



Special Report *of the* Independent
Monitor *for the* Oakland Police
Department: Review of the Frazier
Group, LLC's Independent
Investigation of October 25, 2011
Occupy Oakland Response

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Section One

Introduction

On December 19, 2011, the City of Oakland contracted with the Frazier Group LLC to conduct an impartial review of the events of October 25, 2011 – identified as the Occupy Oakland protest. In the aftermath of these events, the Frazier Group (“Frazier”) reported that serious concerns were raised by both City Officials and the community at large concerning use of unreasonable force, overall police performance, and OPD’s ability to manage future events in an acceptable manner. Frazier’s initial task from the City of Oakland was to focus on the events of October 25, 2011. On April 30, 2012, the Frazier Group issued a report to the City containing its findings, conclusions, and recommendations. As Frazier’s review and analysis of OPD’s performance prior to, during, and subsequent to the October 25, 2011 Occupy Oakland event progressed, systemic shortcomings became alarmingly clear. These shortcomings included policy and practice deficiencies surrounding leadership, accountability, communication and collaboration, technical expertise, and organizational development.

The Frazier report indicates that its investigation took a 360 degree approach and consisted of interviews, conversations, and review of materials from officials, OPD personnel of all ranks, civil rights advocates and organizations, former OPD members and leaders, public safety communications personnel, members of the Oakland Civilian Police Review Board, Federal authorities, and members of our monitoring team. The Frazier report concluded that the Oakland Police Department’s response to the Occupy Oakland protest on October 25, 2011 was flawed by inadequate staffing, insufficient planning, the lack of understanding of modern crowd management techniques, and outdated policies and protocols.

On May 31, 2012, the Honorable Thelton E. Henderson issued a Court Order (Dkt. No. 692) requiring that the Monitor review the Frazier Group report regarding the Occupy Oakland events of October 25, 2011, and address any implications found in the Frazier report relevant to the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, for the United States District Court for the Northern District of California.

The Frazier report contained a series of 68 findings and recommendations to improve the Police Department’s response to future protests. We have analyzed these findings and recommendations and have determined that 39 of them are directly related to Tasks identified in the NSA.¹ Some of the findings and recommendations in the Frazier report affect Tasks which are currently inactive. In the analysis to follow, we have connected specific findings to NSA Tasks and, where applicable, identified the finding as raising potential compliance concerns with the Tasks based on the Frazier Group’s conclusions. Indicating that a finding is cause for compliance concern does not necessarily mean that OPD is out of compliance with the particular Task based exclusively on the finding, or OPD’s response to the events of October 25. The

¹ Some findings and recommendations are applicable to more than one NSA Task.

incident occurred nearly a year ago, and generated significant activity on a multitude of fronts, including, but not limited to: Internal Affairs investigations, criminal investigations, identification of training needs and delivery of training, policy analysis and identification of needed changes, and equipment acquisition. All of these processes are still underway, and we will evaluate their results during the normal course of our monitoring activities. Clearly, OPD's response to these issues has the potential to severely impact its compliance findings in future quarterly reports as we review the Department's completed work.

In June, 2012, the City of Oakland publicly released the Frazier Report, along with the City's assessment of its progress in implementing the recommendations. Each recommendation was categorized as Pending, Underway, or Completed, with Pending indicating that no substantial work had yet been done to implement the recommendation. 26% were reported as Pending, 53% were reported as Underway, and 21% were reported as completed. On June 28th, OPD's Assistant Chief of Police provided further clarification of the Department's progress in a memo to the Monitor. During our most recent site visit, we interviewed numerous OPD personnel of the ranks Sergeant through Assistant Chief in an effort to further clarify progress towards implementing the recommendations and to provide technical assistance. Where it lends clarity to the discussion of the recommendation, notes from those interviews are included.

We note that OPD considered many of the recommendations completed because the activity identified, such as assigning IAD personnel to front line positions in the field, is not normally done. They contend that for these activities, October 25 was an exception and they will not be repeated. We advised them that until the prohibitions of certain practices are memorialized in policy, we do not consider the recommendation "completed".

SUMMARY OF FINDINGS

NSA Task 1 - IAD Staffing and Resources

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	46	Compliance Concern	Pending
	57	Compliance Concern	Underway
	65	Compliance Concern	Underway

NSA Task 2- Time Limits, Standards, and Compliance with IAD Investigations

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	51	Compliance Concern	Underway

NSA Task 5 – Complaint Procedures for IAD

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	44	Compliance Concern	Pending
	46	Compliance Concern	Pending
	52	Compliance Concern	Underway
	53	Compliance Concern	Pending
	55	Compliance Concern	Underway
	60	Compliance Concern	Pending

NSA Task 7 – Methods for Receiving Citizen Complaints

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	61	No Compliance Concern	Pending

NSA Task 11 – Summary of Citizen Complaints Provided to OPD Personnel

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	57	No Compliance Concern	Underway

NSA Task 12 – Disclosure of Possible Investigator Biases

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	7	Compliance Concern	Completed
	49	Compliance Concern	Pending
	57	Compliance Concern	Underway

NSA Task 16 – Supporting IAD Process-Supervisor/Managerial Accountability

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	22	Compliance Concern	Underway
	39	Compliance Concern	Underway
	41	Compliance Concern	Pending
	42	Compliance Concern	Underway

NSA Task 19 – Unity of Command

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	6	Compliance Concern	Underway
	23	Compliance Concern	Underway
	24	Compliance Concern	Completed
	25	Compliance Concern	Pending

NSA Task 20 – Span of Control for Supervisors

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	11	No Compliance Concern	Completed
	24	Compliance Concern	Completed

NSA Task 24 and 25 – Use of Force Reporting; Use of Force Investigation and Report Responsibilities

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	2	Compliance Concern	Pending
	16	Compliance Concern	Underway
	20	Compliance Concern	Underway
	21	Compliance Concern	Completed
	29	Compliance Concern	Underway
	32	Compliance Concern	Underway
	34	No Compliance Concern	Pending
	35	Compliance Concern	Underway
	36	Compliance Concern	Underway

NSA Task 26 – The Force Review Board (FRB)

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	26	Compliance Concern	Underway
	27	Compliance Concern	Underway

NSA Task 27 – Oleoresin Capsicum Log and Check Out Procedures

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	2	Compliance Concern	Pending
	21	Compliance Concern	Completed

NSA Task 29 – IAD Investigation Priority

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	59	No Compliance Concern	Pending

NSA Task 30 – Executive Force Review Board

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	26	Compliance Concern	Underway
	27	Compliance Concern	Underway

NSA Task 32 – Use of Camcorders

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Inactive	31	Compliance Concern	Underway

NSA Task 33 – Supporting the IAD Process – Supervisory/Managerial Accountability

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	22	Compliance Concern	Underway
	39	Compliance Concern	Underway

NSA Task 43 – Academy and In-Service Training

<u>TASK STATUS</u>	<u>FINDING #</u>	<u>CONCLUSION</u>	<u>OPD REPORTED STATUS</u>
Active	14	Compliance Concern	Completed
	17	Compliance Concern	Underway
	64	No Compliance Concern	Underway
	65	Compliance Concern	Underway
	66	Compliance Concern	Underway
	67	Compliance Concern	Underway

Section Two

Compliance Assessments

1. NSA Task 1 – IAD Staffing and Resources

NSA Task 1 is currently an inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified three Findings and Recommendations which in part or in whole relate to Task 1. We found that these raised compliance concerns for Task 1, and outlined below:

A. Frazier Independent Investigation Finding #46:

During the course of their investigation, the Frazier Group, LLC (“Frazier Group”) found that current OPD policies and practices regarding the release and communication of information obtained from an internal affairs (administrative) investigation to criminal investigators (and others who do not have a need or right to know) does not meet current standards of preferred practices. This presents potential compliance concerns for Task 1.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Commanding Officer of CID advised that DGO K-4.1 may be updated to strengthen the language regarding this issue.

B. Frazier Independent Investigation Finding #57:

The Frazier investigation found that current OPD policies and practices regarding the release and communication of information obtained from an Internal Affairs (administrative) investigation to criminal investigators (and other members who do not have a need or a right to know) do not meet current standards and preferred practices. The Report provided that certain information obtained during IAD investigations is often confidential and should not be shared, accessed, or communicated in any manner with department members who do not have a need or a right to know this information. The Frazier Group found, however, that OPD does address this concern in part with OPD Training Bulletin TPV-TO1 Part 3. This presents potential compliance concerns for Task 1.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that the practice of having non-essential personnel present during IAD presentations at Executive Force Review Boards has been stopped. This change will be captured in the next version of DGO K-4.1, currently under revision.

C. Frazier Independent Investigation Finding #65:

The Report indicates that a careful review of existing investigations stemming from the Occupy Oakland events shows that many assigned investigators and supervisors lacked technical proficiency and, in many cases, the experience to conduct comprehensive, aggressive, and unbiased investigations. This presents potential compliance concerns for Task 1.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that OPD is researching POST training offerings to address these concerns.

2. **NSA Task 2 – Time Limits, Standards, and Compliance with IAD Investigations**

NSA Task 2 is currently an active task. While no one Finding and Recommendation specifically relates to Task 2, the events of October 25 generated numerous complaints, some of which are mentioned specifically in the Frazier Report. OPD was required to submit an investigative plan to the Court, detailing how it would handle the large influx of complaints. OPD is relying heavily on outside contractors to conduct the investigations of some of the more complex cases, or those involving a possible conflict of interest. Those complaints filed contemporaneous to or within a few weeks of the event should have been completed during April or May, 2012. Most were not, raising obvious compliance concerns with Task 2.

3. **NSA Task 5 – Complaint Procedures for IAD**

NSA Task 5 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified six Findings and Recommendations which in part or in whole relate to Task 5. We found that these raise compliance concerns for Task 5, as outlined below:

A. Frazier Independent Investigation Finding #44:

The Frazier investigators determined that current OPD policies and practices regarding risk management and quality assurance of IAD and CID investigations do not meet current standards or preferred practices. Specifically, the Report stated that OPD policies and technology do not meet current standards regarding equipment and software necessary to adequately compare and reconcile information available from multiple sources. This presents potential compliance concerns for Task 5.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management and the Captain in charge of the Office of Inspector General (OIG) indicated that an audit of CID case interviews is tentatively scheduled for November. They advised that the OIG function is slated to be transferred to City Hall sometime after January 1. This may potentially impact the audit schedule for NSA Tasks slated to be conducted in the coming year.

B. Frazier Independent Investigation Finding #46:

The Frazier investigation determined that current OPD policies and practices regarding the release and communication of information obtained from an Internal Affairs (administrative) investigation to criminal investigators (and others who do not have a need or right to know) do not meet current standards or preferred practices. This presents potential compliance concerns for Task 5.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Commanding Officer of CID advised that DGO K-4.1 may be updated to strengthen the language around this issue.

C. Frazier Independent Investigation Finding #52:

The Report provided that current OPD policies and practices related to IAD do not represent current standards and preferred practices regarding assertive, thorough, objective, and appropriate criminal and administrative investigative processes. The policies and practices have a definitive impact in the determination of assignments, identification of responsibilities, and actions-taken by on-scene public safety personnel. The Frazier Group's review and analysis revealed a need for departmental investigators to better comply with OPD policies and utilize contemporary IAD investigative procedures. A critical component of IAD investigations involves determining public safety observations and actions prior to, during, and after the collapse of a citizen on October 25, 2011. The Report stated that OPD should take every reasonable and legal administrative investigative action to determine the following from on scene public safety personnel: who could have observed or reasonably should have observed the subject collapse and lay on the ground; what efforts, if any, were made to identify a supervisor; who made the immediate efforts to direct or request medical attention; who made immediate efforts to determine if the cause of the subject's injuries was a Level 1 Use of Force; and who made immediate efforts to ensure potentially involved public safety personnel, along with their less lethal weapons, ammunition, and portable digital recording devices (PDRD), as well whether any potential evidentiary items, were identified and secured. Based on Report findings that subjects on scene should have, did, or could have reasonably known of the injury caused to the citizen, OPD's investigation of this incident will be reviewed for compliance with the requirements of Task 5.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

D. Frazier Independent Investigation Finding #53:

The Report found that current OPD policies and practices regarding IAD investigations do not consistently meet current standards and preferred practices, specifically when measuring the department's: ability to be assertive and thorough; willingness to challenge inconsistencies; commitment to reconciling incongruity; and commitment to finding the facts regardless of the outcome. Investigative interviews conducted with OPD personnel identify a long-time practice of not challenging subject and witness officers. Members of the department observed tacit approval of misconduct by supervisors and commanders. If misconduct is not reported, the misconduct may continue. IAD investigators appear reluctant to sustain complaints against particular members. Specifically, a ranking member stated, "I have little faith that IA can get it right and have even less faith that CID will do the case right. The CID investigation would be a waste of time. I do not have faith in the IA or CID process." This presents potential compliance concerns for Task 5.

(1) OPD Reported Status: Pending.

(2) During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that there have already been personnel changes in IAD based on performance issues. OPD will also enforce its six year term limit for IAD assignments. In addition, the Training Section Commanding Officer is exploring the availability of IA Investigator courses and interview and interrogation training for both IAD and CID personnel.

E. Frazier Independent Investigation Finding #55:

The Report found that current OPD policies and practices regarding the assignment of responsibilities to CID and IAD personnel may pose inherent conflicts of interest or individual negative consequences and therefore do not meet current standards and preferred practices. The Report stated that OPD policies, practices, and assignments have placed both CID and IAD investigators in positions of potential investigative conflict. This conclusion was based on multiple findings. First, based on the current practice of OPD and IAD, when a misconduct investigation involves a subject officer of a higher rank than the investigator, which is usually a Sergeant, it is assigned to the IAD Sergeant as a dedicated case investigator. While it is OPD practice to sometimes utilize an equal or higher ranking officer during interviews, the finding is still the responsibility of the case Sergeant. This practice is in direct conflict with the manner in which CID handles its investigations, which is to assign

investigations to a department member who is at least one rank higher than the subject officer or member.

Second, during the Occupy Oakland event of October 25, 2011, several members of the OPD IAD of all ranks were assigned to field positions. In fact, one IAD Sergeant participated in a physical arrest of a protest participant.

Third, during the October 25, 2011 event, OPD and department leadership assigned IAD investigative personnel to produce Use of Force reports and then turned around and assigned misconduct investigations from the same event to the same IAD investigator. This presents potential compliance concerns for Task 5.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual, will be amended to require that a person of at least one higher rank participate in the interview of subject officers. Additionally, Crowd Control policies are being amended to prohibit the assignment of IAD personnel to field positions during these types of incidents.

F. Frazier Independent Investigation Finding #60:

The Frazier investigation found that current OPD policies and practices regarding the massive IAD intake and investigator case load do not meet current standards and preferred practices. This presents potential compliance concerns for Task 5.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that IAD is hiring a workflow consultant to review its intake and investigative processes.

4. NSA Task 7 – Methods for Receiving Citizen Complaints

NSA Task 7 is currently an active task (only for one subtask). Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified one Finding and Recommendation which in part or in whole relates to Task 7.

A. Frazier Independent Investigation Finding #61:

The Report found that current OPD policies and practices regarding soliciting and obtaining information from reluctant complainants or witnesses indicate an opportunity for

improvement. During the course of their investigation, interviews disclosed that some individuals who have misconduct complaints or criminal complaints about OPD members, or who served as sources of information during CID and IAD investigations, chose not to initiate contact with the OPD IAD and/or identify themselves. The Report identified three common denominators as to why some people chose not to report to IAD: (1) the complainant is concerned about being identified as a criminal; (2) the complainant may fear retaliation; and (3) the complainant is hesitant to trust OPD IAD and, in some cases, the CPRB. Despite this finding, based on our regular reviews of cases related to Task 7, this does not present compliance concerns.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that OPD does not plan any policy or procedure changes to address this issue. He asserted – and our quarterly reviews support – that OPD will take complaints from all sources, including anonymous sources. Further, OPD will initiate complaints based on internet postings, such as those found on YouTube, whether or not a complainant comes forward.

5. NSA Task 11 – Summary of Citizen Complaints Provided to OPD Personnel

NSA Task 11 is currently an Inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified one Finding and Recommendation which in part or in whole relates to Task 11.

A. Frazier Independent Investigation Finding #56:

The Report found that current OPD policies and practices regarding when subject officers and witness officers are notified (“noticed”) of a misconduct investigation, and the orders related to confidentiality pertaining thereto, do not meet current standards or preferred practices. Specifically, the Report focused on the fact that officers who are subjects of IAD investigations are not ordered to not communicate with others regarding the components of the IAD interview or investigation, and that they are not to disclose any information discussed in the interview except to his or her representative or attorney. While Task 11 addresses notice to OPD personnel regarding complaints filed against them, Task 11 does not address the timeframe for notifying OPD personnel or that any admonishment should be given to them. This does not present compliance concerns for Task 11.

(1) OPD Reported Status: Underway.

6. NSA Task 12 – Disclosure of Possible Investigator Biases

NSA Task 12 is currently an Inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we

identified three Findings and Recommendations which in part or in whole relate to Task 12. We found that these raised compliance concerns for Task 12, as outlined below:

A. Frazier Independent Investigation Finding #7:

The Report found that by selecting the IAD Commanding Officer as the B-Watch Operations Section Chief shortly before the Occupy Oakland event, OPD demonstrated a lack of executive oversight. It is clear that having the Commanding Officer of Internal Affairs as the Operations Section Chief during Occupy Oakland, October 25, 2011, did place him in a position of conflict and bias. This presents potential compliance concerns for Task 12.

(1) OPD Reported Status: Completed.

During our on-site interviews, the Assistant Chief expressed agreement with the finding, and stated it was not the Department's regular practice to assign the IAD commanding officer in this manner. He indicated that such assignments would not take place in the future. We advised that the prohibition of such assignment must be memorialized in policy.

B. Frazier Independent Investigation Finding #49:

The Report finds that current OPD policies and practices regarding the assignment of IAD and CID personnel create potential conflicts of interest. In particular, assigning OPD CID and IAD personnel to uniform positions and responsibility during a protest event likely to result in confrontation and force has a clear potential to conflict out the IAD or CID member from conducting or managing investigations related to the event. In addition, the investigator may be a witness to the alleged misconduct or the investigator may themselves become the subject officer of an alleged criminal or administrative complaint. As a result, IAD members may find themselves scrutinized for the possibility of bias as a result of being on sight at the time of the incident. This presents potential compliance concerns for Task 12.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Assistant Chief expressed agreement with the finding, and stated it was not the Department's regular practice to assign the IAD or CID personnel in this manner. He indicated that such assignments would not take place in the future. We advised that the prohibition of such assignment must be memorialized in policy.

C. Frazier Independent Investigation Finding #57:

The Report found that current OPD policies and practices regarding the release and communication of information obtained from internal affairs to criminal investigators

(and other members who do not have a need or a right to know) do not meet current standards and preferred practices. The Report provided that certain information obtained during IAD investigations is often confidential and should not be shared, accessed, or communicated in any manner with department members who do not have a need or a right to know. The Frazier Group investigation found, however, that OPD does address this concern in part with policy OPD Training Bulletin TPV-TO1 Part 3. This presents potential compliance concerns for Task 12.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that the practice of having non-essential personnel present during IAD presentations at Executive Force Review Boards has been stopped. This change will be captured in the next version of DGO K-4.1, currently under revision.

7. NSA Task 16 – Supporting IAD Process-Supervisor/Managerial Accountability

NSA Task 16 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified four Findings and Recommendations which in part or in whole relate to Task 16. We found that these raised compliance concerns for Task 16, as outlined below:

A. Frazier Independent Investigation Finding #22:

According to the B-Watch Operations Section Chief, the Level 1 use of force incident of October 25, 2011, was not reported to him until later that evening, at approximately 10:00 p.m., when the incident occurred at approximately 7:40 p.m. The Frazier Group reviewed hours of video footage involving the injured party who appeared to be approximately 15 to 25 feet in front of the police skirmish line when he was struck and fell to the ground. The fact that no law enforcement officer, supervisor, or commander observed the person falling down or laying prostrate in the street during the confrontation was unsettling and not believable. OPD policy mandates a reporting requirement, as well as the requirement to provide immediate medical attention. This was not done. This presents potential compliance concerns for Task 16.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

B. Frazier Independent Investigation Finding #39:

The Report found that current OPD policies and practices to evaluate and identify potential officer-involved criminal activity do not meet current standards or preferred practices. The

skirmish line contained multiple supervisors who did, should have, or could have witnessed the force which led to the subject being struck with less lethal munitions, and those supervisors took no action. The Frazier investigators also became aware of other potential officer involved criminal activity during their review of video footage and interviews. This presents potential compliance concerns for Task 16.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

C. Frazier Independent Investigation Finding #41:

The Report indicates that current OPD policies and practices do not meet current standards or preferred practices regarding the level of gravity associated with officer-involved criminal allegations and the commensurate investigations. The Report notes that allegations involving criminal conduct by officers should be analyzed and that the ultimate decision to assign cases to CID for criminal investigation rests with the Chief of Police. IAD or mid-level supervisors should not bear this responsibility, absent clear cut guidelines for making these determinations. This presents potential compliance concerns for Task 16.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Commanding Officer of CID indicated that DGO M-4.1 will be revised to outline who will be responsible for making these investigative decisions. The Commanding Officer of CID currently decides what cases will be investigated by his unit.

D. Frazier Independent Investigation Finding #42:

The Report found that current OPD policies and practices delegate inordinate discretion to the Criminal Investigation Division (CID) Commanders to decide whether or not to initiate an officer-involved criminal investigation. Based on the fact that clear evidence indicates that: officer conduct on October 25, 2011 reasonably indicates that both criminal law and administrative policy were violated, and supervisors and commanding officers on the scene failed to identify officer-involved criminal conduct, this presents potential compliance concerns for Task 16.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

8. NSA Task 19 – Unity of Command

NSA Task 19 is currently an Inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified four Findings and Recommendations which in part or in whole relate to Task 19. We found that these raised compliance concerns for Task 19, as outlined below:

A. Frazier Independent Investigation Finding #6:

The Report found that during interviews conducted of personnel assisting with the planning of the Occupy Oakland response on October 25, 2011, it was clear that additional civilian professional staff was necessary to assist with preparation of incident command system documentation and staffing of the emergency operations center. The Report revealed that these responsibilities were thrust upon an untrained person who was placed in a position of decision-making and lacked situational awareness of the events on the street, in violation of the Unity of Command theory. Based on the fact that proper supervision was not provided to individuals within the emergency operations center, this presents potential compliance concerns for Task 19.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Assistant Chief indicated that OPD is working on expanding the number of civilian personnel who are capable of performing Incident Command System duties. Personnel have been identified and training is being arranged.

B. Frazier Independent Investigation Finding #23:

The Report found that current OPD policies and practices governing mutual aid assistance within the City of Oakland, and protocols ensuring post-event collection of documentation from all participating agencies, did not meet current standards or preferred practices. A review of the mutual aid records from October 25, 2011, reveals that most mutual aid agencies were allowed to demobilize and return to their jurisdictions prior to proper accounting for arrests, injuries, use of force applications, and less lethal chemical applications. This presents potential compliance concerns for Task 19.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Assistant Chief advised that OPD's mutual aid policy is currently under development, and is heavily dependent on the involvement of the City Attorney's Office.

C. Frazier Independent Investigation Finding #24:

A review of the Incident Action Plan (IAP) and Operational Plan Annex for B-Watch on October 25, 2011 reveals that mutual aid resources were utilized to defend FOP Park, primarily due to the shortage of OPD personnel. It was determined that mutual aid resources were intermixed with OPD tactical resources at locations where mutual use of force applications occurred. The Frazier Group concluded that allied agencies should not be comingled with OPD personnel when they have not trained together previously. As a result of the comingling of forces, accountability for inflicting injuries to protestors was severely hampered. Based on the evidence identified in the Report regarding the manner in which mutual aid resources were allowed to comingle with OPD, this presents potential compliance concerns for Task 19.

(1) OPD Reported Status: Completed.

During our on-site interviews, OPD advised that in the future, the only comingling of mutual aid resources will be OPD “pathfinder officers” assigned to squads of officers from other jurisdictions. Additionally, the mutual aid resources will be deployed to support roles where possible, freeing up OPD personnel for direct interaction with the citizens involved in the incidents. We advised that these changes must be incorporated into policy.

D. Frazier Independent Investigation Finding #25:

The Report finds that circumstances that precipitated a request for and a deployment of mutual aid resources must be clearly defined within the OPD mutual aid policy. The Report stated that this policy should clearly articulate both OPD responsibilities and responsibilities of responding agencies. It was determined during A-Watch that prior to deployment, responding mutual aid teams received a “force and arrest” briefing that specifically advised them that: outside law enforcement agencies should only deploy chemical agents at the direction of OPD; outside law enforcement agencies should not use electronic weapons against the crowd, and that outside law enforcement agencies should not use launched less lethal impact munitions unless directly threatened by an individual who is an immediate threat to their safety. During the B-Watch October 25, 2011, at 14th and Broadway Streets, it was unclear if outside agencies followed the guidance that OPD provided. Based on the Report findings, it is clear that OPD Command staff did not provide a clear unity of command to ensure that responding mutual aid units followed the required standards and this presents potential compliance concerns for Task 19.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Assistant Chief indicated that these recommendations would be incorporated into OPD’s mutual aid policy.

9. NSA Task 20 – Span of Control for Supervisors

NSA Task 20 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified two Findings and Recommendations which in part or in whole relate to Task 20. We found that these raised compliance concerns for Task 20, as outlined below:

A. Frazier Independent Investigation Finding #11:

The Report found that the B-Watch Operations Section Chief did not have adequate OPD resources to police the FOP Park. These resources should have included an adequate number of officers and “experienced” OPD commanders and supervisors to monitor deployment of chemical agents and to dynamically utilize law enforcement forces to disperse the crowd. Based on the evidence identified in the Report, the supervisor to officer ratio cannot be determined, although it is apparent that there were not sufficient resources on sight to handle the situation. Not knowing the supervisor to officer ratio, we cannot definitively say that this finding raises compliance concerns for Task 20.

(1) OPD Reported Status: Completed.

During our on-site interviews, the Assistant Chief conceded that a lack of critical intelligence led to the lack of sufficient resources on the B-Watch. He correctly pointed out that there is no implementable recommendation with this finding.

B. Frazier Independent Investigation Finding #24:

A review of the IAP and Operational Plan Annex for B-Watch on October 25, 2011 reveals that mutual aid resources were utilized to defend FOP Park, primarily due to the shortage of OPD personnel. It was determined that mutual aid resources were intermixed with OPD tactical resources at locations where use of force applications occurred. The Frazier Group concluded that allied agencies should not be comingled with OPD personnel when they have not trained together previously. As a result of the comingling of forces, accountability for inflicting injuries to protestors was severely hampered. Based on the evidence identified in the Report regarding the manner in which mutual aid resources were allowed to comingle with OPD, this presents potential compliance concerns for Task 20.

(1) OPD Reported Status: Completed.

During our on-site interviews, OPD advised that in the future, the only comingling of mutual aid resources will be OPD “pathfinder officers” assigned to squads of officers from other jurisdictions. Additionally, the mutual aid resources will be deployed to support roles where possible, freeing up OPD personnel for direct interaction with the citizens involved in the incidents. We advised that these changes must be incorporated into policy.

10. NSA Tasks 24 and 25 – Use of Force Reporting; Use of Force Investigation and Report Responsibilities

NSA Task 24 and 25 are currently active tasks. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified 9 Findings and Recommendations which in part or in whole relate to Task 24 or 25. We found that these raised compliance concerns for Tasks 24 and 25, as outlined below:

A. Frazier Independent Investigation Finding #2:

The Report identified that Department General Order K-3 (1 August 2007 – Use of Force) was outdated and should be updated. Specifically, the Report stated that a recent 9th Circuit Appellate decision – *Young v. County of Los Angeles* (9th Cir Aug 26, 2011), found that the use of pepper spray and a baton on a non-combative, albeit uncooperative citizen is excessive force. The Frazier Group stated OPD should utilize the analysis of this case as guiding authority for an updated version of Department General Order K-3. Based on OPD's failure to maintain their Use of Force policy pursuant to current case law, this presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Pending.

During our on-site interviews, Training Section representatives indicated that a committee has been formed to look at combining all of OPD's use of force policies into one comprehensive policy. The resulting policy will incorporate the recommendations in this finding.

B. Frazier Independent Investigation Finding #16:

The Report found that during the evening deployment (B-Watch) at FOP Park, following a decision authorizing less lethal munitions and chemical agents, officers from OPD and allied agencies deployed chemical agents from behind bicycle fence barriers. The protestors retrieved and threw several of these canisters back at the police. It was believed that during this exchange the victim of a Level 1 Use of Force was most likely struck in the head with a bean bag round and critically injured. Immediately following his injury, and while he was lying on the ground, at least one chemical agent canister was deployed by an identified OPD officer into a small crowd that had surrounded the victim to render aid. The Report concluded that there are "serious concerns regarding the quality and breadth of the OPD criminal investigation of this event." This presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor. The criminal investigation has also been reassigned within CID.

C. Frazier Independent Investigation Finding #20:

The Report found that based on existing policy, the deployment and approval of specialty impact less lethal weapons on the night of October 25, 2011, may or may not have been reasonable. What is clear, however, is that each usage within an incident is required to be reported and analyzed separately to ensure compliance with OPD Policy. This policy was not followed on the evening of October 25, 2011. Based on OPD's failure to properly report the use of specialty impact less lethal weapons, this presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

D. Frazier Independent Investigation Finding #21:

The Report found that less lethal munitions and chemical agent issuance/usage records for Tango Team members and supervisors do not exist for October 25, 2011. Based on the Report finding that detail records were not kept regarding an accounting of deployed or supplied munitions, this presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Completed.

During our on-site interviews, we were advised that the Training Section has established "Tango Kits" – inventoried boxes of various munitions which are sealed and assigned to Tango Teams. At the end of a deployment, the boxes are inventoried again for an accounting of any munitions which may have been used. We advised that these changes must be incorporated into policy.

E. Frazier Independent Investigation Finding #29:

The Report found that OPD policies and practices regarding completion and content of Use of Force Reports did not meet current standards or preferred practices. OPD personnel are guided by policy when using force and are required to document their use of force or their individual presence during use of force incidents on an appropriate form when it is an "investigated use of force." It is clear that an unacceptable number of OPD Use of Force and Participant Officer Reports written after the October 25 event were inadequate. Training,

mutual aid advisories and collection of reports from OPD and mutual aid personnel were deficient. This presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the current practice of assigning a sergeant to conduct use of force investigations for a “company” of officers (about 50 personnel) will be changed. This responsibility will be no greater than the “squad” level (approximately 8 personnel). We advised that these changes must be incorporated into policy.

F. Frazier Independent Investigation Finding #32:

The Report found that OPD policies and practices regarding responsibility for operation Use of Force Reports and the collection and submission of individual supplemental Use of Force Reports did not meet contemporary standards or preferred practices. The Report identified that the OPD Policy DGO K-4 requires that supervisors of members who use Level 2 or Level 3 forces must investigate and complete a Use of Force Report. Included in this Use of Force Report is a recommendation from the supervisor that finds the use of force within or outside of policy. Additionally, the Report found that an operation plan for both “A” and “B” Watches on October 25, 2011 directed that the Incident Commander would designate a report writing team of one Sergeant and two officers. The team’s responsibility, in part, was to complete a mass Use of Force Report. In essence, it would require the team to collect individual officer reports; review, investigate, and document the gathered information; and make a finding for each individual within 15 days. The Report indicated that collecting and indexing reports was problematic. The use of force reports were not completed, not submitted, or not located; and were ultimately not completed within policy deadlines. Initial Use of Force reports submitted through the chain of command were reviewed and determined to be deficient, and had to be returned for additional work. The Frazier Group found that this issue may have occurred, in part, because some authors of use of force reports may not possess requisite expertise in the issues reviewed. In this case the issues reviewed were: the strategies, tactics, weapons, and munitions used on October 25, 2011. This presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the current practice of assigning a sergeant to conduct use of force investigations for a “company” of officers (about 50 personnel) will be changed. This responsibility will be no greater than the “squad” level (approximately 8 personnel). We advised that these changes must be incorporated into policy.

G. Frazier Independent Investigation Finding #34:

The Report found that OPD policies and practices regarding the reporting and investigating of Levels 2, 3, and 4 uses of force do not meet current standards or preferred practices. Particularly, OPD policy K-4 directs that for any use of force investigation which indicates misconduct, the commanding officer shall complete, at a minimum, a Level 2 use of force investigation. This investigation requires, in part, collecting reports and interviewing involved personnel. The Frazier Group recommended that OPD consider a more assertive use of the CID when allegations of criminal misconduct are possible. There is also concern of a potential conflict which may arise when an indication of criminal or administrative misconduct is identified by the on scene supervisor or commander and the supervisor's investigation continues, as required by policy, when CID and IAD should be notified and involved. While the Report identified important issues to prevent future conflicts between street supervisors and CID/IAD investigations, and stated that the policy should be analyzed, the finding does not present compliance concerns with Tasks 24 and 25.

(1) OPD Reported Status: Pending.

During our on-site interviews, Training Section Staff advised that they are awaiting the results of the IAD investigations into the October 25 incident. The recommendations associated with this finding, and any recommendations resulting from the IAD investigations, will be incorporated into the Use of Force policy consolidation project.

H. Frazier Independent Investigation Finding #35:

The Report found that after a review of the Operations Plan for October 25, 2011, reference is made to "use of force in major crowd situations." The Operations Plan provides: "officers shall make an effort to arrest suspects when force is used to gain compliance." The Report identified that during crowd control and crowd management efforts on October 25, 2011, there were a number of incidents where OPD used less lethal force. However, virtually no effort was made to take the suspects into custody when it would have been reasonable to do so. This is particularly evident between the hours of 7:30 p.m. and 11:30 p.m. in the vicinity of 14th and Broadway. This presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that as soon as the updated Crowd Control policy is finished, the Training Section will be tasked with developing and delivering the training curricula recommended by the Frazier group as a result of this Finding.

I. Frazier Independent Investigation Finding #36:

The Report finds that the Operations Order for October 25, 2011, "Report Writing," provides that "all personnel involved in the operations shall complete a supplemental report along with a suspect's page in cases where officers arrest suspects." Supplemental report forms documenting arrests, injuries, use of force incidents, and munitions expended by any involved law enforcement agency should be submitted to the OPD Planning Section prior to being released from duty or mutual aid. The Report clearly finds that these requirements were not met on the evening of October 25, 2011, and most documents have not been turned in at all. This presents potential compliance concerns for Tasks 24 and 25.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Assistant Chief advised that during subsequent mutual aid events, the appropriate forms were completed and collected from OPD and assisting agency personnel prior to demobilization. We advised that these changes must be incorporated into policy.

11. NSA Task 26 – The Force Review Board (FRB)

NSA Task 26 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified two Findings and Recommendations which in part or in whole relate to Task 26. We found that these raised compliance concerns with Task 26, as outlined below:

A. Frazier Independent Investigation Finding #26:

The Report found that OPD Force Review Boards have yet to individually evaluate the numbers and types of force applied during the October 25, 2011, for reasonableness and adherence to OPD policy. Based on the Report findings that the Level 1 and Level 2 uses of force utilized on October 25, 2011 have not been reviewed, this presents potential compliance concerns for Task 26.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management acknowledged that the use of force cases had not been reviewed by FRBs, but OPD intends to insure that policy is followed. Timeliness of the reviews will be an issue.

B. Frazier Independent Investigation Finding #27:

The Report found that OPD policy requires that department FRBs review Level 1 and Level 2 use of force applications. The Frazier Group found that OPD FRBs have yet to individually evaluate Level 1 and Level 2 use of force incidents during the October 25, 2011 incident, an

event more than six months ago, for policy compliance. Based on the Report findings that FRBs still have not reviewed Level 1 and Level 2 uses of force, this presents potential compliance concerns for Task 26.

(1) OPD Reported Status: Underway.

As mentioned above, during our on-site interviews, the Deputy Chief for the Bureau of Risk Management acknowledged that the use of force cases had not been reviewed by FRBs, but OPD intends to insure that policy is followed. Timeliness of the reviews will be an issue.

12. NSA Task 27 – Oleoresin Capsicum Log and Check Out Procedures

NSA Task 27 is currently an Inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified two Findings and Recommendations which in part or in whole relate to Task 27. We found that these raised compliance concerns for Task 27, as outlined below:

A. Frazier Independent Investigation Finding #2:

The Report identified that the Department General Order K-3 (1 August 2007 – Use of Force) was outdated and should be updated. Specifically, they stated that a recent 9th Circuit Appellate decision – *Young v. County of Los Angeles* (9th Cir Aug 26, 2011), found that the use of pepper spray and a baton on a non-combative, albeit uncooperative, citizen is excessive force. The Frazier Group found that OPD should use this case as guiding authority to update the current version of Department General Order K-3. This presents potential compliance concerns for Task 27.

(1) OPD Reported Status: Pending.

During our on-site interviews, Training Section representatives indicated that a committee has been formed to look at combining all of OPD's use of force policies into one comprehensive policy. The resulting policy will incorporate the recommendations in this finding.

B. Frazier Independent Investigation Finding #21:

The Report found that less lethal munitions and chemical agent issuance/usage records for Tango Team members and supervisors do not exist for October 25, 2011. Based on Report findings that detailed records were not kept regarding an accounting of deployed or supplied munitions, this presents potential compliance concerns for Task 27.

(1) OPD Reported Status: Completed.

During our on-site interviews, we were advised that the Training Section has established “Tango Kits” – inventoried boxes of various munitions which are sealed and assigned to Tango Teams. At the end of a deployment, the boxes are inventoried again for an accounting of any munitions which may have been used. We advised that these changes must be incorporated into policy.

13. NSA Task 29 – IAD Investigation Priority

NSA Task 29 is currently an Inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified one Finding and Recommendation which in part or in whole relates to Task 29. Based on our analysis, we do not believe this presents compliance concerns with Task 29:

A. Frazier Independent Investigation Finding #59:

The Report found that current OPD policies and practices regarding subject-officer admonishment and potential consequences do not meet current standards and preferred practices. The Report identified that subject officers in misconduct investigations are often provided a *Lybarger* advisement. The *Lybarger* advisement is unique to California law enforcement in the sense that it requires that the subject-officer must provide a statement to IAD investigators regardless of the nature (criminal or administrative) of the alleged misconduct. The Report identified, however, that there are circumstances where a subject officer statement resulting from a *Lybarger* advisement may be accessed and potentially used during criminal prosecution. The Report stated that department members should be reasonably informed of the vulnerability inherent in providing a statement when measured against the consequences of refusing to provide one. While this may be sound advice for OPD, we do not believe that this presents compliance concerns for Task 29.

(1) OPD Reported Status: Pending.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management advised that Departmental Training Bulletin V-T.1, Internal Investigation Procedure Manual, will be amended to address this and other recommendations of the Report.

14. NSA Task 30 – Executive Force Review Board (EFRB)

NSA Task 30 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified 2 Findings and Recommendations which in part or in whole relate to Task 30. We found that these raised compliance concerns for Task 30, as outlined below:

A. Frazier Independent Investigation Finding #26:

The Report found that OPD Force Review Boards (to include Executive Force Review Boards) have yet to individually evaluate the numbers and types of force applied during the October 25, 2011, for reasonableness and adherence to OPD policy. Based on the Report findings that the Level 1 and Level 2 uses of force utilized on October 25, 2011 have not been reviewed, this presents potential compliance concerns for Task 30.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management acknowledged that the use of force cases had not been reviewed by EFRBs, but OPD intends to insure that policy is followed. Timeliness of the reviews will be an issue.

B. Frazier Independent Investigation Finding #27:

The Report found that OPD policy requires that department FRBs (to include EFRBs) review Level 1 and Level 2 use of force applications. The Frazier Group found that OPD FRBs and EFRBs have has yet to individually evaluate Level 1 and Level 2 use of force incidents during the October 25, 2011 incident, an event more than six months ago, for policy compliance. Based on the Report findings that FRBs, to include EFRBs, still have not reviewed Level 1 and Level 2 uses of force, this presents potential compliance concerns for Task 30.

(1) OPD Reported Status: Underway.

As mentioned above, during our on-site interviews, the Deputy Chief for the Bureau of Risk Management acknowledged that the use of force cases had not been reviewed by EFRBs, but OPD intends to insure that policy is followed. Timeliness of the reviews will be an issue.

15. NSA Task 32 – Use of Camcorders

NSA Task 32 is currently an inactive task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified one Finding and Recommendation which in part or in whole relates to Task 32. We found that this raised compliance concerns for Task 30, as outlined below:

A. Frazier Independent Investigation Finding #31:

The Frazier Group found that OPD policies and practices regarding portable digital recording devices (PDRDs) must be significantly modified to address routine usage issues, as well as use which is unique to long term crowd management and control events. The Report found that the OPD Operations Plan for Phase 1 (A-Watch) directed that officers assigned PDRDs shall activate cameras per department policy. The Operations Plan for Phase 2 (B-Watch) was more precise, directing personnel who had been issued a PDRD were required to wear it and activate it if directly engaged with the crowd. While the focus of Task 32 is to utilize camcorders in patrol vehicles, OPD has made the conscious decision to utilize PDRD cameras and failed to have proper practices in place regarding their use for this event. This presents potential compliance concerns for Task 30.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Assistant Chief advised the PRRD general order is currently under revision, and the recommendations of this finding will be incorporated into that process.

16. NSA Task 33 – Supporting the IAD Process – Supervisory/Managerial Accountability:

NSA Task 33 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified two Findings and Recommendations which in part or in whole relate to Task 33. We found that this raised compliance concerns for Task 33, as outlined below:

A. Frazier Independent Investigation Finding #22:

According to the B-Watch Operations Section Chief, the Level 1 use of force incident of October 25, 2011, was not reported to him until later that evening, at approximately 10:00 p.m., when the incident occurred at approximately 7:40 p.m. The Frazier Group reviewed hours of video footage involving the injured party who appeared to be approximately 15 to 25 feet in front of the police skirmish line when he was struck and fell to the ground. The fact that no law enforcement officer, supervisor, or commander observed the person falling down or laying prostrate in the street during the confrontation was unsettling and not believable. OPD policy mandates a reporting requirement, as well as the requirement to provide immediate medical attention. This was not done. This presents potential compliance concerns for Task 33.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

B. Frazier Independent Investigation Finding #39:

The Report found that current OPD policies and practices to evaluate and identify potential officer-involved criminal activity do not meet current standards or preferred practices. The skirmish line contained multiple supervisors who did, should have, or could have witnessed the force which led to the subject being struck with less lethal munitions, and those supervisors took no action. The Frazier investigators also became aware of other potential officer involved criminal activity during their review of video footage and interviews. This presents potential compliance concerns for Task 33.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised that the investigation of this incident has been assigned to an outside contractor.

17. NSA Task 43 – Academy and In-Service Training

NSA Task 43 is currently an active task. Based on our analysis of the Frazier Group, LLC Independent Investigation of the Occupy Oakland Response on October 25, 2011 we identified 6 Findings and Recommendations which in part or in whole relate to Task 43. We found that this raised compliance concerns for Task 43, as outlined below:

A. Frazier Independent Investigation Finding #14:

The Frazier Group found that after a review of the current OPD Crowd Control Policy, and the actions conducted throughout October 25, 2011, OPD did not satisfactorily exercise current strategies to include Quick Response Teams, conduct coordinated and dynamic crowd control tactics, provide immediate medical assistance for injured parties, and consider strategies to minimize the deployment of chemical agents and less lethal impact munitions. Based on the Report findings, this presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Completed

During our on-site interviews, we were advised that the Department has appointed a Crowd Management Coordinator, assigning a Captain to this position. While this is a notable first step, many of the recommended duties of this position, including the development of crowd management and control training for the entire Department, have yet to be accomplished.

B. Frazier Independent Investigation Finding #17:

The Report found that the use of force involving less lethal impact munitions and chemical agents was not synchronized with on the ground tactics to achieve crowd control. The Report identified that once dispersal orders were given and chemical agents were deployed, there were no dynamic movements of forces to ensure dispersal of the hostile crowd and to make arrests when appropriate. The Report is clear that while use of force was conducted, appropriate procedures were not followed once the force and proper dispersal orders were given. In addition, the reporting and investigation requirements were not properly completed. This presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Underway.

During our on-site interviews, we were advised by Training Section staff that the membership in Tango Teams has been expanded, primarily by adding officers who have advanced patrol training. However, the combined training recommended as a result of this finding has not yet begun.

C. Frazier Independent Investigation Finding #64:

The Report found that a review of Occupy Oakland events identified on video and interviews conducted with department personnel revealed that OPD's crowd control tactics are outdated, dangerous, and ineffective. This presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Underway.

During our on-site interviews, Training Section Staff advised that OPD is currently field testing several options to upgrade their less lethal weapons capabilities, taking into account the recommendations of the Report. They have identified some issues with the weapons systems they are testing, and have been working with the various vendors to address them. Once equipment changes are finalized, training as recommended in the report will commence.

D. Frazier Independent Investigation Finding #65:

The Report indicates that a careful review of existing investigations stemming from the Occupy Oakland events shows that many assigned investigators and supervisors lacked technical proficiency and, in many cases, the experience to conduct comprehensive, aggressive, and unbiased investigations. This presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that OPD is researching POST training offerings to address these concerns.

E. Frazier Independent Investigation Finding #66:

The Frazier investigation found that after considerable interaction with Command and OPD's executive leadership levels, the general level of experience and the accompanying formal training, leadership, and management specialized skills are low. Additionally there is no formal training program in place to train future leaders in the many broad and complex components of a modern police department. This presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that OPD is researching POST training offerings to address these concerns.

F. Frazier Independent Investigation Finding #67:

The Report found that during the OPD review process, Frazier Group conducted three training sessions involving all levels within OPD. The training sessions included crowd management intervention, critical incident command, and subject matter expert crowd control tactics, use of force, chemical agents, and specialty munitions. The Frazier Group stated that the training sessions provided great insight into OPD leadership and expertise. Based on the hours of Frazier Group interviews, personnel interactions and observations, and the practical application portions of the training, it is the opinion of the Frazier Group subject matter experts that OPD does not have adequate mid-level management or critical incident management experience or expertise. This presents potential compliance concerns for Task 43.

(1) OPD Reported Status: Underway.

During our on-site interviews, the Deputy Chief for the Bureau of Risk Management indicated that OPD is researching POST training offerings to address these concerns.

Section Three

Conclusion

We commend the Frazier Group for the quality and thoroughness of their investigation and documentation of OPD's response to the October 25 Occupy Oakland Protest. Our goal in this review was not to reinvestigate the incident or duplicate their work.

As the Report documents in great detail, OPD's response to this incident was troubling. Our focus is, and will continue to be, OPD's reaction to their response, primarily from two perspectives. First, the incident consisted of and generated several activities which are directly related to NSA requirements and are under the direct purview of our review as the monitoring team. These include such things as incidents of uses of force, their investigation, review, and disposition; and citizen complaints, their investigation, review, and disposition. As OPD brings these individual investigations to closure, they will become the subject of our regular quarterly reviews.

Second, we will assess any systemic changes that OPD makes in the wake of the Report's findings. These include such things as changes to policy, development and delivery of training, organizational restructuring, and personnel assignments. Pursuant to court order, these activities are subject to the review and approval of the Monitor.

OPD is at a crossroads as it pertains to this issue. The Department cannot undo the events of October 25. It can, however, determine its response to them. We believe the Frazier Report lays out a roadmap for the Department to correct some glaring deficiencies. OPD and the City would be wise to embrace and implement the Report's recommendations. Not only do the citizens of the City of Oakland deserve a proper response to incidents such as the Occupy Oakland protests, but OPD's compliance with many of the NSA Tasks may be at stake if they do not properly address the numerous issues outlined in the Report.