

**FIRST QUARTERLY REPORT OF THE INDEPENDENT MONITOR**  
*Delphine Allen, et al., v. City of Oakland, et al.*

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

**Independent Monitoring Team**

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## **EXECUTIVE SUMMARY**

### **Introduction**

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement) resolving allegations of police misconduct raised by private plaintiffs in the civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* On August 28, 2003, Judge Thelton Henderson approved the appointment of Rachel Burgess, Kelli Evans, Charles Gruber and Christy Lopez to serve as the Independent Monitoring Team (IMT). This report is the first quarterly report of the IMT, covering the first ninety days of the IMT's tenure. It addresses the status of OPD's compliance with the Settlement Agreement from July 15, 2003, to October 15, 2003.

The reforms required by the Settlement Agreement are neither extraordinary nor unusual. They simply reflect professional policing standards and practices that are consistent with constitutional requirements. Indeed, one of the most common refrains heard by the IMT during its first quarter of work—from commanders, union officials, city officials and others—is that many provisions of the Settlement Agreement merely require OPD to do what it should have been doing all along. The Settlement Agreement requires police reforms in several areas, including: internal affairs; supervision of officers; police use of force; training; personnel practices; and community policing.

The City and OPD demonstrated courageous leadership when they recognized the need for reform and negotiated the Settlement Agreement. While the Settlement Agreement's requirements are not unusual, implementing institutional reform is always challenging and arduous. To OPD's credit, we have observed, for the most part, recognition of its own shortcomings and good faith efforts towards compliance with the Settlement Agreement. It is clear, however, that the successful implementation of the Settlement Agreement will require the sustained efforts of officials throughout the City, not just the efforts of the Oakland Police Department. Every City stakeholder in this endeavor: the Police Department; the City Manager; the Mayor; the City Council; the City Attorney's office; and the Oakland Police Officer's Association, has a critical role to play in these efforts. Unless each of these stakeholders energetically supports this process, it is unlikely that Oakland's police officers and the larger citizenry will reap the benefits of the Settlement Agreement's reforms.

Although the Settlement Agreement resolved a civil lawsuit, it is frequently associated with the criminal prosecution of three former Oakland police officers who were allegedly part of a group known as "The Riders." These former officers were prosecuted for allegedly engaging in a variety of misconduct, including the use of excessive force and the planting of evidence on citizens. On October 1, 2003, a jury acquitted the officers of some charges, but deadlocked on the majority of charges. The Alameda County District Attorney subsequently announced that the officers will be retried.



While the criminal prosecution involves allegations of criminal acts by three individual officers, the *Delphine Allen* civil litigation was broader in scope, alleging systemic failures by the Police Department and City that led to widespread constitutional violations by Oakland police officers. Thus, regardless of the eventual outcome of the criminal prosecution, the Settlement Agreement remains a vital and appropriate vehicle for achieving the broad reforms deemed necessary to ensure effective and respectful policing in Oakland.

If the City and the Oakland Police Department continue to recognize the value of these reforms and the shared responsibility for their implementation, the IMT is optimistic that this Settlement Agreement can dramatically improve the Oakland Police Department and its relationship with the people of Oakland.

### **IMT's Monitoring Activities During the First Quarter**

To educate ourselves about OPD operations and to begin monitoring compliance, the IMT conducted a variety of on- and off-site monitoring activities during its first ninety days. The IMT made several site visits to the Oakland Police Department and other relevant locations in Oakland. These site visits focused on meeting with the various stakeholders to the Settlement Agreement; familiarizing ourselves with OPD operations; participating in the monthly meetings required by the Settlement Agreement; and meeting with OPD's Office of Inspector General (OIG) and other officials regarding OPD's compliance efforts and status.

### **OPD Accomplishments & Areas of Concern**

#### **OPD Accomplishments**

Although there is no question that cynicism, fear and even obstructionism regarding the Settlement Agreement exist within OPD, overall the IMT is encouraged by the level of commitment to the Settlement Agreement within the Police Department. OPD and the City have taken a number of steps demonstrating their recognition that this Settlement Agreement is needed and is consistent with effective and vigorous policing, and that they are accordingly committed to its success. These steps include:

- establishing and adequately staffing a strong compliance unit under the auspices of the Office of Inspector General (OIG);
- conducting monthly monitoring meetings months before the IMT began its work;
- producing straightforward and fair internal accounts of OPD's own progress, including the public release of OPD's first semi-annual status report;
- the personal involvement and commitment of the Chief of Police; and
- drafting new policies and procedures in a number of areas.

## **Areas of Concern**

The IMT is concerned about two areas in particular: the development of OPD's Personnel Information Management System (PIMS) (Task 40); and the development of OPD's Consistency of Discipline policy (Task 45).

### **Personnel Information Management System (PIMS)**

The Settlement Agreement requires that OPD develop and implement a Personnel Information Management System (PIMS) (Task 40). This computer system is intended to improve OPD's ability to manage the risk of police misconduct, and to better evaluate and audit the performance generally of OPD members of all ranks. Further, the Settlement Agreement places certain parameters on using PIMS, and requires that OPD develop a policy incorporating these requirements (Task 41). While the compliance deadlines for these PIMS tasks are not until June 28, 2005, the size and complexity of this project require early and energetic commitment if it is to stay on track for timely and effective implementation.

After meeting with the police officials charged with overseeing development and implementation of PIMS, the IMT is concerned with the status of OPD's PIMS progress thus far. Although the officers from OPD's Information Technology unit assigned to this task appeared knowledgeable and committed to completing this project, in the IMT's view, their efforts will not be successful unless they begin receiving stronger support from OPD and the City. While OPD performed a variety of necessary work related to this task, including conducting background research, evaluating other departments' systems and meeting with the Mayor and City Manager, progress appears to have stalled. The commander in charge of the task reported that the PIMS subcommittee has not met in five months. OPD only recently assigned an officer to develop policies related to PIMS and no drafts of such policies have yet been produced. There are fundamental questions about the data PIMS is supposed to capture that remain unresolved. In short, OPD efforts on this task are clearly lagging.

The City must also attend to this task if it is to be completed in time. The request for proposals (RFP) to create the PIMS system has been delayed, and there is concern within OPD that some language required by the City may make it difficult to attract moderately-priced proposals. OPD is further concerned that the initial cost estimates for PIMS were unrealistic and that the City may not commit the resources sufficient to develop a PIMS that complies with the Settlement Agreement. While there may be excellent reasons for the language in the RFP, and the IMT takes no position on the appropriate cost of PIMS, the IMT encourages the City and OPD to discuss these concerns as soon as possible and move forward with issuing a RFP as a first step towards bringing this task back on track.

### **Consistency of Discipline**

If the Settlement Agreement is to bring about the changes the Police Department, City and community desire, OPD must be able to assure the community, and its own officers, that officers are treated fairly and consistently, with positive, energetic policing rewarded and misconduct and lax policing punished. In the IMT's view, implementation of OPD's Consistency of Discipline policy is a lynchpin to these efforts.

During this reporting period, OPD was to develop a policy to "ensure that discipline is imposed in a fair and consistent manner" (Task 45). The Settlement Agreement requires, for example, distinguishing between Class I and Class II violations in the disciplinary process, and establishing a centralized system for documenting and tracking disciplinary actions. However, as discussed below, OPD has not yet drafted a policy that comports with these provisions of the Settlement Agreement. OPD did draft a policy purporting to codify OPD's current practices in this area, but this policy does not incorporate the provisions of the Settlement Agreement or provide guidance adequate to ensure that discipline is fair and consistent. The IMT recognizes the Department's efforts in this area. However, given the importance of this requirement, the IMT is concerned that OPD remains quite far from complying with the terms of the Settlement Agreement in developing and implementing a system that ensures the fair and consistent imposition of discipline.

### **Status of Compliance**

Our discussion of OPD's compliance efforts and status is organized around the twelve Settlement Agreement sections from which OPD derived fifty-one "tasks." The Settlement Agreement sets specific due dates for these various tasks. The sixteen Settlement Agreement tasks listed below had due dates in the first quarter:

<b>S.A. Section</b>	<b>Name of Task</b>	<b>Task #</b>	<b>Due Date</b>
Supervisory Span of Control	Span of Control for Supervisors	20	14 August 2003
Supervisory Span of Control	OPD/DA Liaison Commander	22	15 April 2003
Reporting Procedures	Reporting Misconduct	33	25 August 2003
Reporting Procedures	Vehicle Stops, Field Investigation and Detentions	34	25 August 2003
Reporting Procedures	Use of Force Reports-Witness Identifications	35	25 August 2003
Reporting Procedures	Procedures for Transporting Detainees and Citizens	36	25 August 2003
Reporting Procedures	Internal Investigations-Retaliation Against Witnesses	37	25 August 2003

Reporting Procedures	Citizens Signing Police Forms	38	25 August 2003
Reporting Procedures	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	39	25 August 2003
Personnel Practices	Performance Appraisal Policy	44	8 July 2003
Personnel Practices	Consistency of Discipline Policy	45	6 October 2003
Personnel Practices	Promotional Consideration	46	8 July 2003
Community Policing	Community Policing Plan	47	1 August 2003
Annual Reports	Department Management and Annual Management Report	48	5 September 2003
Independent Monitor	Monitor Selection and Compensation	49	15 April 2003
Compliance Unit	Compliance Unit Liaison Policy	50	4 March 2003

For each of the above listed tasks, the listed due date is the date by which OPD was to have the policy developed and implemented. In some instances the due date listed is different from the date initially set in the Settlement Agreement. In all instances where a due date was changed, such revision was pursuant to agreement between the Parties to the settlement.

OPD is in compliance with two of the sixteen tasks with due dates during the first quarter: Monitor Selection and Compensation (Task 49) and Compliance Unit Liaison Policy (Task 50). OPD did not meet the compliance deadline for either of these tasks, but had come into compliance by the end of the reporting period.

In two additional tasks, OPD met the deadline for publishing the required (compliant) policy: Vehicle Stops, Field Investigations and Detentions (Task 34); and Citizens Signing Police Forms (Task 38).

In the first instance (Vehicle Stops, Field Investigations and Detentions), OPD conducted training and implemented the policy by the deadline. However, according to OPD's internal review, OPD officers are not yet complying with this policy. Nevertheless, the IMT views OPD's work pursuant to this task as some of its strongest to date. In addition to drafting and publishing a compliant policy by the Settlement Agreement's deadline (and prior even to the time that the IMT began its work), OPD trained its officers, proactively identified deficiencies in compliance and devised a strategy to improve compliance. Whether the IMT continues to hold the view that OPD's work in this area is strong largely depends upon whether OPD officers come into

compliance with this policy, and the Settlement Agreement requirements it reflects, by the end of the current quarter.

The second task for which OPD met the policy development deadline is the requirement that citizens sign police forms. OPD discovered that this requirement was existing OPD policy pre-dating the Settlement Agreement. Based on concerns that the policy was not being followed, OPD elected to retrain its officers on this requirement by presenting an “Information Bulletin” during roll call. The IMT had hoped to monitor officers’ compliance with this provision of the Settlement Agreement during this reporting period, but OPD did not conduct the requisite training until after the conclusion of the reporting period. The IMT will conduct this review shortly and report on compliance in its next report.

For the remaining tasks with due dates during this quarter, OPD did not publish corresponding policies by the end of the reporting period. In the absence of published policies, OPD did not conduct officer training, which meant that assessment of actual practice would be premature. Although concerned about the delay in publishing these policies, the IMT does not believe there is any cause for alarm—yet. Indeed, we have generally observed good faith efforts and continued progress towards meeting the Settlement Agreement’s requirements. Further, some of the delays in publication stem from the Parties and the IMT working out a publication review process. In most instances, draft policies are near completion, and OPD expects that they will be published, and appropriate training provided, in the upcoming weeks. In other instances, although no policies have yet been drafted, OPD has changed actual practice to comport with Settlement Agreement requirements. For example, although OPD’s policies related to establishing a 1:8 supervisory ratio in patrol (Task 20) have not been finalized, OPD has taken significant steps towards fulfilling these requirements in practice.

It is worth noting that OPD has come into compliance with some Settlement Agreement requirements not yet due. As discussed below, the IMT has determined that OPD is in compliance with two Settlement Agreement requirements well before their due dates: exploring the use of in-car video recorders (Task 32) and locating OPD Internal Affairs Division offices off-site (part of Task 7). In addition, OPD is significantly ahead of schedule on other tasks, including developing a policy prohibiting the refusal of citizen complaints (Task 6) and publishing a policy requiring command staff rotation (Task 23). OPD has also decertified all of its Field Training Officers and, pursuant to the Settlement Agreement, overhauled its field training program (Task 42).

In sum, the IMT is encouraged by OPD’s actions, which demonstrate its commitment to the Settlement Agreement reforms. Although OPD did not meet the majority of the deadlines imposed by the Settlement Agreement, OPD showed good faith progress on the tasks due this reporting period, as well as on tasks not yet due.

In its next report, the IMT will monitor whether OPD improves its ability to meet the Settlement Agreement’s deadlines for policy development and, more importantly,

whether OPD begins to effectively implement the Settlement Agreement requirements throughout the Department.

## **I. INTRODUCTION**

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement) resolving allegations of police misconduct raised by private plaintiffs in a civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* Honorable U.S. District Court Judge Thelton Henderson approved the Settlement Agreement and entered it as an Order of the court on this same date.

The City approved its contract with the Independent Monitoring Team (IMT) on July 15, 2003. On August 28, 2003, Judge Henderson approved the appointment of the IMT. The Settlement Agreement requires that the IMT submit a quarterly report to the Parties and the Court during the first two years of the Agreement (Section XIII.I.). Accordingly, the Independent Monitoring Team submits this first quarterly report, covering the first ninety days of the IMT's tenure. This report addresses the status of OPD's compliance with the Settlement Agreement from July 15, 2003, to October 15, 2003.

### **A. Role of the Independent Monitoring Team**

The Independent Monitoring Team is comprised of: Division Chief Rachel Burgess (ret.); Kelli Evans, Esq.; Chief Charles Gruber; and Christy Lopez, Esq. Rachel Burgess is a retired Division Chief from the Los Angeles County Sheriff's Department (LASD). While at the LASD, Chief Burgess oversaw the Sheriff's Department's compliance with reforms ordered by the Los Angeles County Board of Supervisors. Charles Gruber is currently the Chief of Police of the South Barrington, Illinois Police Department, and is former Chief of Police of the Shreveport, Louisiana and Elgin, Illinois Police Departments. Chief Gruber is past president of the International Association of Chiefs of Police (IACP) and currently chairs the Professional Standards Committee of the IACP. Ms. Evans and Ms. Lopez are both civil rights attorneys in private practice and former senior trial attorneys in the Civil Rights Division of the United States Department of Justice.

The IMT is not employed by any of the Parties to the Settlement Agreement, but is an independent entity reporting directly to the Court. The IMT's role is not to diminish or circumvent the authority of the Chief of Police. Rather, the IMT is responsible for frankly and rigorously assessing and reporting on OPD's and the City's compliance with the terms of the Settlement Agreement. The IMT will monitor in a manner that facilitates building capacity within OPD and the City to sustain the Settlement Agreement's reforms. In this way, the IMT hopes to make its tenure as short and as effective as possible.

The IMT will assess whether OPD has created the policies, plans and procedures required by the Settlement Agreement and whether the required policies, plans and procedures are being effectively implemented throughout the Department. The IMT will monitor OPD's progress using a variety of monitoring techniques including interviews

with officers, command staff and community members; dialogues and discussions with affected staff and citizens; audits of required documentation; verification of the adequacy, veracity and reliability of required documentation; statistical sampling; surveys; and direct observation. The IMT will employ each of these techniques in a thorough but minimally intrusive manner to determine whether the provisions of the Settlement Agreement are being met.

Because the IMT is committed to establishing and maintaining open and effective lines of communication with the Parties and other stakeholders, the IMT will meet with key stakeholders, including Plaintiffs; OPD employees throughout the Department; union members; Oakland officials; advocacy organizations; and members of the community, throughout the monitoring tenure. As required by the Settlement Agreement, the IMT will provide technical assistance to aid compliance and to ensure that the implemented reforms are sustainable. The IMT's reports will include analyses of data in the areas governed by the Settlement Agreement. In addition to the IMT's quarterly reports, the IMT will provide reports on an as-needed basis, as required by the Settlement Agreement.

## **B. Overview of Settlement Agreement**

The reforms required by the Settlement Agreement are neither extraordinary nor unusual. They simply reflect professional policing standards and practices that are consistent with constitutional requirements. Indeed, one of the most common refrains heard by the IMT during its first quarter of work—from commanders, union officials, city officials and others—is that many provisions of the Settlement Agreement merely require OPD to do what it should have been doing all along.

The Settlement Agreement requires police reforms in several areas, including: internal affairs; supervision of officers; police use of force; training; personnel practices; and community policing. In order to ensure that these reforms are implemented, the Settlement Agreement calls for the appointment of a person or team to act as the Independent Monitor. The Settlement Agreement authorizes the Monitor to provide technical assistance to the Parties in implementing the Agreement.

The City and OPD demonstrated courageous leadership when they recognized the need for reform and negotiated the Settlement Agreement. While the Settlement Agreement's requirements are not unusual, implementing institutional reform is always challenging and arduous. To OPD's credit, we have observed, for the most part, recognition of its own shortcomings and good faith efforts towards compliance with the Settlement Agreement. It is clear, however, that the successful implementation of the Settlement Agreement will require the sustained efforts of officials throughout the City, not just the efforts of OPD. Every City stakeholder in this endeavor: the Police Department; the City Manager; the Mayor; the City Council; the City Attorney's office; and the Oakland Police Officer's Association, has a critical role to play in these efforts. Unless each of these stakeholders energetically supports this process, it is unlikely that



Oakland's police officers and the larger citizenry will reap the benefits of the Settlement Agreement's reforms.

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If the City and the Oakland Police Department continue to recognize the value of these reforms and the shared responsibility for their implementation, the IMT is optimistic that this Settlement Agreement can dramatically improve the Oakland Police Department and its relationship with the people of Oakland.

## **II. IMT MONITORING ACTIVITIES**

The IMT conducted a variety of on- and off-site monitoring activities during its first ninety days. The IMT made several site visits to the Oakland Police Department and other relevant locations in Oakland. These site visits focused on meeting with the various stakeholders to the Settlement Agreement; familiarizing itself with OPD operations; participating in the monthly meetings required by the Settlement Agreement; and meeting with OPD's Office of Inspector General (OIG) and other officials regarding OPD's compliance efforts and status.

During these site visits the IMT met with: several groups of OPD officers during roll-calls (line ups); groups of OPD sergeants; OPD command staff; representatives of the City Attorney's office; and the head of the Citizens' Police Review Board. The IMT also privately met several times with the Oakland Police Officers Association leadership; with Chief of Police Richard Word; with community groups; and with Plaintiffs' attorneys. The IMT also met with leadership of the Service Employees International Union, attended City Council meetings, and appeared at a Community Police Advisory Board meeting. The IMT has met with Judge Thelton Henderson to introduce the monitoring team. In addition, the IMT met with IAD officials; reviewed IAD office space; conducted an informational review of IAD investigative files; and reviewed OPD's

system for tracking review of IAD investigations. The IMT has also met with various groups of OPD officers responsible for a variety of Settlement Agreement tasks, including those responsible for implementing OPD's Personnel Management Information System (PIMS); OPD's new Field Training program; OPD's performance appraisal system; and OPD's in-service and academy training programs.

The IMT continues to meet with stakeholders, and to date, has met with or is scheduled to meet with city officials ranging from the Mayor, City Manager and City Council Members, to the City Attorney, Public Defender, District Attorney and police officers, as well as with additional community groups.

While on-site, members of the IMT also participated in "ride-alongs" with OPD officers and attended hearings conducted before the Citizen Police Review Board. With the considerable assistance of the OIG, the IMT was able to secure office space.

In addition to its on-site activities, the IMT spent considerable time off-site devoted to monitoring tasks. Much of this time was spent reviewing materials relevant to monitoring the Settlement Agreement including: draft publications and revised draft publications (discussed further below); OPD's current policies and other directives; OPD's first Semi-Annual Report (reporting compliance efforts to date); OPD compliance status reports; and materials provided by citizen groups and the Citizens' Police Review Board. While off-site this quarter, the IMT also met to discuss its work plan and related issues. To inform its monitoring efforts, members of the IMT also attended a three-day conference designed for monitors to and police officials of police departments being monitored, as well as a one-day workshop, hosted by OPD, designed to further the creation of fair and predictable disciplinary systems.<sup>1</sup>

### **III. OPD ACCOMPLISHMENTS AND AREAS OF CONCERN**

#### **A. OPD Accomplishments**

Although there is no question that cynicism, fear and even obstructionism regarding the Settlement Agreement exist within OPD, overall the IMT is encouraged by the level of commitment to the Settlement Agreement within the Police Department. OPD and the City have taken a number of steps demonstrating their recognition that this Settlement Agreement is needed and is consistent with effective and vigorous policing, and that they are accordingly committed to its success.

OPD began conducting monthly monitoring meetings before the IMT began its work. These meetings, facilitated by the OIG, established from the beginning the important dynamic of frequent information sharing among the parties, and became a forum for routine status-checks even before the monitoring team was in place. The IMT

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<sup>1</sup> The IMT did not bill Oakland for the time or expenses associated with attendance at this conference and workshop.

so far has found that OPD's internal tracking of its own compliance efforts, including the internal audits conducted by the OIG, OPD's six-week reports and OPD's semi-annual report on Settlement Agreement compliance, are diligent and fair.

Much of this work has been conducted at the direction of OPD's Settlement Agreement Compliance Unit, operating under the auspices of OPD's Office of Inspector General. The IMT has been particularly impressed with the work of the Compliance Unit/OIG. The OIG began leading monitoring meetings before the IMT began its work; is closely tracking and facilitating compliance efforts within the department; and has thoroughly documented OPD's progress. Although not specifically required by the Settlement Agreement, the OIG has implemented a number of policies and procedures to facilitate the effective performance of its duties under the Settlement Agreement.

The OIG has already conducted several internal audits of OPD compliance with Settlement Agreement provisions and is developing a realistic work plan for future audits. As required by the Settlement Agreement, the OIG has been responsive to the IMT's requests for documents, information and assistance in setting up meetings with OPD personnel. The City and Chief of Police should be commended for ensuring that this office is staffed with sufficient numbers of high caliber personnel to perform the OIG's difficult and important function.

Chief of Police Richard Word's personal involvement in the implementation of the Settlement Agreement has also been invaluable. During this first reporting period, Chief Word met weekly with the OIG regarding the status of compliance efforts; was accessible to the IMT and responsive to our concerns; and made public statements supporting the Settlement Agreement.

As discussed below, OPD has made substantial progress in drafting policies required by the Settlement Agreement and is ahead of schedule in compliance with some Settlement Agreement requirements.

Many of the most difficult aspects of Settlement Agreement implementation have not yet come to pass; whether the Department will withstand such tests to its commitment to reform thus remains to be seen. The IMT is nonetheless encouraged by OPD's early indications of seriousness and dedication to these efforts.

## **B. Areas of Concern**

### **1. Personnel Information Management System**

The Settlement Agreement requires that OPD develop and implement a Personnel Information Management System (PIMS) (Task 40). This computer system is intended to improve OPD's ability to manage the risk of police misconduct, and to better evaluate and audit the performance generally of OPD members of all ranks. PIMS will track, for example: all reportable uses of force; officer-involved shootings; citizen complaints; training; sick leave usage; criminal arrests of OPD members and employees; as well as

commendations and awards. Further, the Settlement Agreement places certain parameters on using PIMS, and requires that OPD develop a policy incorporating these requirements (Task 41). While the compliance deadlines for these PIMS tasks are not until June 28, 2005, the size and complexity of this project require early and energetic commitment if it is to stay on track for timely and effective implementation. Because of this, and in light of the critical importance of this task to the staying power of the Settlement Agreement reforms generally, the IMT met with the subject matter experts charged with overseeing development and implementation of PIMS during this reporting period.

The IMT is concerned with the status of OPD's PIMS progress thus far. Although the officers from OPD's Information Technology unit assigned to this task appeared knowledgeable and committed to completing this project, in the IMT's view, their efforts will not be successful unless they begin receiving stronger support from OPD and the City. While OPD performed a variety of necessary work related to this task, including conducting background research, evaluating other departments' systems, and meeting with the Mayor and City Manager, progress appears to have stalled. The commander in charge of this task reported that the PIMS subcommittee has not met in five months. OPD only recently assigned an officer to develop policies related to PIMS and no drafts of such policies have yet been produced. There are fundamental questions about the data PIMS is supposed to capture that remain unresolved. In short, OPD efforts on this task are clearly lagging.

The City must also attend to this task if it is to be completed in time. The request for proposals (RFP) to create the PIMS system has been delayed, and there is concern within OPD that some language required by the City may make it difficult to attract moderately-priced proposals. OPD is further concerned that the initial cost estimates for PIMS were unrealistic and that the City may not commit the resources sufficient to develop a PIMS that complies with the Settlement Agreement. While there may be excellent reasons for the language in the RFP, and the IMT takes no position on the appropriate cost of PIMS, the IMT encourages the City and OPD to discuss these concerns as soon as possible and move forward with issuing a RFP as a first step towards bringing this task back on track.

## **2. Consistency of Discipline**

If the Settlement Agreement is to bring about the changes the Police Department, City and community desire, OPD must be able to assure the community, and its own officers, that officers are treated fairly and consistently, with positive, energetic policing rewarded and misconduct and lax policing punished. In the IMT's view, implementation of OPD's Consistency of Discipline policy is a lynchpin to these efforts.

During this reporting period OPD was to develop a policy to "ensure that discipline is imposed in a fair and consistent manner" (Task 45). The Settlement Agreement requires, for example, distinguishing between Class I and Class II violations in the disciplinary process, and establishing a centralized system for documenting and

tracking disciplinary actions. However, as discussed below, OPD has not yet drafted a policy that comports with these provisions of the Settlement Agreement. While OPD did draft a policy purporting to codify OPD's current practices in this area, this policy did not incorporate the provisions of the Settlement Agreement or provide guidance adequate to ensure that discipline is fair and consistent. The IMT recognizes the Department's efforts in this area.<sup>2</sup> However, given the importance of this requirement, the IMT remains concerned that OPD remains quite far from complying with the terms of the Settlement Agreement in developing and implementing a system that ensures the fair and consistent imposition of discipline.

#### **IV. COMPLIANCE OVERVIEW**

Unless otherwise noted, "compliance" with a Settlement Agreement provision means that:

- 1) OPD has a published policy or other appropriate directive (e.g. General Order; Training Bulletin; Manual; etc.) that accurately reflects the requirements of the Settlement Agreement;
- 2) OPD has adequately trained the appropriate OPD personnel regarding how to implement the requirements of the Settlement Agreement provision; and
- 3) actual practice comports with the requirements of the Settlement Agreement provision.

Developing policies that incorporate the requirements of the Settlement Agreement is the first step towards compliance. Generally speaking, it is also the easiest step. Similarly, determining whether a published policy accurately reflects the requirements of the Settlement Agreement is relatively straightforward. Determining whether training for that policy is sufficient and whether actual practice comports with the Settlement Agreement is more complex, frequently requiring both subjective and objective analyses. The IMT's general methodology is to first review the policy or other directive to determine whether it facially complies with the Settlement Agreement; then assess whether training is sufficient; and finally, to conduct audits and other reviews to determine whether the actual practice of OPD officers complies with the terms of the Settlement Agreement. Accordingly, the IMT's compliance reviews during this first reporting period were largely limited to reviewing OPD draft policies to determine whether they accurately reflect the requirements of the Settlement Agreement.<sup>3</sup>

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<sup>2</sup> In addition to developing a draft policy, OPD also hosted a workshop on consistency of discipline and, after the end of this reporting period, issued a white paper to Chief Word outlining disciplinary system alternatives.

<sup>3</sup> Similarly, the IMT's Scope of Services requires that the IMT develop its monitoring criteria, procedures, frequency, and methodology for each Settlement Agreement requirement as that requirement becomes due.

Our discussion of OPD’s compliance efforts and status is organized around the twelve Settlement Agreement sections from which OPD derived fifty-one “tasks.” The IMT has reviewed OPD’s task designations, determined that the task division is workable, and in the interests of clarity and consistency, has adopted the same designations.<sup>4</sup>

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

Sixteen Settlement Agreement Tasks had due dates within the quarter covered by this report (July 15, 2003–October 15, 2003). As the chart below demonstrates, most of these tasks were in the areas of Supervisory Span of Control; Reporting Procedures; and Personnel Practices:

<b>S.A. Section</b>	<b>Name of Task</b>	<b>Task #</b>	<b>Due Date</b>
Supervisory Span of Control	Span of Control for Supervisors	20	14 August 2003
Supervisory Span of Control	OPD/DA Liaison Commander	22	15 April 2003
Reporting Procedures	Reporting Misconduct	33	25 August 2003
Reporting Procedures	Vehicle Stops, Field Investigation and Detentions	34	25 August 2003
Reporting Procedures	Use of Force Reports-Witness Identifications	35	25 August 2003
Reporting Procedures	Procedures for Transporting Detainees and Citizens	36	25 August 2003
Reporting Procedures	Internal Investigations-Retaliation Against Witnesses	37	25 August 2003
Reporting Procedures	Citizens Signing Police Forms	38	25 August 2003
Reporting Procedures	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	39	25 August 2003

<sup>4</sup> Section XV of the Settlement Agreement imposes additional obligations on the Parties (e.g. semi-annual status reports to the Court and meet-and-confer obligations). Because the IMT agrees with OPD that there is no need to “task” these obligations, they are not included in the description of compliance efforts and status. Nevertheless, failure to abide by these provisions would of course constitute a violation of the Settlement Agreement.

Personnel Practices	Performance Appraisal Policy	44	8 July 2003
Personnel Practices	Consistency of Discipline Policy	45	6 October 2003
Personnel Practices	Promotional Consideration	46	8 July 2003
Community Policing	Community Policing Plan	47	1 August 2003
Annual Reports	Department Management and Annual Management Report	48	5 September 2003
Independent Monitor	Monitor Selection and Compensation	49	15 April 2003
Compliance Unit	Compliance Unit Liaison Policy	50	4 March 2003

For each of the above listed tasks, the listed due date is the date by which OPD was to have the policy developed and implemented. In some instances the due date listed is different from the date initially set in the Settlement Agreement. In all instances where a due date was changed, such revision was pursuant to agreement between the Parties to the settlement.

OPD is in compliance with two of the sixteen tasks with due dates during the first quarter: Monitor Selection and Compensation (Task 49) and Compliance Unit Liaison Policy (Task 50). OPD did not meet the compliance deadline for either of these tasks, but had come into compliance by the end of the reporting period.

In two additional tasks, OPD met the deadline for publishing the required (compliant) policy: Vehicle Stops, Field Investigations and Detentions (Task 34); and Citizens Signing Police Forms (Task 38).

In the first instance (Vehicle Stops, Field Investigations and Detentions), OPD conducted training and implemented the policy by the deadline. However, according to OPD's internal review, OPD officers are not yet complying with this policy. Nevertheless, the IMT views OPD's work pursuant to this task as some of its strongest to date. In addition to drafting and publishing a compliant policy by the Settlement Agreement's deadline (and prior even to the time that the IMT began its work), OPD trained its officers; proactively identified deficiencies in compliance; and devised a strategy to improve compliance. Whether the IMT continues to hold the view that OPD's work in this area is strong largely depends upon whether OPD officers are acting in compliance with this policy, and the Settlement Agreement requirements it reflects, by the end of the current quarter.

The second task for which OPD met the policy development deadline is the requirement that citizens sign police forms. OPD discovered that this requirement was existing OPD policy before the Settlement Agreement was signed. Given that there were concerns that the policy was not being followed, OPD elected to retrain its officers on this requirement by presenting an "Information Bulletin" during roll call. The IMT had hoped to monitor officers' compliance with this provision of the Settlement Agreement

during this reporting period, however OPD conducted the requisite training after the conclusion of the reporting period. The IMT will conduct this review shortly and report on compliance in its next report.

For the remaining tasks with due dates during this quarter, OPD did not publish corresponding policies by the end of the reporting period. In the absence of published policies, OPD did not conduct officer training, which meant that assessment of actual practice would be premature. Although concerned about the delay in publishing these policies, the IMT does not believe there is any cause for alarm—yet. Indeed, we have generally observed good faith efforts and continued progress towards meeting the Settlement Agreement’s requirements. Further, some of the delays in publication stem from the Parties and the IMT working out a publication review process. In most instances, draft policies are near completion, and OPD expects that they will be published, and appropriate training provided, in the upcoming weeks. In other instances, although no policies have yet been drafted, OPD has changed actual practice to comport with Settlement Agreement requirements. For example, although OPD’s policies related to establishing a 1:8 supervisory ratio in patrol (Task 20) have not been finalized, OPD has taken significant steps towards fulfilling these requirements in practice. OPD’s efforts and the status for each of the sixteen tasks due this reporting period are detailed below.

It is worth noting that OPD has come into compliance with some Settlement Agreement requirements not yet due. As discussed below, the IMT has determined that OPD is in compliance with two Settlement Agreement requirements well before their due dates: exploring the use of in-car video recorders (Task 32) and locating IAD offices off-site (part of Task 7). In addition, OPD is significantly ahead of schedule on other tasks, including developing policies related to prohibiting the refusal of citizen complaints (Task 6) and publishing a policy requiring command staff rotation (Task 23). OPD has also decertified all of its Field Training Officers and, pursuant to the Settlement Agreement, overhauled its entire field training program (Task 42).<sup>5</sup>

## **V. DETAILED COMPLIANCE REPORT**<sup>6</sup>

In the interest of completeness, we discuss below the requirements for each section of the Settlement Agreement, as well as a brief statement of OPD’s progress thus far. As noted above, the majority of the tasks due this reporting period were in three areas: Supervisory Span of Control; Reporting Procedures; and Personnel Practices. Given that tasks in other areas are not yet due, there is little to report regarding the status of OPD’s compliance.

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<sup>5</sup> As discussed below, because no academies have been conducted since the IMT began its work, there has been no opportunity to review whether the field training program complies with the Settlement Agreement in actual practice.

<sup>6</sup> The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.



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

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

None of these requirements became due during the first reporting period. Our discussion of this section of the Settlement Agreement is thus largely limited to a reiteration of the Settlement Agreement requirements and a very brief statement of OPD’s progress. We anticipate a much fuller discussion in our next report, as many tasks become due during the second quarter.

Although formal compliance monitoring of IAD would have been premature during the first quarter, the IMT did take the opportunity to begin to educate itself about OPD’s IAD. We visited the new (off-site) IAD offices; met with numerous IAD officers and command staff; and reviewed a number of IAD investigations. Several of these investigations raised concerns about the investigation or the IAD process in general. We discussed a number of these concerns with Chief Word, the OIG and IAD staff. We are hopeful that OPD and the IAD will begin addressing these issues before the IMT’s formal compliance reviews, so that we will be able to report that our initial concerns were addressed.

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

**a. Settlement Agreement Requirements**

- By June 1, 2005, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By June 1, 2005, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By June 1, 2005, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.

### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that it is currently in the process of completing the revisions and manual required by this provision. The IMT will provide status/compliance updates as appropriate.

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

### **a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must develop and, by June 1, 2004, implement, timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.
- IAD command and the Department's command staff must regularly monitor compliance with these timeliness standards.
- If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing must be increased to maintain timeliness standards.

### **b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that it is in the process of drafting the standards required by this provision. The IMT will provide status/compliance updates as appropriate.

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

### **a. Settlement Agreement Requirements**

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

### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task has not yet been started. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must develop a policy regarding an informal complaint resolution process to be used by supervisors and IAD to resolve minor complaints not rising to the level of Class II misconduct. The Settlement Agreement sets forth certain criteria that must be included in this informal complaint resolution process.
- By June 1, 2004, OPD must implement this informal complaint resolution process.
- By December 1, 2003, OPD must develop a policy establishing a central control system for complaints and Departmental requests to open investigations. The Settlement Agreement sets forth certain criteria that must be included in this central control system.
- By June 1, 2004, OPD must implement this central control system.

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must develop a policy to provide immediate access to a supervisor to all citizens seeking to file a complaint. The Settlement Agreement sets forth certain criteria to be followed if there is delay greater than three hours in providing access to a supervisor or if the complainant refuses to travel to or wait for a supervisor.
- By December 1, 2003, OPD must develop a policy to provide Oakland City Jail inmates the opportunity to file a complaint against OPD officers/employees. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By December 1, 2003, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints,

including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the “preponderance of evidence” standard; and permanently retain all notes related to the investigation. This provision also defines the five investigative dispositions (unfounded; sustained; exonerated; not sustained; and filed) and requires that each allegation in a complaint be resolved with one of these dispositions.

- By June 1, 2004, OPD must implement the above referenced policies.

#### **b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. OPD has drafted a policy, *Manual of Rules* insert 398.76, incorporating one part of this task (complainant access to a supervisor). The IMT has provided its comments on this draft and is awaiting the revised policy from OPD. The IMT will provide status/compliance updates as appropriate.

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

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD has drafted a policy incorporating this provision, *Manual of Rules* insert 398.76. The IMT has provided its comments on this draft and is awaiting the revised policy from OPD. The IMT commends OPD for being substantially ahead of schedule in drafting this policy.

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

#### **a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must, based on contemporary police standards and best practices, develop a policy strengthening its procedures for receiving citizen complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy, including that OPD: establish a staffed complaint hotline; make complaint forms, brochures and guidelines easily and widely available,

including in OPD vehicles; translate those forms; and accept anonymous complaints.

- By June 1, 2004, OPD must implement the above referenced policy.
- By June 1, 2004, IAD must be located in a dedicated facility removed from the Police Administration Building.

#### **b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. However, the IMT has verified that OPD is in compliance with the requirement that IAD offices be located off-site. The IMT will provide status/compliance updates as appropriate.

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

#### **a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must, based on contemporary police standards and best practices, develop a policy establishing a classification system for citizen complaints. The Settlement Agreement calls for complaints to be divided into two categories according to the severity of the offense:
  - Class I offenses are the most serious allegations of misconduct, which, if proven, might serve as the basis for a criminal prosecution and/or for dismissal from OPD.<sup>7</sup> IAD investigators must investigate Class I offenses, unless otherwise directed by the Chief of Police. OPD must tape record statements and interviews in Class I investigations.
  - Class II offenses include all other misconduct situations.<sup>8</sup> The appropriate supervisor or manager must investigate Class II offenses, unless otherwise directed by the Chief of Police. OPD must tape record statements and interviews in Class II investigations.
- By June 1, 2004, OPD must implement this classification system.

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<sup>7</sup> Class I offenses are: Use of excessive force; Fabrication of evidence, including the planting of inculpatory evidence; Untruthfulness; Knowingly and intentionally filing a false police report; Insubordination; Commission of a felony or serious misdemeanor; Exhibition of bias or harassment; Actions of a retaliatory nature or failure to take reasonable steps to prevent retaliation; Solicitation or acceptance of gifts or gratuities; Willful false arrest, made knowingly without probable cause; and Failing to report others who commit any Class I offense.

<sup>8</sup> Class II offenses include all misconduct situations not specified as a Class I offense, such as rudeness, use of obscenities, lack of attention, timeliness of response, or other performance deficiencies.

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must develop and, by June 1, 2004, implement, a policy requiring that IAD, or the investigator assigned to an investigation, contact citizens who have made complaints as soon as possible, in order to determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible.

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By June 1, 2005, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16.)
- By June 1, 2005, OPD must train all personnel to ensure that they have received, understand and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16.)

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. This task will be completed once OPD has created its IAD procedural manual for conducting complaint investigations, including the provisions articulated in Tasks 1–9 and 11–16, and has adequately trained the appropriate OPD personnel in the new and revised policies and procedures. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must, based on contemporary police standards and best practices, develop a policy requiring that complaint investigators:
  - provide the member/employee with a brief synopsis of any complaint alleged against them, but not allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee's interview;
  - notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
  - upon completion of the investigation and issuance of a final report, provide subject members/employees with access to the underlying data upon which an IAD report is based, including all tape-recorded interviews, transcripts and investigator's notes.
- By June 1, 2004, OPD must implement this policy.

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must develop and, by June 1, 2004, implement, a policy requiring that it investigate allegations of *Manual of Rules* violations resulting from certain lawsuits and legal claims, treating them in the same manner as other citizens' complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy.

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must, based on contemporary police standards and best practices, develop a policy requiring that, except upon written authorization from the Chief of Police, the operational chain of command, from lieutenant up, review recommended findings



and make disciplinary recommendations in sustained internal investigations.

- By June 1, 2004, OPD must implement this policy.

#### **b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

#### **a. Settlement Agreement Requirements**

- By December 1, 2003, OPD must, based on contemporary police standards and best practices, develop a policy that holds supervisors and commanders, as well as other managers in the chain of command, accountable for supporting the IAD process. Where an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed a Class I offense, that supervisor or manager must be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review and/or failure to intervene.
- By June 1, 2004, OPD must implement this policy.

#### **b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

### **B. Supervisory Span of Control and Unity of Command** (Tasks 17–23; S.A. IV.)

Section IV of the Settlement Agreement, Tasks 17–23, covers a number of changes required to improve supervision of OPD officers and employees, particularly field supervision of OPD's patrol officers. In addition to the key requirement of a 1:8 supervisor to patrol officer ratio, this section also promotes more consistent supervision by requiring the assignment of a single supervisor to each OPD member and employee. This section also requires mechanisms to improve the detection and communication of problems or potential problems, including regular performance review meetings and assignment of a liaison to the District Attorney's and Public Defender's Offices.

Two of these requirements, Span of Control for Supervisors (Task 20) and OPD/DA Liaison Commander (Task 22), were due during the first reporting period. As discussed more fully below, OPD did not develop and implement compliant policies for either task. OPD has made progress towards improving the ratio of supervisors to patrol officers, although this progress is incomplete and tenuous.

**1. Supervisory Span of Control and Unity of Command** (Task 17; S.A. IV.)

**a. Settlement Agreement Requirements**

- By January 20, 2004, OPD must develop and implement, based on contemporary police standards and best practices, policies to address certain standards and provisions (set forth in section IV, paragraphs A–F) related to Supervisory Span of Control and Unity of Command.

**b. Status of Compliance and Assessment**

This task has no separate requirements. It will be completed once OPD has completed tasks 18, 19, 21 and 23 (detailed below) and is in compliance with section IV, paragraphs A–F of the Settlement Agreement.

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

**a. Settlement Agreement Requirements**

- By January 20, 2004, OPD must develop and implement a policy requiring the approval of field-arrests by a supervisor in most cases. This policy necessitates that OPD develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates. The Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD has drafted a policy incorporating a portion of this provision, General Order M-18 (Arrest Approval and Report Review in the Field). The IMT has provided its comments on this draft and OPD is revising the draft in light of the IMT's comments.

### **3. Unity of Command (S.A. IV.B.)**

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. The IMT will closely monitor compliance with this provision during the upcoming reporting period.

### **4. Span of Control for Supervisors (Task 20; S.A. IV.C.)**

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

In January 2003, OPD took the important step of assigning additional sergeants to patrol to provide closer supervision of patrol officers. While this has improved the ratio of supervisors to officers, many squads cannot maintain the required 1:8 ratio, and many supervisors are not sergeants, or are on loan from non-patrol OPD units. These loans result in shortages in other units and, because they are only temporary, do not provide the continuity of supervision contemplated by the Settlement Agreement. OPD does not contend that actual practice is in compliance with the Settlement Agreement's requirements related to span of control for supervisors. Review of materials provided by OPD, including its September 12, 2003, internal review of the patrol division's span of control and a list of patrol division assignments, as well as conversations with OPD commanders, confirm that there has been only sporadic compliance with the Settlement Agreement's 1:8 requirement.

The IMT has reviewed and commented upon OPD's initial draft policy addressing span of control for supervisors. During the upcoming quarter, the IMT will determine whether the policy as published comports with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD's actual practice in this area complies with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

- By January 20, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a member, employee and supervisor performance review policy. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By January 20, 2004, OPD must hold its supervisors and commanders/managers responsible for identifying patterns of improper behavior of their subordinates. Failure to identify patterns and instances of misconduct when the supervisors or commanders/managers knew or reasonably should have known of the misconduct shall constitute grounds for discipline.
- By January 20, 2004, Bureau of Field Operations sergeants and lieutenants must scrutinize arrests and uses of force that have been historically associated with police misconduct.

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD has drafted a policy incorporating this provision, General Order B-6 (Performance Appraisal). The IMT has provided its comments on this draft and is awaiting the revised policy from OPD. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

- The MLL is required to meet and cooperate with the Monitor. The District Attorney and Public Defender offices may attend these meetings.

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has established a MLL. The IMT has reviewed and commented upon OPD's initial and revised draft policies addressing the MLL (General Order A-18), and is awaiting the revised policy from OPD. During the upcoming quarter, the IMT will determine whether the policy as published comports with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

### **7. Command Staff Rotation (Task 23; S.A. IV.F.)**

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. In April 2003, OPD published a directive (Chief of Police Memorandum) incorporating this requirement of the Settlement Agreement. The IMT will monitor whether OPD's actual practice complies with this Settlement Agreement provision. The IMT commends OPD for being substantially ahead of schedule in publishing this directive.

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

Section V of the Settlement Agreement, Tasks 24–32, requires OPD to make a number of significant changes in the way it reports and investigates uses of force. This section requires changes in reporting uses of force ranging from Oleoresin Capsicum (OC) spray to officer-involved shootings, and enhances the requirements for OPD's Use of Force Review Board (UFRB) and Firearms-Discharge Board of Review. The Settlement Agreement also requires significant changes to use of force investigations, including requiring mandatory training in this area for supervisors. As discussed elsewhere, we urge OPD to complete these changes and begin training recently promoted supervisors in these new use of force procedures as soon as possible.

None of these requirements had a due date during the first reporting period. Although the IMT's monitoring in this area was thus limited, we did review policies related to use of force reporting that OPD has drafted, as discussed below. In addition, the IMT has determined that OPD is in compliance with Task 32, which required OPD to explore the use of camcorders in patrol vehicles.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadlines for this task have not yet occurred. OPD reports that work on this task is on target. A policy related to this provision, Special Order 8061, was published before the IMT began its work, but training has not yet been completed. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

- By July 20, 2004, OPD must develop and implement a policy to coordinate its administrative investigation of a member/employee with the Alameda County District Attorney's Office if a criminal proceeding is potentially viable.
- By July 20, 2004, when OPD initiates an interview or interrogation of OPD personnel and it appears that the subject may be charged with a crime, or the subject asserts his or her Fifth Amendment rights on grounds that the answers to questions posed may be incriminating, such interrogation must be preceded by a Lybarger warning.

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

**a. Settlement Agreement Requirements**

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



## **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is on target. The IMT will provide status/compliance updates as appropriate.

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

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred. However, OPD has published two training bulletins related to these Settlement Agreement provisions. The IMT provided comments on one of these training bulletins (Training Bulletin V-O), which had already been published by OPD. OPD states that it will modify this training bulletin in light of the IMT's comments. The IMT has not reviewed a second training bulletin (Training Bulletin III-X) related to this provision. OPD has already begun training officers on these new training bulletins. To the extent that the policies must be revised to comport with the Settlement Agreement, OPD must retrain officers accordingly. The IMT will closely monitor this task during the next quarter.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet occurred; however, the IMT and OPD are in agreement that this task was completed upon the production of a white paper on this topic (which the IMT has reviewed) and the provision of recommendations to the Chief of Police.

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

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

Each of these tasks was due during the first reporting period. With the exception of Tasks 34 and 38, OPD did not develop and implement compliant policies for the tasks. Despite having published compliant policies, OPD is not in compliance with Task 34, and the IMT was unable to verify compliance with Task 38 during the first reporting period. The compliance status and the IMT's assessment for each of these tasks is discussed more fully below.

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

**a. Settlement Agreement Requirements**

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

- The Settlement Agreement further requires that OPD assess corrective action and/or discipline for failure to report misconduct.

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published policies reflecting each of the requirements of this Settlement Agreement task and training has not been completed.

Before the IMT was retained, OPD revised its *Manual of Rules* (MOR) to incorporate many of the Settlement Agreement requirements related to reporting misconduct (MOR inserts 314.48; 314.49; 370.18; and 370.27). The IMT has since determined that the MOR revisions comport with the Settlement Agreement for the most part, and has reviewed OPD's further revisions to the MOR inserts. The IMT has also reviewed General Order D-16 (Check In and Orientation), which requires that officers receive, read, review, understand and comply with OPD policies and procedures. The IAD manual reportedly will provide further guidance on how to conduct confidential investigations. OPD members have not yet been trained regarding these new provisions related to reporting.

During the upcoming quarter, the IMT will determine whether the remaining policies to be published comport with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

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

#### **a. Settlement Agreement Requirements**

- By August 25, 2003, OPD members must complete a basic report on every vehicle stop, field investigation and detention. The Settlement Agreement sets forth particular information that must be included in this report.
- OPD must enter this report data into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD did publish a policy accurately reflecting the requirements of this Settlement Agreement within the timeline set by the Settlement Agreement. OPD published this policy (Special Order 8012) before the IMT was retained. The IMT has since reviewed the policy and determined that it comports with the Settlement Agreement. Although OPD conducted training within the timeline set by the

Settlement Agreement, many of the officers ordered to attend training on completing the stop-data forms failed to do so.

To OPD's credit, it has already conducted an internal review of compliance with this policy/Settlement Agreement provision, determined that compliance is deficient, and begun implementing measures designed to ensure future compliance. Such measures include ensuring that officers actually attend required training, and that their supervisors are held accountable if they do not. The IMT applauds OPD's proactive approach to this task and believes it should serve as a model for OPD's approach to other Settlement Agreement tasks.

The IMT will closely monitor compliance with this Settlement Agreement requirement in the next quarter, and report to the Court the result of OPD's compliance efforts in its next report, or earlier if appropriate.

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

#### **a. Settlement Agreement Requirements**

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has drafted a Special Order (Special Order 8066) addressing this Settlement Agreement requirement. This Special Order will be incorporated into the Department's policy on reporting use of force, due to be completed later this year. The IMT has reviewed and commented upon this draft Special Order. OPD has revised the Special Order based on the IMT's comments and has stated that it will be published in the next few weeks.

During the upcoming quarter, the IMT will determine whether the Special Order and subsequent policy as published comport with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD drafted Special Order 8055 addressing this Settlement Agreement requirement. The IMT has reviewed for compliance this draft Special Order and provided comments to OPD. OPD has revised the Special Order based on the IMT’s comments and has stated that it will be published in the next few weeks.

During the upcoming reporting period, the IMT will determine whether the Special Order as published comports with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD’s actual practice complies with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

## **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published policies accurately reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has revised its *Manual of Rules* to reflect these Settlement Agreement requirements (MOR 398.73 and MOR 398.74). The IMT provided comments to OPD on the MOR revisions, noting that the *Manual of Rules* revisions are not in compliance because they do not make dismissal the presumptive disciplinary penalty for retaliation; they instead state that discipline “up to and including termination” will be assessed. OPD has stated that it will further revise the MOR to comply with the Settlement Agreement.

During the upcoming reporting period, the IMT will determine whether the *Manual of Rules* revisions reflecting the requirements of the Settlement Agreement have been published; whether appropriate training was conducted; and will monitor whether OPD’s actual practice complies with this Settlement Agreement provision.

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

### **a. Settlement Agreement Requirements**

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

### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD discovered that it already had a policy addressing this task (Report Writing Manual Insert S-1). Due to concerns about whether officers were complying with this policy, OPD decided to provide refresher training to OPD officers during roll-call in the form of an “Information Bulletin,” reiterating the policy’s requirements. This training was not completed within the timeframe set by the Settlement Agreement.

The IMT was not able to confirm whether OPD is in compliance with this task in actual practice. Several months ago, the IMT asked to review citizen statements and offense reports to determine whether officers are complying with this requirement, once roll-call training had been completed. Training was not completed during the first quarter but should be completed at the beginning of the second quarter. The IMT will report to the Court whether OPD is complying with this requirement in the IMT’s next report, or earlier if appropriate.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD reports that the draft General Order covering these requirements (General Order B-4) is “on hold” while Chief Word conducts negotiations with the Oakland Police Officers’ Association (OPOA) regarding transfer policies. OPD has drafted Special Order 8064, covering these requirements, as a stop-gap measure until a policy can be drafted and implemented. The IMT has reviewed for compliance this Special Order and related MOR insert 314.28 and provided comments to OPD. Neither the Special Order nor the related MOR insert has been published.

During the upcoming reporting period, the IMT will monitor the development of the General Order covering these requirements and report its status to the Court if appropriate. The IMT will further determine whether OPD’s directives as published comport with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD’s actual practice complies with these Settlement Agreement provisions.

**E. Personnel Information Management System (PIMS) (Tasks 40–41; S.A. VII.)**

Section VII of the Settlement Agreement, Tasks 40–41, requires OPD to develop a computerized relational database that will permit it to record, track and retrieve data necessary for OPD to appropriately supervise and manage members and employees. Use of such systems is becoming increasingly widespread as police departments seek to effectively gather and organize data currently recorded in a variety of formats and locations. Better tracking of this information facilitates consistency in performance

evaluations and corrective action decisions. OPD's system, the Personnel Information Management System, or "PIMS," is not due to be completed until mid-2005. However, as discussed more fully below, OPD is already falling behind on this critical task.

**1. Personnel Information Management System (PIMS)-Purpose** (Task 40; S.A. VII.A.)

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. However, because of the size, complexity and critical importance of this task, the IMT met with the subject matter experts charged with overseeing development and implementation of PIMS in October, 2003.<sup>9</sup> As noted above, the IMT is concerned with the status of OPD's PIMS progress thus far. Although the officers from OPD's Information Technology unit assigned to this task appeared knowledgeable and committed to completing this project, in the IMT's view, their efforts will not be successful unless they begin receiving stronger support from OPD and the City. The commander in charge of this task reported that the PIMS subcommittee has not met in five months. OPD only recently assigned an officer to develop policies related to PIMS and no drafts of such policies have been produced. There are fundamental questions about the data PIMS is supposed to capture that remain unresolved. OPD efforts on this task are clearly lagging.

The City must also attend to this task if it is to be completed in time. The request for proposals (RFP) to create the PIMS system has been delayed, and there is concern within OPD that some language required by the City may make it difficult to attract moderately-priced proposals. OPD is further concerned that the initial cost estimates for PIMS were unrealistic and that the City may not commit the resources sufficient to develop a PIMS that complies with the Settlement Agreement. While there may be excellent reasons for the language in the RFP, and the IMT takes no position on the appropriate cost of PIMS, the IMT encourages the City and OPD to discuss these

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<sup>9</sup> The IMT was able to meet with the Deputy Chief charged with PIMS' implementation and officers from OPD's Information Technology (IT) unit. The Lieutenant tasked with developing policies related to PIMS was apparently invited but unable to attend this meeting.



concerns as soon as possible and move forward with issuing a RFP as a first step towards bringing this task back on track.

OPD and the City must act now to bring this task back on track or it is unlikely that they will be able to make up enough ground to meet the compliance date set by the Settlement Agreement.

**2. Use of Personnel Information Management System (PIMS)** (Task 41; S.A. VII.B.)

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

This task cannot be completed until the PIMS is developed. See “Status of Compliance and Assessment” under Task 40: Personnel Information Management System (PIMS)-Purpose.

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

Section VIII of the Settlement Agreement, Task 42, requires OPD to make significant changes in the manner in which its Field Training Officers are selected, certified, trained, supervised, rotated and evaluated. These enhancements are designed to ensure that rookie officers receive field training from seasoned officers who have demonstrated their leadership abilities, professionalism and commitment to OPD values. In order to ensure that the training is effective, the Settlement Agreement also requires OPD to conduct daily audits and regular evaluations of all Field Training Officers. None of the compliance deadlines related to the Field Training Officer section of the Settlement Agreement occurred during this reporting period.

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

**a. Settlement Agreement Requirements**

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

officers in field training. The Settlement Agreement sets forth extensive requirements that must be part of this new Field Training Program.

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. However, OPD states that it has completed development of this new program. In January 2003, OPD published and distributed a new General Order (B-8) regarding the Field Training Program. OPD has also decertified all forty-nine of its previously certified field training officers pending the next academy when all FTO's will be required to meet the new standards. The Oakland Police Officers' Association has filed a grievance regarding decertification. This grievance is currently pending. Because there are currently no police academies scheduled, the new FTO program has not been implemented. The IMT has met with the OPD commanders currently responsible for implementation of this task. The IMT will review the new FTO policies and protocols to determine whether they comport with the Settlement Agreement and will monitor actual FTO practice at the earliest opportunity.

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

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

The compliance deadline related to the Academy and In-Service Training section of the Settlement Agreement did not occur during this reporting period. Our discussion of this section of the Settlement Agreement is thus largely limited to a reiteration of the Settlement Agreement requirements and a very brief statement of progress so far. We anticipate a much fuller discussion in subsequent reports, as the tasks related to this section of the Settlement Agreement become due beginning in February 2005.

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

##### **a. Settlement Agreement Requirements**

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

## **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. Although formal compliance monitoring of the improvements OPD is required to make to its Academy and In-Service Training programs would have been premature during the first quarter, we did begin to educate ourselves about OPD's plan for compliance with the Settlement Agreement's training requirements. The IMT met with the Lieutenant and Deputy Chief in charge of overseeing OPD's reforms in these areas. We obtained an overview of the planned enhancements, including a description of how OPD's Training Management Division will track training to ensure that all officers receive the training required by the Settlement Agreement.

OPD officials report that twelve sergeants have been promoted since the Settlement Agreement was entered without receiving the training required by the Settlement Agreement. OPD reports that there are no plans to provide the enhanced training required by the Settlement Agreement to these new sergeants. Given the critical importance of OPD's sergeants to the success of the Settlement Agreement, the IMT urges OPD to provide this training to these sergeants and to accelerate the development and implementation of this task so that, in the future, officers promoted to sergeant will have the benefit of these in-service training enhancements.

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

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

The Settlement Agreement's Performance Appraisal section, Task 44, requires OPD to prepare written performance appraisals for each officer, documenting the officer's conduct and performance in a variety of areas, which has not occurred with regularity in recent years. If done consistently and fairly, performance appraisals will be a valuable management tool for identifying both excellent and substandard police work and for holding supervisors accountable for the performance of their subordinates.

The Settlement Agreement's Consistency of Discipline section, Task 45, requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The timely and fair imposition of discipline is essential to ensure accountability.

The Settlement Agreement's Promotional Consideration section, Task 46, requires the Department to consider a variety of factors, including sustained misconduct cases, quality of citizen contacts and support for departmental integrity measures when making promotional decisions.

The compliance deadlines for the Personnel Practices section of the Settlement Agreement occurred during this reporting period. While OPD initiated important work in each of these areas, as discussed below, it did not achieve compliance in any of these areas.

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

**a. Settlement Agreement Requirements (see also Task 21)**

- By July 8, 2003, OPD must write performance appraisals individually for the member/employee being evaluated. These performance appraisals must accurately reflect the quality of each member/employee's performance. The Settlement Agreement sets forth criteria for these performance appraisals, including documentation of complaints and patterns of conduct and accountability of PSA lieutenants for the quality of community contacts by their beat officers. The Settlement Agreement further designates the supervisor responsible for completing the performance appraisal and requires OPD to conduct regular audits of the performance appraisal system to ensure compliance with the Settlement Agreement.

**b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has drafted General Order B-6 addressing this Settlement Agreement requirement. The IMT has reviewed and commented upon this draft General Order and OPD is currently revising the General Order. In practice, OPD reports that supervisors have not been completing regular performance appraisals for some time. Since the implementation of the Settlement Agreement, supervisors have begun completing performance appraisals. In addition, the City of Oakland recently created a new employee performance appraisal form. OPD reports that it intends to use this form as part of its performance appraisal system, and is attempting to obtain training on this form for all of its supervisors.

During the upcoming reporting period, the IMT will determine whether the General Order as published comports with the Settlement Agreement; whether appropriate training was conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

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

### **a. Settlement Agreement Requirements**

- By October 6, 2003, OPD must revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The updated disciplinary policy must describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate, and establish a centralized system for documenting and tracking all forms of discipline and corrective action. The Settlement Agreement also sets forth general criteria for OPD's response to sustained findings in Class I and Class II investigations.

### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task, and training has not been completed.

Although OPD has not yet drafted a policy that comports with the requirements of the Settlement Agreement, OPD has drafted a directive that, according to OPD, codifies OPD's current disciplinary practices. It appears that OPD initially believed that codification of its current practice might bring it into compliance with the Settlement Agreement. OPD now appears to understand that this is not the case and is working on drafting a policy that comports with the Settlement Agreement.

In October 2003, OPD hosted a workshop that brought together police practices experts from across the country to exchange ideas about police department disciplinary policies. OPD has also established a working group that, in November 2003, produced a "white paper" intended to compile best practices in this area and recommend a disciplinary policy to the Chief of Police.

During the upcoming reporting period, the IMT will closely monitor OPD's development of its disciplinary system. The IMT will determine whether the policy comports with the Settlement Agreement; whether appropriate training is conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

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

### **a. Settlement Agreement Requirements**

- By July 8, 2003, OPD's promotion policy must be modified so that sustained misconduct cases against a member/employee are an important factor in determining promotability, including presumptive

ineligibility for promotion for twelve months following the sustained finding of a Class I violation.

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

#### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task.

OPD drafted a memorandum from the Office of the Chief of Police addressing these Settlement Agreement requirements. The IMT reviewed the memorandum and found that it was too vague to facilitate compliance with the Settlement Agreement. OPD subsequently decided not to publish the memorandum until the OPD policy defining Class I and Class II offenses is published. This policy is due December 3, 2003.

During the upcoming reporting period, the IMT will determine whether the memorandum as published comports with the Settlement Agreement; whether appropriate training is conducted; and will monitor whether OPD's actual practice complies with these Settlement Agreement provisions.

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

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

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

### **a. Settlement Agreement Requirements**

- By August 1, 2003, OPD must develop and implement a plan to strengthen its commitment to local communities. The Settlement Agreement sets forth particular requirements the plan must include: OPD must host at least one community meeting per quarter in each Patrol Service Area; each patrol supervisor and officer assigned to a regular beat or geographic area of the City must attend a minimum of one community meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in “Crime-Stop” meetings, along with information on citizen complaints and use of force incidents; and OPD must arrange a meeting within sixty days unless not feasible with representatives of an organization active within Oakland, if the organization communicates a concern regarding specific police personnel or practices.

### **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has drafted a number of publications related to the Settlement Agreement’s community policing provisions, including General Order B-7; Bureau of Field Operations Policy 3-03; and Training Bulletin III-A.5. The IMT reviewed these drafts for compliance and OPD is in the process of incorporating the changes required to bring the policies into compliance.

In addition, OPD recently reorganized its field operations, as outlined in Training Bulletin III-A.5. While this reorganization was labeled as an attempt to enhance the Department’s community policing efforts, it appears that it was primarily driven by budget concerns. OPD did not seek comment from Oakland’s Community Police Advisory Board (or any other community group of which the IMT is aware) before instituting the reorganization (the IMT understands that only one member of the Advisory Board was approached even informally). However, this is not to say that the reorganization outlined in this Training Bulletin will not be effective. The reorganization, while more of a problem-solving oriented policing approach than a community-oriented policing approach, is not inconsistent with community policing and may strengthen OPD’s relationships with local communities, if implemented appropriately. The IMT will offer support and whatever technical assistance is appropriate to help ensure that the reorganization is successful and enhances OPD’s community policing efforts.

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

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

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

**a. Settlement Agreement Requirements**

- By September 5, 2003, OPD must develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve months. The report must include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. The settlement further requires that division commanders meet individually with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management reports of that division.

**b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has drafted General Order A-7 covering this requirement of the Settlement Agreement. The IMT reviewed this General Order and found that it accurately reflects the requirements of the Settlement Agreement. However, OPD has not yet published this policy.

During the upcoming reporting period, the IMT will determine whether the General Order as published comports with the Settlement Agreement; whether appropriate training is conducted; and will monitor whether OPD's actual practice complies with this Settlement Agreement provision.

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

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



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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is in compliance with this Settlement Agreement task. On July 15, 2003, the City Council approved the Parties' selection of a Monitoring team. This Court approved that selection on August 28, 2003.

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

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

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

**a. Settlement Agreement Requirements**

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

## **b. Status of Compliance and Assessment**

The compliance deadline for this task occurred during this reporting period. OPD is in compliance with this Settlement Agreement task. OPD has incorporated this function into the Office of Inspector General. Although not specifically required by the Settlement Agreement, the OIG has implemented a number of policies and procedures to facilitate the effective performance of its duties under the Settlement Agreement.

The IMT has been particularly impressed with the work of the Compliance Unit/OIG. The OIG began leading monitoring meetings before the IMT began its work; is closely tracking and facilitating compliance efforts within the department; and has thoroughly documented OPD's progress. The OIG has already conducted several internal audits of OPD compliance with Settlement Agreement provisions and has a realistic work plan for future audits. As required by the Settlement Agreement, the OIG has been responsive to the IMT's requests for documents, information and assistance in setting up meetings with OPD personnel. The IMT believes that without the high quality of the OIG's work, OPD would be much further behind in its compliance efforts.

The City and Chief of Police should also be commended for ensuring that this office is staffed with sufficient numbers of high caliber personnel to perform OIG's difficult and important function.

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

### **a. Settlement Agreement Requirements**

- By September 1, 2005, following the implementation of policies and procedures required by the Settlement Agreement, OPD must conduct annual audits of: arrest and offense reports (including follow-up investigation reports); use of force incident reports and use of force investigations; complaint processing and investigation; Mobile Data Terminal traffic; personnel evaluations; and citizen accessibility to the complaint process and the availability of complaint forms.
- The Settlement Agreement further sets minimum requirements for these audits and requires that their results be reported in OPD's semi-annual compliance reports.

### **b. Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. OPD has published Special Order 8011 incorporating the requirements of this task. OPD has also published Training Bulletin V-P, which provides guidance for conducting audits. To its credit, as noted above, the OIG has already begun auditing OPD's compliance with the Settlement Agreement's provisions. OIG staff is also scheduled to attend audit training. The IMT

will continue to monitor whether OPD conducts the audits required by the Settlement Agreement.

## **VI. CONCLUSION**

The IMT is encouraged by OPD's actions demonstrating its commitment to the Settlement Agreement reforms. Although OPD did not meet the majority of deadlines imposed by the Settlement Agreement, OPD demonstrated diligent good faith efforts and made significant progress in the tasks due this reporting period, as well as in tasks not yet due.

In its next report the IMT will monitor whether OPD improves its ability to meet the Settlement Agreement's deadlines for policy development and, more importantly, whether OPD begins to effectively implement the Settlement Agreement requirements throughout the Department.