the officers, and is considered a good start; however, our optimism was quickly mitigated when we learned that the data is significantly flawed, since it is not inclusive of each individual involved in a multiple-person stop. We have discussed this issue in detail with OPD, and have received assurances that corrective measures will be implemented.

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

Task 34.3.2 requires that the data captured on the Stop Data Forms be entered completely and accurately into the database (compliance standard: 85%). As noted above, the entering of stop data into the Field Based Reporting system requires officers to make a selection in each form field. If an officer fails to fill in the information in any field, the system will not allow the form to be completed. Task 34.3.2 was created to govern the submission of data from the written forms to the computerized system. Since this type of data entry is no longer necessary, the Department is in compliance with Task 34.3.2.

OPD is in partial Phase 2 compliance with Task 34.

Compliance Status:
Phase 1: In compliance
Phase 2: Partial compliance

Next Steps:
During our next site visit, we will again meet with the sergeant who oversees the Department's stop data systems and other relevant Department personnel to discuss the Department's progress in this area. We will further discuss with the Department its various Task 34-related data systems to assess their operability, accuracy, and utility in storage and ease of access to stop data. We will continue to work with OPD on ways to verify the legal basis for stops, searches, and other related activities expeditiously. We will also review an expanded sample of walking stops to analyze the legitimacy of stops and/or subsequent activity.

Task 35: Use of Force Reports - Witness Identification

Requirements:

1. *OPD shall require, by policy, that every use of force report, whether felonies were involved or not, include the names, telephone numbers, and addresses of witnesses to the incident, when such information is reasonably available to the members/employees on the scene.*
2. *In situations in which there are no known witnesses, the report shall specifically state this fact. Policy shall further require that in situations in which witnesses were present but circumstances prevented the author of the report from determining the identification or phone number or address of those witnesses, the report shall state the reasons why the member/employee was unable to obtain that information. Reports shall also include the names of all other members/employees of OPD witnessing the use of force incident.*

(Negotiated Settlement Agreement VI. C.)

Comments:
During all of the previous reporting periods, we found OPD in compliance with Task 35.

Discussion:
As previously reported, OPD published Special Order 8066, *Use of Force—Witness Identification* (April 12, 2004), which incorporates the requirements of Task 35. Additionally, OPD published Departmental General Order K-4, *Reporting and Investigating the Use of Force* (February 17, 2006), which also incorporates the requirements of Task 35. OPD revised DGO K-4 on August 1, 2007. The revised policy also incorporates the requirements of Task 35. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

To assess Phase 2 compliance for Task 35 for this reporting period, we reviewed 19 use of force reports, including: one Level 1; five Level 2; and 13 Level 3 use of reports covering incidents that occurred between October 1, and December 31, 2011. (Per DGO K-4, Level 4 use of force reports do not require witness identification.)

We assessed Task 35.1 in conjunction with Task 35.2. **Task 35.1** requires that use of force reports include the name, telephone number, and addresses of witnesses to the incident when such information is reasonably available to the members/employees on the scene (compliance standard: 90%); and **Task 35.2** requires that when there are no known witnesses, the use of force reports specifically state this fact (compliance standard: 90%). All 19 reports that we reviewed comported with these requirements. OPD is in compliance with these subtasks.

Task 35.3 requires reports to document instances where witnesses are present but circumstances prevent the author of the report from gathering the data (compliance standard: 90%). Of the 19 applicable UOF reports we reviewed, one fell into this category and was properly documented in the report.
OPD is in compliance with Task 35.3.

Task 35.4 requires that UOF reports include the names of all other OPD members/employees witnessing the incident (compliance standard: 90%). We found no instances when an OPD witness was not documented in the 19 reports we reviewed. OPD is in compliance with Task 35.4.

OPD is in Phase 2 compliance with Task 35.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Next Steps:
During our next site visit, we will examine an expanded sample of force reports, in addition to our regular document request, to ensure that OPD is moving toward the long-term sustainability of this Task.

Task 37: Internal Investigations-Retaliation Against Witnesses

Requirements:
OPD shall prohibit retaliation against any member or employee of the Department who:

1. *Reports misconduct by any other member or employee, or*
2. *Serves as a witness in any proceeding against a member or employee.*

The policy prohibiting retaliation shall acknowledge that retaliation may be informal and subtle, as well as blatant, and shall define retaliation as a violation for which dismissal is the

presumptive disciplinary penalty. Supervisors, commanders and managers shall be held accountable for the conduct of their subordinates in this regard. If supervisors, commanders or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, they shall be subject to the investigative, and if appropriate, the disciplinary process.
(Negotiated Settlement Agreement VI. E.)

Comments:
During previous reporting periods, we found that all of the cases alleging retaliation against an employee or member of OPD were investigated as required, and that the IAD findings fell within policy. As a result, we found the Department in compliance with Task 37.

Discussion:
As previously reported, we found OPD in continued Phase 1 compliance with this Task. OPD published Special Order 8092 on November 23, 2003, which incorporated the requirements of Task 37. This policy consists of two Manual of Rules (MOR) Sections: 398.73, *Retaliation Against Witnesses*; and 398.74, *Retaliation Against Witnesses, Accountability.* These MOR provisions (revised in lieu of a City policy on retaliation) incorporate the requirements of Task 37. OPD has trained at least 95% of relevant personnel on these policies.

Task 37.1 requires that officers be held accountable for retaliating against employees or members who report misconduct or serve as witnesses in proceedings against other members/employees (compliance standard: 95%); and **Task 37.2** requires that supervisors, commanders, and managers be held accountable if they knew or reasonably should have known that persons under their supervision engaged in retaliation (compliance standard: 95%).

We reviewed all eight cases that were approved during the period of October 1, through December 31, 2011, that OPD regards as containing allegations of retaliation. We found that three of the eight cases did not apply to Task 37 because they involved complaints lodged by citizens that an officer(s) "retaliated" against them. Such cases do not fit the definitions of retaliation as set forth in Task 37, which addresses retaliation against an *employee* or *member* of OPD who has reported misconduct or served as a witness.

Our review determined that one case did involve an allegation of retaliation against members of the Department. The one approved case that did involve an allegation of retaliation, as defined by Task 37, was sustained for two non-retaliation matters and not sustained for the retaliation allegation. We found that the investigation pertaining to the retaliation allegation was reasonable. In addition, we reviewed 33 IAD cases, approved during this reporting period, in which there was a sustained finding; and we found no instance where supervisors, commanders, and managers knew or reasonably should have known that persons under their supervision engaged in retaliation and failed to report it.

OPD is in Phase 2 compliance with Task 37.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Task 40: Personnel Assessment System (PAS) - Purpose

Requirements:
Within 635 days from the effective date of this Agreement, OPD shall enhance its existing complaint-tracking and select indicator systems so that it has a fully implemented, computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of OPD and its personnel. This data shall be used by OPD: to promote professional police practices; to manage the risk of police misconduct; and to evaluate and audit the performance of OPD members of all ranks, employees, and OPD units, subunits and shifts. PAS shall contain information on the following:

1. *All uses of force required to be reported by OPD;*
2. *OC spray canister check-out log (see Section V, paragraph D)*
3. *All police-canine deployments; where the canine is deployed in a search for or to apprehend a suspect(s). It does not include, deployments for the purpose of locating bombs, narcotics, missing persons, etc., where the canine is not involved in an investigated use of force (i.e., deliberately or inadvertently bites or injures a person) If such force occurs, a Use of Force report is required.*
4. *All officer-involved shootings and firearms discharges, both on duty and off duty, excluding an intentional discharge while at a range facility; a discharge while engaged in a lawful recreational activity, such as hunting or target practice; a discharge by Criminalistics Division personnel for the purpose of scientific examination; and a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury;*
5. *All on-duty vehicle pursuits and on-duty vehicle collisions;*
6. *All complaints, whether made to OPD or CPRB;*
7. *All civil suits and/or tort claims related to members' and employees' employment at OPD, or which contain allegations which rise to the level of a Manual of Rules violation;*
8. *Reports of a financial claim as described in Section VI, paragraph G (3).*
9. *All in-custody deaths and injuries;*
10. *The results of adjudications of all investigations related to items (1) through (9), above, and a record of investigative findings, including actual discipline imposed or non-disciplinary action administered;*
11. *Commendations and awards;*
12. *All criminal arrests of and charges against OPD members and employees;*
13. *All charges of resisting or obstructing a police officer (Penal Code §§69 and 148), assault on a police officer (Penal Code §243(b)(c), or assault-with-a-*

deadly-weapon on a police officer [Penal Code §245(c)(d)];

14. *Assignment history and rank history for each member/employee;*
15. *Training history for each member/employee;*
16. *Line-of-duty injuries;*
17. *Sick leave usage, particularly one-day sick leaves;*
18. *Report Review Notices or Case Evaluation Reports for the reporting member/employee and the issuing investigator;*
19. *Criminal cases dropped due to concerns with member veracity, improper searches, false arrests, etc.; and*
20. *Other supervisory observations or concerns.*

(Negotiated Settlement Agreement VII. A.)

Comments:
Following two reporting periods in which we recognized Phase 2 compliance, we found the Department out of Phase 2 compliance with Task 40 in our last report. It was during that reporting period that OPD identified problems with the arrests data as they were recorded in PAS.

Discussion:
General Order D-17, Personnel Assessment Program (February 24, 2007) incorporates the requirements of Tasks 40 and 41. OPD has completed a draft revision of the policy which updates it from its last revised which was approved on August 20, 2008. The revision was under review by the Chief at the time of our most recent site visit. The revised policy addresses issues identified by OPD while working with the Monitor over the past two years. Of particular note in the revision are the increase of the PAS-related monitoring period from three to six months, and an increase in the required number of required supervisory reviews for officers under monitoring or supervision. The review period will also changed from 30 to 18 months, and threshold analyses will be completed every six weeks, rather than quarterly. The new policy will also increase scrutiny based on Level 4 uses of force, and will support supervisory review based on referrals from the PAS Administration Unit. These and other changes draw on the Department's experience and analysis, and are consistent with the approach of continuous improvement that the PAS Administration Unit has worked to support. The Department has trained at least 95% of relevant personnel on the current policy. OPD, therefore, remains in Phase 1 compliance with this Task.

The Personnel Management System (PAS) was developed to address the requirements of Tasks 40 and 41. The potential for this system has continued to increase over the periods covered in our reports. The Department has addressed some key concerns regarding the collection and storage of data, and it has improved its use of data by enhancing its approach to identifying officers for review and by conducting reviews that continue to increase in quality. Despite those accomplishments, two related concerns persist: The first involves the stability of the system data, and the second concerns whether staffing is sufficient to meet the expanding workload.

As noted in our last report, these issues combine to render the most valuable functions of the system inoperable, and severely limit the ability to address those problems in a timely manner. The result was that OPD fell out of compliance with Task 40, which addresses data issues. It was only the fact that reviews were not immediately affected by the data problems that allowed the Department to remain in partial compliance with Task 41. For this reporting period, the data problems have continued and caught up with the review process, therefore negatively influencing compliance on both risk management-related requirements.

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

With regard to Phase 2 compliance, PAS records for the quarter of October 1, through December 31, 2011 indicate that data were entered for most but not all of the fields required by Task 40. OPD was unable to report the total number of arrests occurring during the current reporting period, although it was able to correct this problem following the quarter's end. With that, it could not report the number of arrests under the specific categories required by the NSA including disorderly conduct, interfering, and assault on officers. As a result, OPD also could not report any of the rates of activities that involve arrest ratios; and therefore, it is unable to schedule and conduct the appropriate reviews. We are pleased to report that the data problems appear to have been resolved, although not in time to be useful during the current reporting period. The resolutions did, however, allow us to present the relevant data in the summary table below and to correct the data omissions from the previous reporting period.

The required data for the quarter included reports of 957 uses of force. This is a decline of 15% from the last reporting period, for which there was a decline of 8% from the previous reporting period. The corrected data for the current reporting period indicates that there were 3,402 arrests.

A further breakdown of the types of use of force shows that, for this reporting period, there were three Level 1 (down from six in the last reporting period); 48 Level 2; and 108 Level 3 uses of force. The increases in these as shown in the table below reflect the Occupy-related activity discussed in the Appendix. The table also shows a decline of 25% in Level 4 uses of force, to a total of 797. The Level 4 decline is the major contributor to the overall decline in reported uses of force. The data count for the current reporting period and the two prior reporting periods is presented in the table below.

OPD Performance Activity Comparison by Quarter 2011			
Performance Activity	**April 1 to June 30 2011**	**July 1 to September 30 2011**	**October 1 to December 31 2011**
Level 1 Uses of Force	4	6	3
Level 2 Uses of Force	21	19	48
Level 3 Uses of Force	37	38	108
Level 4 Uses of Force	1154	1066	797
Unintentional Firearms Discharge	0	0	0
Sick Leave Hours	9378.39	10406.31	12084.56
Line of Duty Injuries	40	52	43
Narcotics Related Possessory Offenses Arrests	426	482	445
Vehicle Collisions	15	11	7
All Vehicle Pursuits	82	117	89
All Arrest	3374	3470	3402
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	63	61	61
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	17	16	24
Awards	160	70	65
Assignment History	9498	9498	9498
Case Evaluation Reports	629	321	193
Report Review Notices--Positive	2	0	1
Report Review Notices--Negative	0	0	0
Canine Deployments	92	112	71
Financial Claims	0	0	3
Internal Affairs Complaints	286	386	316
In-Custody Injuries	70	56	97
Civil Suits (Tort Claims)	32	7	22
Criminal Cases Dropped	0	0	0
O.C. Checkouts	42	41	34
Officer Involved Shootings	7	4	2
Rank / Class History	2336	2336	2336
Training History	14159	21017	21084
Supervisory Notes	3589	3338	3281
Criminal Arrest Made Against OPD	0	0	0

The data problems noted above have now persisted for two full reporting periods and into the next reporting period. The conclusions for Task 40, therefore, must remain as they were reported in our last report. We note again that we are pleased that the PAS Administration Unit uncovered the data problems in a timely fashion, but we are troubled that the issues could not be resolved expeditiously. One difficulty clearly stems from the fact that, while the PAS administration Unit must store and use the data, it does not manage or control its original collection. Problem-solving thus requires coordination across organizational units. To accomplish that, and thus assure the value of the system and support NSA compliance, it may very well take greater attention to these coordination efforts from up the chain of command. The concern here is well illustrated in the audit process that was undertaken by the Department's Records Section. The initial audit simply reported that an audit of arrests had occurred, but provided no details that would allow an examination of whether adequate case review and necessary data-cleaning had occurred.

We are hopeful that all of the now-identified data problems will be resolved in the very near future, and that any new issues can be addressed more expeditiously. Unfortunately, that has no bearing on our current finding.

OPD is not in Phase 2 compliance with Task 40.

Compliance Status:
Phase 1: In compliance
Phase 2: Not in compliance

Task 41: Use of Personnel Assessment System (PAS)

Requirements:
Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
2. *The Department shall retain all PAS data for at least five (5) years.*
3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
4. *PAS, the PAS data, and reports are confidential and not public information.*
5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
7. *When review and analysis of the PAS threshold report data indicate that a*

member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*
Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months. Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less

frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Comments:

In the last reporting period, we continued OPD in the status of partial compliance with Task 41 with the hope that data problems noted above would be resolved and the damage to the risk management review process could be contained. We had hoped that falling back out of compliance would not occur. We were overly optimistic; and the strain of the underlying problems undermined the review process by making it impossible to establish key thresholds, identify officers who exceed them, and initiate the process of supervisory review.

Discussion:
As noted above with regard to Task 40, OPD has revised Departmental General Order D-17, *Personnel Assessment Program,* which governs the procedures relevant to Tasks 40 and 41. The revised policy was under review by the Chief at the end of the reporting period. The revision includes some significant and desirable improvements. In the meantime, however, based on existing policy and the related training, we again find OPD in continued Phase 1 compliance with this Task.

Within the limits of the problems noted above, during this reporting period, we continued our examination of the stages of the PAS process consistent with this Task. We examined the threshold analyses that were performed for the period of October 1, through December 31, 2011. This included a review of the histogram analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold.

During this reporting period, 32 officers were initially identified as meeting PAS thresholds. We reviewed notification memoranda and other PAS activity review and report documents, as well as the use of PAS for reasons other than threshold-initiated reviews. In accordance with this Task requirement, we reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we also verified reports of regular quarterly PAS command reviews of officers by supervisors in OPD command units.

The PAS process also calls for follow-up reports of officers under supervision or monitoring, as well as reports of officers not discharged from the process by the end of one year. We reviewed the reports that were completed during the current reporting period. Our examination included a review of 18 disposition and 18 follow-up reports. We found that the documents provide sound descriptions of the officer/supervisor interaction and explanations for its current status. These meetings all document supervisory reviews of officers who have been selected for some form of action as a result of PAS reviews.

The most critical use of PAS is in the supervisory review of officers who may be experiencing work-related problems. These officers are identified for PAS review through the threshold analyses. An examination of the processes and outcomes of these meetings, and the review of them up the chain of command, have been central in our compliance review process. For this reporting period, we examined the reports of 60 officers completed and/or signed during the quarter under review. These reviews were not affected by the arrest data issues discussed above.

Our examination of PAS reviews during this reporting period again revealed them to be generally thorough and complete. The reviews include analyses of officer histories of complaints and uses of force. These appear to provide useful summaries and valuable information for reviewers. The expansion of the command review to include not only the documentation and recommendations of the PAS review conducted by the first-line supervisors, but also a more general evaluation of that supervisor, also continues to function well.

For the quarter ending September 30, 2011, OPD conducted a total of 50 PAS reviews. The results of the reviews are included in the table below. The table shows that superiors recommended that no action be taken in 37, or 74%, of the reviews. The table also shows that commanders disagreed with lower-level recommendations and prompted additional monitoring and supervision in 6% of cases. Deputy Chiefs disagreed with the commanders' decisions in 20% of their decisions, and the PAS Review Panel suggested revisions in 8% of the findings of the Deputy Chiefs. These findings are consistent with the view that, if the goal is to move to less risk, reviewers at all stages up the command review process could be expected to decrease their tolerance for risk by always rejecting some number of recommendations for inaction and by setting higher standards for acceptable patterns of behavior. This finding provides support for the conclusion that OPD recognizes that risk reduction is a dynamic process in which expectations can grow higher over time. The value of the data in the chart below is in tracking them over time and using them to increase the rigorousness of the review process as it serves the goal of risk reduction.

	PAS Reviews Completed	Supervisor Rec- no action	%	Recognition	%	Supervisor Rec - Monitoring	%	Supervisor Rec- Intervention	%	Commander rec Concurs w Supervisor	%	Dep. Chief Concurs w Commander	%	PAS Panel Concurs w DC	%	Pending	Number of personnel that exceeded a threshold	* Percentages apply to completed cases only **
January	11	9	82%	0	0%	2	18%	0	0%	10	90%	11	100%	10	90%	0	11	
February	9	8	89%	0	0%	1	11%	0	0%	9	100%	9	100%	8	89%	0	5	
March	17	10	59%	1	5%	4	24%	2	12%	17	100%	17	100%	17	100%	0	11	
April	12	11	92%	0	0%	0	0%	1	8%	12	100%	12	100%	12	100%	0	18	
May	10	6	60%	0	0%	2	20%	2	20%	10	100%	10	100%	10	100%	0	7	
June	8	6	80%	0	0%	1	10%	1	10%	8	100%	8	100%	8	100%	0	7	
July	11	7	63%	0	0%	4	36%	0	0%	9	90%	10	90%	10	100%	0	16	July: One review did not require a commander's recommendation.
August	2	2	100%	0	0%	0	0%	0	0%	2	100%	2	100%	2	100%	0	23	
September	19	13	68%	0	0%	5	26%	1	5%	18	94%	18	94%	19	100%	9	16	September: One review did not require a commander's recommendation.
October	12	10	83%	0	0%	2	17%	0	0%	11	92%	11	92%	12	100%	0	26	
November	16	11	69%	1	1%	2	13%	3	19%	15	94%	10	63%	12	75%	0	47	November: No Deputy Chief assigned to BOI. (2 reviews)
December	22	16	73%	0	0%	6	27%	0	0%	21	95%	19	86%	22	100%	0	14	
Total	149	109		2		29		10		142		137		142		9	201	
Average	***12.4***	***9.1***	***77%***	***0.2***	***1%***	***2.4***	***0***	***0.8***	***6%***	***11.8***	***96%***	***11.4***	***94%***	***11.8***	***96%***	***0.8***	***16.8***	

In summary, the above discussion should make it clear that there are areas of the operation of the risk management system that show continued progress and demonstrate effective use. It is, of course, unfortunate that the full effectiveness of the system has been constrained by technical data problems that have been slow to be resolved. We certainly hope the situation is rectified for our next review, although we can already note that problems remain for at least some of the quarter that follows the current reporting period. For the present, however, there is no escaping the fact that the risk management system has not been functioning in a manner consistent with the requirements of the NSA.

Compliance Status:
Phase 1: In compliance
Phase 2: Not in compliance

Next Steps:
During our next site visit, we anticipate the implementation of the revised risk management policy, and we will continue to work with the Department to examine the processes of collecting and storing data and the use of that data in the PAS review process. We will, of course, focus attention on the data questions that OPD reports will be resolved by then. We also hope that these issues' continued impact on the review process will be minimal for the reporting period. We will therefore, focus on the stability of the system, how data problems are identified and addressed, and how they impact the review process over time.

Task 42: Field Training Program

Requirements:
Within 323 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Field Training Program. This plan shall address the criteria and method for selecting FTOs, the training provided to FTOs to perform their duty, 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 plan must ensure proper reporting, review and approval of probationary officers' reports.

Field Training Program Coordinator
The Chief of Police shall assign a full-time sergeant for the first year who shall develop and implement the new policies and procedures described in this section. The Chief of Police shall determine, upon successful completion of the development and implementation of these policies, if it is necessary to continue the position at the rank of sergeant, but in any event, the position shall continue as a full-time position.

Trainee Rotation
During their field training, trainee officers shall rotate to a new FTO and a new geographic area of the City at predetermined intervals. Prior to rotation, trainee officers shall be interviewed by the Field Training Program Coordinator or his/her designee and given an opportunity to raise any questions or concerns they may have about the quality of training provided to them.

FTO Participation Incentives
OPD shall increase the incentives for participation in the FTO program so that the Department will have a larger pool of qualified, experienced candidates from which to choose.

FTO Candidate Nomination and Requirements
FTO candidates shall be nominated by field supervisors and commanders, but shall be approved

for assignments to this duty, and for retention in it, by the Chief of Police. All FTO candidates must have completed three (3) years of Departmental service before selection, unless specifically authorized by the Chief of Police. FTO candidates shall be required to demonstrate their commitment to community policing, and their problem- solving and leadership abilities. Ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy shall be primary criteria in the selection of FTOs. Excessive numbers of sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304, or excessive numbers of use of force incidents shall bar a candidate from selection as an FTO for no less than two (2) years.

Decertification
The presumptive result of sustained disciplinary action, completed within the time limits imposed by Government Code Section 3304, against an FTO or the FTO Program Coordinator for excessive force, unlawful arrest, false testimony, racial, ethnic, sexual-orientation or gender-based discrimination or slurs, or other serious examples of police misconduct, shall be removal from the FTO program. The Deputy Chief of the member's chain of command may recommend to the Chief of Police to grant an exception to this presumption after conducting a hearing on the facts of the matter. The Chief of Police shall document the approval/disapproval in writing.

FTO Assignment
Assignment to an FTO position shall be contingent upon successful completion of a training course designed for this position and shall be approved by OPD and the State of California Peace Officers' Standards and Training.

FTO Evaluation
At the end of a complete FTO cycle, trainee officers leaving the FTO program shall anonymously evaluate each of their FTOs. OPD shall develop a form for such evaluations which emphasize effectiveness at training and effectiveness at supervision. The evaluation form shall also assess the degree to which the FTO program reflected policies, procedures, values and other information taught in the recruit academy. The FTO evaluation forms shall be reviewed by the Field Training Program Coordinator and the individual FTO's commander and supervisor. The Field Training Program Coordinator shall provide evaluation information to the FTOs as a group, concerning program effectiveness. Each FTO shall also be provided with evaluation information regarding their individual performance. The individual evaluation forms shall not be made available to individual FTOs in the interest of maintaining anonymity of trainee officers who have completed the forms.

Daily Evaluation Audit
The Field Training Program Coordinator, or his/her designee, shall conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained.

Trainee Officer Assignment
When a trainee officer's FTO is absent, the trainee officer shall not be assigned to field duties

with an "acting" FTO. They shall be placed with another certified FTO, or shall be assigned to non-field duties, pending the availability of a certified FTO.

Field Commander and FTO Supervisor Training
OPD shall provide field commanders and supervisors with training on the FTO program, including the field-training curriculum, the role of the FTO, supervision of FTOs and probationary employees, the evaluation process and the individual duties and responsibilities within the FTO program.

Focus Groups
The Field Training Program Coordinator and Academy staff shall conduct focus groups with randomly selected trainee officers midway through the field-training cycle, upon completion of field training, and six (6) months after completion of the field training program, to determine the extent to which the Academy instructors and curriculum prepared the new officers for their duties.

Consistency of Training
The results of these focus group sessions shall be reviewed at a meeting to include the Training Division Commander, the FTO Program Coordinator, the BFO Deputy Chief, and the BOS Deputy Chief. If it is determined that there is a substantial discrepancy between what is taught in the Academy and what is taught in the FTO program, there shall be a determination as to which is correct, and either the training Academy or the FTO program shall make the necessary changes so that the desired training information is consistent. In the event that the discrepancies appear to be the result of one or more individual FTOs, rather than the FTO program as a whole, the review group shall determine whether the discrepancies are serious enough to warrant removal of that officer or officers from the FTO program. The results of the meeting of this review group shall be documented and this information shall be provided to the Monitor.
(Negotiated Settlement Agreement VIII. A.-L.)

Comments:
In August 2009, since no Academy was planned for the near future, the Parties agreed that there would be no active monitoring of this Task. In addition, since there were no new officers being trained, OPD decertified all then-current Field Training Officers (FTOs). During 2010, OPD recruited and began training 21 new officers and five lateral officers. However, due to the City's budget cuts, OPD laid off all new officers, both trainees and laterals, and 80 full-time OPD officers. Accordingly, until this review, we have deferred our compliance finding for Task 42.

Discussion:
During the last reporting period, we learned that OPD was authorized to rehire 10 of the 21 trainee officers who attended the Alameda County Sheriff's Basic Training Course; as well as three additional OPD officers who were laid off.

With the need for FTOs apparent, OPD selected and certified a group of FTOs. The Department received applications from 59 officers for the FTO position. The 59 officers included both newly volunteered officers and those who had been previously certified as FTOs.

On January 11, 2011, an FTO Selection Panel (composed of the two Deputy Chiefs, the IAD Captain, three patrol captains, an OIG lieutenant, and two Field Training Unit officers) was convened. The panel reviewed, assessed, and recommended the candidates.

On February 4, 2011, the Chief approved the selection of 36 field training officers, including 20 who were recertified and 16 who are new to the FTO Program.

We reviewed the IAD histories for the FTOs who were selected. We found that no Class I incident was sustained for any of the 36 successful FTO candidates in the years 2009, 2010, or 2011.

These 10 trainees all graduated from the eight-week OPD Academy and entered the FTO Program. Because of BFO-wide scheduling changes, they spent their first week assigned to CID. On February 4, 2011, they began their first week of field training.

On February 20, 2011, OPD planned to hire eight transitional officers who graduated from other police academies. These officers attended an OPD Academy for eight weeks and then entered the FTO Program. In August 2012, the Department expects to begin its 166th Academy with 50 recruits.

To date, OPD has followed the FTO selection procedures required by the NSA. Inasmuch as the Department reinstated the FTO Program on February 4, 2012, we still cannot fully evaluate the Department's compliance with the overall FTO Program and again defer our Phase 2 compliance assessment.

Compliance Status:
Phase 1: In compliance
Phase 2: Deferred

Task 43: Academy and In-Service Training

Requirements:

A. *Academy Training Plan*
Within 540 days of the effective date of this Agreement, OPD shall develop and implement a plan to enhance its Academy and in-service training to ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions, and aware of and able to implement the most contemporary developments in police training. This plan shall include a review of OPD's training curriculum, with

additional emphasis on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community. The plan shall also address the criteria and method for selecting OPD training instructors, the training provided to instructors, procedures for evaluating the content and quality of training provided to OPD personnel and procedures for maintaining training records for OPD personnel. In arriving at the plan regarding staffing, training content and methodology, OPD shall consult with at least four (4) other, large law-enforcement agencies within the United States which have excellent reputations for professionalism. In particular, OPD shall consult with these agencies about qualifications and other criteria to be used in selecting staff for training positions. OPD shall also review the approach of these other law enforcement agencies in training both new staff and experienced staff on ethics and professionalism, critical thinking and problem solving, conflict resolution, and relationships with the community.

B. *Professionalism and Ethics*
OPD shall expand professionalism and ethics as a training topic within the recruit academy, in-service training, and field training. Wherever possible, OPD shall include and address issues of professionalism and ethics using curricula that employ realistic scenario-based training exercises.

C. *Supervisory and Command Training*
OPD shall provide all sergeants and commanders with mandatory 40-hour in-service supervisory and leadership training. Officers shall attend training prior to promotion to the rank of sergeant. Lieutenants shall attend training within six (6) months of promotion. Such training shall include supervisory and command accountability, and ethics and professionalism, with emphasis on supervisory and management functions and situations, and shall include both scenario-based training and case studies.

D. *In-Service Training*
OPD shall provide all members with forty (40) hours of in-service training every eighteen (18) months.
1. *Sergeants shall receive at least 20 hours of training designed for supervisors every 18 months.*
2. *Members at the rank of lieutenant and above shall receive at least 20 hours of training designed for commanders every 18 months.*

E. *Training Staff Record Review*
Appointment to the Academy staff or other staff training position shall also require a review of the record of the individual being considered, to ensure that the individual does not have a record of any Class I offense, as defined in Section III, paragraph H (1), within the prior two (2) years, and that the individual is supportive of the philosophy and values of OPD.[18]
(Negotiated Settlement Agreement IX. A.-E.)

Comments:
Only one provision of Task 43 (43.1.1) is being actively monitored under the MOU. This subtask requires OPD to ensure that OPD members, dispatchers, and civilian evidence

[18] The underlined requirement is the only provision of Task 43 that is being actively monitored under the MOU.

technicians are adequately trained for their positions. During the last reporting period, we found that 99% of the members and employees in our sample received the required in-service training.

Discussion:
As previously reported, OPD published General Order B-20, *Departmental Training Program* (April 6, 2005), which incorporates the requirements of Task 43. As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Task 43.1.1 requires that OPD's training plan ensure that OPD members, dispatchers, and civilian evidence technicians are adequately trained for their positions (compliance standard: Yes/No). To assess this subtask, we interviewed the new OPD Training Section Commander and other personnel and observed a training session in a new approach to crowd control. During previous site visits, we reviewed training schedules, course outlines, and lesson plans.

We noted in our last report that training is critically important particularly in times of diminished resources. We were pleased to learn that the new Training Commander has begun a process of a training needs assessment, which could help to ensure that available training resources are focused on OPD's most urgent needs. The Training Commander has begun by interviewing commanders throughout OPD, as well as making his own observations to identify weaknesses that need to be addressed. For instance, the new Chief tasked him to create a more robust cultural competency course for recruits and officers' in-service training (CPT). A process that takes into account the Department's serious strengths and weaknesses, and identifies training needs that are the most important, is critical to a successful training program.

For this reporting period, we reviewed the training records of a stratified random sample of 111 OPD members and employees – including 61 officers, 18 sergeants, and 20 dispatchers; as well as all 12 police evidence technicians (PETs) – to determine if the members and employees received adequate training for their positions.

The Department produced a record for each member and employee in our sample. For each we reviewed the training s/he received during previous years, and calculated the number of hours recorded in his/her record. For the sworn officers in our sample, we credited the California Peace Officer Standards and Training (POST)-certified Continued Professional Training (CPT) as counting toward the requirement. CPT is, according to California state requirements, to be delivered to every officer every two years; OPD uses an 18-month cycle. We found that 100 of the 111 employees whose records were reviewed had received training appropriate to their jobs. In addition, eight employees were considered excused due to medical leave, recent hiring, or limited duty status. Thus, 108 (97%) of the 111 employees in our random sample received training appropriate to their positions. The following chart reflects the results of our survey.

	Records Reviewed	Training Received	Excused	%
PETs	12	9	3	100%
PCDs	20	15	2	85%
POs	61	59	2	100%
SGTs	18	17	1	100%
	111	100	8	97%

We noted in our last two reports that a lack of planning and attention to the training of PETs constituted a negative trend that needed to be corrected to ensure that the Department remains in Phase 2 compliance with this requirement. We noted that OPD had begun to address the issue. Again during this reporting period, we reviewed the PET records to determine whether progress had been made in this area. We note the attendance of several evidence technicians at CPT classes as a positive trend in the training of PETs. Further, we found that PETs had attended training offered by federal agencies that would be expected to sharpen their technical skills.

OPD is in Phase 2 compliance with Task 43.1.1.

Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

Task 45: Consistency of Discipline Policy

Requirements:
On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall 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/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Comments:
During our November 2011 review, we found OPD to be in compliance with Task 45.1, which requires that the Department maintain a centralized system for documenting and tracking all forms of discipline and corrective action. We found, however, that discipline had not been uniformly administered in several cases, including two we viewed as serious. Accordingly, we continued the finding of partial compliance.

Discussion:
Task 45.1 requires that OPD maintain a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level (compliance standard: Yes/No). To assess Phase 2 compliance with this subtask, we have observed demonstrations of the IAD database, discussed it with IAD personnel who operate it and with senior IAD officers, and on February 22, 2012, we queried the IAD database to identify all of the cases that were approved with at least one sustained finding between October 1, 2011 through December 31, 2011. This query identified 33 cases containing 51 sustained findings.

During this review, we found that 28 of the 33 cases, and that 43 of the 51 sustained findings, had listed the dates of discipline conference and letter and the discipline imposed. Our review revealed that the five of the cases containing eight of the sustained findings lacked this information because the case was awaiting a Skelly hearing, or that IAD management had returned the case to the division-level investigator for additional documentation. Thus, the IAD records were 100% accurate, in that they contained the discipline imposed, and the dates of the disciplinary conference and disciplinary letter; or there was an adequate explanation for why the data was not on the list.

OPD is in compliance with 45.1.

Task 45.4 requires that discipline be imposed in a manner that is fair and is consistent (compliance standard: 95%). To this end, the Department has developed and revised a Discipline Matrix. The Department most recently updated and revised its Discipline Matrix on September 2, 2010.

We found that in all (100%) of the 51 sustained findings in which discipline was required and recorded, the discipline fell within the Discipline Matrix in use or it was a reasonable application of discipline justified by an analysis of the facts of the case. We note that the Department is not bound to its Discipline Matrix, but when it finds it necessary to go outside of the range specified for a particular violation, it must present a reasonable justification for doing so.

During the period of October 1, through December 31, 2011, there were eight Skelly hearings decided. We reviewed documentation for each of the hearings, and found that discipline was upheld and fell within the Discipline Matrix; or when there was a departure, the logic that justified the departure was reasonable.

We found one case, however, with which we disagree. In that case, an employee posted a joke on a bulletin board that was inappropriate and of a sexual nature. An officer saw the posting and removed it from the bulletin board. The next day, the joke reappeared, and was attached with so many staples, tacks, duct tape, and crime scene tape that the officer had to disassemble the bulletin board to remove it. The recommended discipline for the employee who posted the joke was a 30-day suspension. The Skelly Hearing Officer changed the Matrix violation from a Class I violation (Conduct Toward Others – Harassment and Discrimination) to a Class II violation (Conduct Toward Others – Unprofessional Conduct in Violation of AI 71), and recommended a one-day suspension. The Chief changed the suspension to two days.[19] Thus, a 30-day suspension for the employee who posted the joke was reduced to a two-day suspension.

This case strikes at the heart of the NSA. Here the employee not only posted an inappropriate sexual joke, but when an officer recognized it as such and removed it, the employee displayed his contempt for the policies of the Department by again posting the joke – but this time with so many tacks and staples that the bulletin board had to be disassembled to remove it. This does not appear to be a case in which the employee suffered a moment of bad judgment.

There were two other cases that were decided during the current reporting period and initially were to be afforded a Skelly hearing. In one, it was determined that the employee was in an "at will status" and not entitled to a Skelly hearing, and she was terminated as an employee. In a second case, the officer declined the Skelly hearing, and the discipline of a 30-day suspension was imposed.

OPD is in Phase 2 compliance with Task 45.

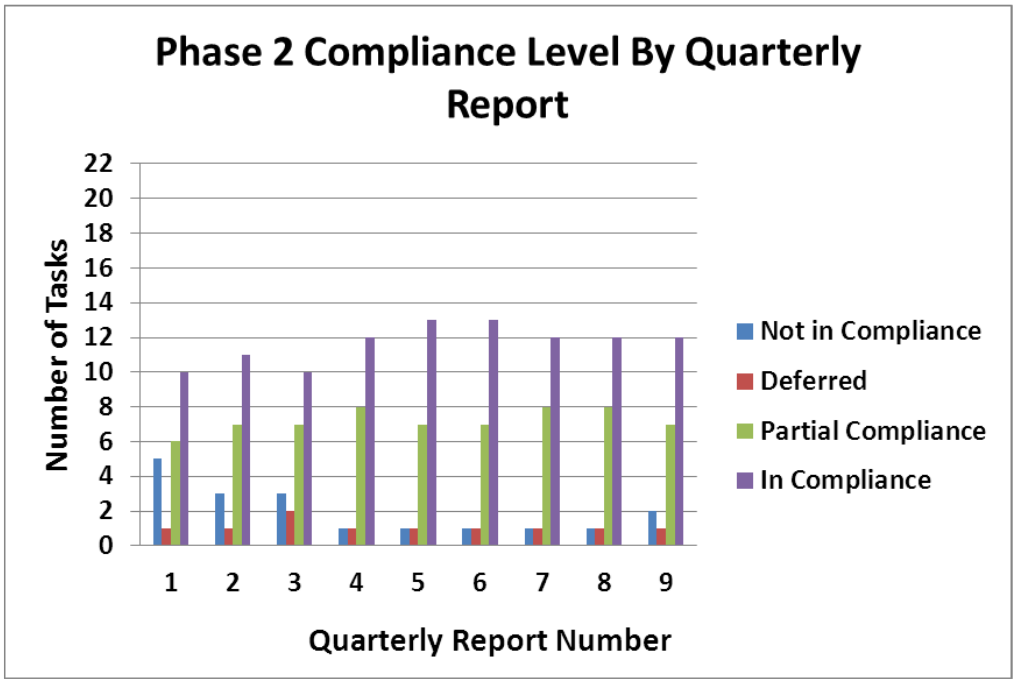
Compliance Status:
Phase 1: In compliance
Phase 2: In compliance

[19] Administrative Instruction 71 (Equal Employment Opportunity/Anti-Discrimination/Non-Harassment Policy and Complaint Procedure.

Section Three

Conclusion: Critical Issues

This is our ninth quarterly report. The status of compliance with the 22 active requirements of the Negotiated Settlement Agreement is shown for all of our quarterly reports in the graph below. The graph shows that although the same number of Tasks has been in compliance for three consecutive reporting periods, there is now an additional Task not in compliance. The two Tasks that are not in compliance both address risk management; their non-compliance results from lingering Departmental data problems.



In our reports, we seek to identify and summarize issues that appear to thwart the Department's progress toward compliance. For the most part, these issues remain unchanged from prior reporting periods. Supervision and the review of work by officers remains a concern. Inadequate documentation continues to be a limitation. The failure to quickly rectify data problems with the risk management system is an important issue. The two risk management-related Tasks are not in compliance because problems with data made the full use of the system impossible. We are hopeful that these issues will have been rectified for our next quarterly report.

In Appendix A of this report, we present the beginnings of our review of NSA-related issues associated with the police response during the beginning of the Occupy movement activities in Oakland. The ongoing investigations of complaints and uses of force associated with Occupy activities can be expected to take considerable time. That process must run its course. We expect to review those cases as they become available through our regular review process. That will be incorporated into our quarterly reports.

We concluded our last report by noting that the Department's slow progress toward compliance had left the path forward unclear. It is certainly true that in the years since the Parties agreed to the terms of the Tasks that we review, progress has been slow – at best. Despite that, residents of Oakland must continue to expect the Oakland Police Department to meet the highest standards of effectiveness and also the highest standards of Constitutional policing. Their expectations must serve to clarify the right course for the Oakland Police Department, and also for our Team in our role as Monitors. Even when there is little else to show as progress, those expectations point toward the right path. We find cause for optimism in the early actions taken by the new Chief, and in his commitment to progress on the NSA. We are glad to support him in that pursuit.

Appendix A

The Negotiated Settlement Agreement and Occupy Oakland

As noted in our last report, as the Monitor appointed by the Federal Court in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, I have the responsibility to oversee our Team's assessment of compliance of the City of Oakland and its Police Department with the Tasks agreed upon by the parties in the Negotiated Settlement Agreement (NSA). This includes those Tasks now identified as active Tasks, and described in detail in the body of this report, as well as those Tasks not reviewed each quarter but still subject to periodic assessment to assure continued compliance. The wide range of law enforcement policies and practices subject to review under this Agreement includes the activity associated with what is known as "Occupy Oakland."

Our goal in this appendix is to discuss briefly some of the Occupy-related activities that occurred during the current reporting period, October 1, through December 31, 2011, using the methodology established in our regular reporting processes. As noted below, these efforts will continue through future reporting periods, as the majority of Occupy-related misconduct investigations and use of force reports have not yet been completed.

Members of the Monitoring Team were present in Oakland during the period from October 25, through 28, 2011; and from November 14, through 18, 2011. Additionally, our local Monitoring Team member was present throughout the October through December "Occupy"-related activity. During the relevant time periods, we met with police command staff and local officials, and made observations on the street. We also have reviewed – and continue to review – reports and videos from official and unofficial sources.

As we noted in our last report, we were, in some instances, satisfied with the performance of the Department; yet in others, we were thoroughly dismayed by what we observed. I cannot overstate our concern that although progress on NSA compliance has been slow, even those advancements may have been put in doubt in the face of these events.

We also note that the unusual circumstances posed by the events surrounding Occupy Oakland do not relieve the Department, in any way, of any of the requirements of NSA compliance. Instead, it is precisely in such times that the reforms articulated in the NSA are at their point of greatest significance, as they govern the behavior of the Department and its officers.

Our areas of concern may expand as our assessment progresses, but they clearly involve the NSA Task areas noted below.

Internal Affairs Complaints
According to the Department, as of February 15, 2012, IAD has classified 1,039 misconduct complaints as related to Occupy Oakland. The complaints have been divided into 68 separate cases. Seven cases – involving 671 complaints – have been administratively closed. Twelve

cases – involving 148 complaints – have been assigned to an outside firm for investigation. One case – involving 63 complaints – has been sustained and discipline administered.

Most of the remaining cases are in various stages of investigation. It does not appear that IAD will meet its rapidly approaching investigation deadlines (180 days following a complaint) required by both the NSA and Departmental policy. If these internal and external investigations are not completed by the required deadlines, it will threaten OPD's compliance with Task 2, which relates to investigation timeliness. In future reporting periods – as cases are completed, approved by the Chief, and closed – we will review the Occupy-related complaints for investigation timeliness and quality.

During our most recent site visit, IAD consulted with the Monitoring Team to develop a protocol to triage the numerous Occupy-related complaints that were received. Most of the complaints came were from persons not directly involved in the protests, who called to express their displeasure with what they saw in various media reports. Among other elements, the protocol indicates that IAD does not have to re-contact complainants who did not have any direct involvement with an Occupy Oakland incident, or direct connection with an involved party. The protocol also utilizes a more liberal use of IAD's summary finding process, which allows for closure without the need to interview everyone involved in a particular case; in such cases, all parties will be deemed credible. And, the protocol states that complaints of excessive force or serious misconduct are to be investigated via standard investigative procedures. In future reporting periods, the Monitoring Team will review if the complaints that were grouped by IAD into cases were actually eligible – per the new protocol, Departmental policy, and NSA requirements – for consolidation.

Task 2.3 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards. We understand that OPD has assigned two new investigators – and eventually, will assign one additional investigator to IAD. The fact that the leadership of both the City and the Department have found it necessary to outsource the investigations of Occupy Oakland complaints should be an alarming development in this process. That said, both the Administration of the City and Chief Jordan are to be commended for their candor. In future reporting periods, we will assess how the Department has modified its IAD staffing to manage this unusual proliferation of cases.

Risk Management

For the quarter subject to review in this report, the risk management database experienced problems related to the recording of some arrest data. These problems, however, did not affect the data on uses of force or misconduct complaints. Examination of the PAS database shows that these data elements have been entered for the reporting period, including the Occupy-related activity. The PAS administrator continues to review the data to reconcile any irregularities in data updates. The risk management data issues most relevant to the Occupy activities involve the extent to which some uses of force may not have resulted in use of force reports, and the classification of complaints as to whether specific officers are identified. These issues will be considered in the ongoing investigations related to Occupy activities. The use of the risk

management system to identify officers for supervisory review and possible intervention is continuing according to policy; and is not impacted by Occupy-related events, except to the extent that data recording may be affected, as discussed above.

Supervisory Span of Control and Unity of Command

We are concerned with the supervisory span of control, the ratio of supervisors to officers, and the unity of command during the Occupy Oakland operations. The Department's own after-action report following the October 25, 2011 events acknowledges, "The command structure for the event was not finalized until the day of the event. This allowed only minimal time for preplanning among the assigned command staff. The operational commander was assigned to his role hours before the incident. More in-depth discussions have not taken place as a part of the review process due to the ongoing civil litigation, internal affairs and CID investigations, as well as the external review."

We appreciate that the relevant activities involved both the Oakland Police Department and a large number of other police agencies that participated under agreements for mutual aid. Since all of these activities occurred under the auspices of the City of Oakland and its Police Department, we regard all of the activities as appropriate subjects for review under the NSA.

The Department has advised us that when a large-scale operation – such as the Occupy events – is underway, OPD shares its operations plans and distributes policies to the command staff of any outside agencies at a designated staging area. At this time, and according to the Department, OPD conducts an inventory of weapons brought by each outside agency, and any weapons that are not sanctioned by OPD are collected. OPD has advised us that it has recently implemented a pathfinder program, whereby a liaison from OPD – generally an officer, Field Training Officer, or acting sergeant – attaches him/herself to a commander from the squad/unit from the outside agency to assist with communication and other operational needs. We will continue to monitor these new practices closely.

Training

We are also concerned with the extent to which the documentation of the relevant events indicates compliance with requirements regarding the adequacy of training, particularly as it pertains to crowd control and policing demonstrations.

We learned that OPD provided only limited training on such topics to its own personnel, and there was even less coordinated training among OPD and the neighboring agencies that are part of the mutual aid agreements. For instance, in November 2010, OPD hosted a crowd control training exercise that was apparently attended by 150 OPD officers, 35 Hayward officers, 25 BART Police Department officers, and 20 Union City/Newark officers.

As noted in our discussion of Task 43, we have recommended that OPD conduct a full training needs assessment. We anticipate that such an assessment will include recommendations for improving the Department's coordinated training with neighboring agencies that are part of the mutual aid agreements.

Use of Force

On at least two occasions during the current reporting period, OPD clashed with Occupy Oakland protesters while clearing the City's Frank Ogawa Plaza. As stated above, we continue to review the incidents to determine if violations of Departmental policy occurred during the OPD clashes with protestors.

As noted, we have viewed many official and unofficial video clips of the Occupy Oakland-related incidents. We have reviewed media reports and documents, videos, and audio files made available by OPD. Some of the videos that we observed are concerning as to the manner which non-deadly munitions were utilized. In addition, we have viewed multiple videos that show the launching of gas canisters and flash bang grenades. These recordings lead us to ask additional questions as the level of force that was used by OPD officers, and whether that use of force was in compliance with the Department's use of force policies. In future reporting periods – as the more serious force investigations are completed and closed – we intend to determine whether OPD violated its own crowd control and use of force policies when dealing with the Occupy Oakland demonstrations.

On October 25, 2011, Oakland police, with mutual aid from over 16 area law enforcement agencies, forcibly evicted an Occupy Oakland encampment from Frank Ogawa Plaza. During that evening when protesters returned to the plaza, but were kept at bay by police barricades and were met with volleys of tear gas, smoke grenades, and bean bag rounds. The recordings of this incident involved an overwhelming military-type response to Occupy Oakland demonstrators. Several well-known incidents were associated with activity, including the injury of a former member of the U.S. military.

On February 13, 2012, we received an update on a particular Occupy investigation, and learned that the investigation was transferred to an outside consultancy retained by the City. The City's decision to retain this firm was founded on the City's conclusion that the Department, in general, and the Internal Affairs Division, in particular, lacked the capacity to undertake an investigation of this breadth and scope.

In the case in question, it has been confirmed that what struck the citizen in the head was a beanbag round that was fired by OPD. This is allegedly confirmed by PDRD video and actual evidence. Specifically, OPD had retrieved the hat worn by the citizen, which shows green residue. (The beanbag rounds used by the SWAT team on October 25, 2011 leave a green dye when they impact with the target.) An additional dimension of this investigation is that while the crowd formed to assist the citizen, an officer threw a canister of tear gas into the crowd.

On November 2, 2011, thousands of protesters converged on downtown Oakland throughout the day, marching to the Port of Oakland in the evening, shutting it down. Late that night and into the next morning, protesters in Frank Ogawa Plaza occupied a closed Travelers Aid Society building adjacent to the plaza. Police arrived shortly after, and a confrontation broke out, where police shot tear gas rounds at protesters, and some protesters broke store windows on Broadway and barricaded streets with burning trash cans.

On November 3, 2011, it is reported that a citizen required surgery after he was struck with batons by officers. A video displays an officer breaking the ranks of the riot squad and delivering multiple strikes to the body of this citizen as he attempted to run away.

On February 13, 2012, we received an update on this investigation, and learned that the investigation was transferred to the outside consultancy. Although an initial investigation by IAD noted that there was no PDRD video, OPD later learned that the officer was assigned a PDRD, but that he did not have it with him during the incident. This issue is currently under investigation. According to IAD, the subject officer abandoned his skirmish line to address the action of the citizen. It is reported that the citizen was given multiple commands – to which he did not comply – and as the officer went to arrest him, he "flinched" him. We look forward to reviewing this investigation.

Also on November 3, 2011, a citizen was shot with a beanbag round while videotaping the line of riot-gear-clad officers at Frank Ogawa Plaza's north end. On the video, the citizen can be heard twice asking, "Is this OK?" The video shows that he was traveling backward and sideways in front of the line of officers, and maintained a good distance away from the officers. The video shows that an officer raised a weapon and fired, striking him in the upper thigh with a non-deadly projectile. The video shows a flash and a bang is heard; the citizen collapses while yelling.

No police warning is audible before the shot is heard. This is a violation of the Department's use of force and crowd control policies, which require officers to issue a warning before firing beanbags on protesters. The citizen has sued the Department in Federal Court, seeking unspecified damages. Although OPD has conducted an investigation of this incident, it has been referred to the outside consultancy for further review.

On November 3, 2011, an OPD senior officer is reported as approving the use of beanbag projectiles to be used against protesters. The media reported, after an apparent interview with the senior officer, that he ordered that officers on a skirmish line could fire the beanbag rounds if they were approached by a nearby group of "anarchists" who had already broken windows and lit trash fires. He said he did not order the shot that hit the citizen and was not on the line when the round was fired.

During the interview, it is reported that the senior officer stated that the citizen's video "doesn't look too good" for the Department. He said that SWAT officers came to him and asked how they should respond if demonstrators charged them. "I drew a line in the sand," he said. If demonstrators who were threatening police got too close, the officers could fire 12-gauge rounds containing bags of lead pellets to stop them. Implicit in the order, the senior officer said, was that advancing demonstrators had to meet the Department's strict criteria for the use of force,

which states that projectiles can be fired "only against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury" to themselves, police officers, or others. "You can't just shoot somebody for walking up to a line," the senior officer said. "My order was clear."

On February 13, 2012, we received an update on this investigation, and learned that the investigation was transferred to the outside consultancy.

OPD policy and training for crowd control management identifies that the U.S. Constitution guarantees by the First Amendment the right of persons to assemble peacefully. Law enforcement – in this case, OPD – has the responsibility to ensure public safety while protecting the rights of individuals.

The incidents noted above, and other uses of force and citizen complaints, are currently subject to internal and external investigations. As those investigations move forward, the Monitoring Team will continue to assess the Occupy-related activities against the requirements of the Negotiated Settlement Agreement.

Again, the City is to be commended for its self-assessment of its capacity to thoroughly review the actions of the Department and individual officers. But as there are strong likelihoods for future demonstrations, we hope the Department will take heed of the lessons it has learned from its organizational introspection and the assistance it has received from its external consultants.

Appendix B

Cumulative Key Indicator Data

PAS AD MIN UNIT STATISTICAL COMPARISON

OAKLAND POLICE DEPARTMENT - KEY INDICATOR BY MONTH 2010-11

Percent of Arrests Associated with	JAN 10	FEB 10	MAR 10	APR 10	MAY 10	JUN 10	JUL 10	AUG 10	SEP 10	OCT 10	NOV 10	DEC 10	JAN 11	FEB 11	MAR 11	APR 11	MAY 11	JUN 11	JUL 11	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	Sparkline Percentage of Arrests (decrease = risk reduction)
A Use of Force (levels 1,2,3 - **per reporting officer**)	2.78	1.13	4.07	2.35	1.23	1.33	7.57	1.93	4.10	2.31	3.78	1.21	2.89	2.24	2.21	1.60	2.35	1.66	2.64	1.66	1.01	5.72	6.70	0.84	
A Use of Force (levels 1,2,3,4** - **per reporting officer**)	42.03	42.55	37.45	36.52	41.22	32.27	43.20	36.37	49.03	39.24	52.02	47.44	37.64	37.98	25.91	29.34	42.82	35.61	32.24	32.31	31.15	24.68	25.17	34.21	
A Police Pursuit (**per reporting officer**)	3.46	2.26	1.88	3.13	3.20	2.97	5.92	4.36	3.99	5.67	6.30	2.16	4.39	4.73	2.13	3.04	4.04	1.57	2.91	4.90	1.56	2.53	2.30	3.09	
An IA Complaint (**per subject officer sworn only**)	5.82	9.43	10.40	9.65	9.03	13.01	13.25	9.93	11.17	7.41	7.93	9.43	9.12	10.71	8.45	6.91	7.14	9.01	10.20	8.67	8.10	9.59	9.19	6.19	
An In-Custody Injury	4.30	2.08	2.42	4.26	2.38	1.23	2.72	3.14	2.62	1.97	5.29	0.54	2.66	1.37	2.05	1.60	4.04	0.52	1.28	1.23	1.17	4.31	3.35	0.37	
Each Hour of Sick Leave (**excludes civilians**)	273.0	271.6	177.4	206.4	193.1	332.5	303.8	330.4	290.4	364.0	323.4	3098.8	216.7	254.2	170.9	180.5	226.4	221.0	210.0	229.51	184.11	230.26	283.83	235.15	

Number of Arrests per (blank if o cases)	JAN 10	FEB 10	MAR 10	APR 10	MAY 10	JUN 10	JUL 10	AUG 10	SEP 10	OCT 10	NOV 10	DEC 10	JAN 11	FEB 11	MAR 11	APR 11	MAY 11	JUN 11	JUL 11	AUG 11	SEP 11	OCT 11	NOV 11	DEC 11	Sparkline Number of Arrest per (increase = risk reduction)
Officer Involved Shooting **(includes shootings involving animals which includes force types 1,21, 24, 27 and 26-21)***	197.5		1279	1150			282	987	292	864	397	247	144.3		633	395	533	572	1098	571	1284			534	
Vehicle Collisions (**excludes civilians**)	131.7	176.7	319.75	288	609	325	211	110	146		79	148	433	160.6	316.5	169	178	572	1098	286	321	336	1045		
Civil Suit (**excludes civilians**)	592.5	62.35	127.9	383	122	244	141	82	110	72	99	67	78.73	47.24	211	198	56	1143	1098	381	1284	336	95	152	
All Arrest (totals)	1185	1060	1279	1150	1218	976	845	987	877	864	794	742	866	803	1266	1186	1065	1143	1098	1142	1284	1345	1045	1067	

Appendix C

Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

Acronym	Definition
ACSO	Alameda County Sheriff's Office
BART	Bay Area Rapid Transit
BFO	Bureau of Field Operations
BOI	Bureau of Investigation
BOS	Bureau of Services
CAD	Computer Assisted Dispatch
CHP	California Highway Patrol
CID	Criminal Investigation Division
CORPUS	Criminal Oriented Records Production Unified System
CPRB	Citizens' Police Review Board
CPT	Continued Professional Training
CRIMS	Consolidated Records Information Management System
DGO	Departmental General Order
DIL	Daily Incident Log
DLI	Division-level investigation
EFRB	Executive Force Review Board
FRB	Force Review Board
FTO	Field Training Officer
FTP	Field Training Program
FTU	Field Training Unit
IAD	Internal Affairs Division
IB	Information Bulletin
ICR	Informal Complaint Resolution
IPAS	Input for Personnel Assessment System
LEWI	Law Enforcement Warrants Inquiry System
MOR	Manual of Rules
NSA	Negotiated Settlement Agreement
OCA	Office of the City Attorney
OIG	Office of Inspector General
OPD	Oakland Police Department
PAS	Personnel Assessment System
PDRD	Portable Digital Recording Device
POST	Peace Officer Standards and Training
RMM	Risk Management Memorandum
RWM	Report Writing Manual
SDF	Stop Data Form
SO	Special Order
TB	Training Bulletin
UOF	Use of force