

**COMBINED FOURTH AND FIFTH 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 Combined Fourth and Fifth Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from April 16, 2004, to October 15, 2004.

### **IMT's Monitoring Activities During the Fourth and Fifth Quarters**

The IMT conducted a variety of on- and off-site monitoring activities during this reporting period. During a series of visits to Oakland, the IMT, among other activities, participated in ride-alongs with OPD officers; attended the Use of Force and Firearms Discharge Boards of Review; observed training sessions; reviewed and analyzed OPD documents and files, including investigations and performance appraisals; observed a demonstration of software related to the Personnel Information Management System (PIMS); attended hearings of the Citizens' Police Review Board (CPRB); and participated in the monthly meetings required by the Settlement Agreement.

While on-site, the IMT met with OPD's Training, Communications, and Internal Affairs Divisions; individual OPD officers; officer associations; civilian managers and employees; command officials, including Sergeants, Lieutenants, Captains, and Deputy Chiefs; and with Chief Richard Word. In addition, the IMT met with a variety of other stakeholders, including: the Oakland Police Officers' Association; Oakland community members and groups including the NAACP, Bay Area PoliceWatch, PUEBLO, and Neighborhood Crime Prevention Councils; the Mayor; City Council Members; Office of the City Attorney; the Public Defender; and CPRB.

During this reporting period, the IMT also spent considerable time off-site devoted to monitoring tasks. As during previous reporting periods, much of this time was spent reviewing materials relevant to the Settlement Agreement including: draft publications; MLL reports; Oleoresin Capsicum Tracking Reports; firearms discharge reports; Internal Affairs investigation files; OPD audits; and materials provided by officers and citizen groups. In addition to reviewing these documents off-site, the IMT also participated in teleconferences with OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Span of Control for Supervisors (Task 20); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigation and Detentions (Task 34); and Personnel Practices (Task 44). The results of each of these reviews can be found in the individual Task updates discussed below. While OPD has made some progress in each of these areas, with the exception of Task 22, its actual practices do not yet comply with the Settlement Agreement.

## **OPD Accomplishments and Areas of Concern**

### **OPD Accomplishments**

OPD achieved several notable accomplishments during the combined fourth and fifth quarter reporting period. Below is a summary of these accomplishments:

- **Undertaking Management Assessment**

During this reporting period, the Audit and Inspections Unit of OIG conducted an insightful managerial risk assessment of its Bureau of Field Operations (BFO). This assessment was not required by the Settlement Agreement, yet was undertaken by OPD in order to gather a variety of important information that will help the Department implement the Settlement Agreement. OPD's undertaking of the assessment demonstrates the type of proactive interest in and commitment to reform that is necessary to implement the Settlement Agreement successfully. The information gathered during the assessment included information regarding support for the Settlement Agreement; systems and controls relating to implementation; and obstacles that may affect implementation.

As part of its management assessment, OIG issued a host of detailed and thoughtful recommendations aimed at addressing the issues identified. All of the recommendations are intended to improve the Department and to increase the likelihood that OPD will timely satisfy the objectives of the Settlement Agreement. OIG issued a comprehensive report setting forth its findings and recommendations on July 9, 2004. Unfortunately, despite the demonstrated need, only a few of the recommendations have been implemented. The IMT challenges OPD to show the same proactive interest and commitment that produced the assessment by implementing the measures necessary to actually carry out the Settlement Agreement.

- **Self Identification of Deficiencies in Tracking and Control of Oleoresin Capsicum Spray**

As we have previously reported, an important factor in a police department's ability to earn the trust and respect of the community it serves is its ability to self-identify and effectively respond to improper police practices. Police departments that have



developed this capacity reap the benefits of greater community cooperation and improved officer morale. They also frequently benefit from a reduction, sometimes significant, in lawsuit payouts. Thus, the IMT commends OPD for its recent self-identification of deficiencies in the Department's tracking and control of Oleoresin Capsicum Spray (OC Spray).

OPD developed a policy, Special Order 8061, designating OPD's Property and Evidence Unit (PEU) as the unit responsible for issuing and tracking the OC spray canisters used by officers. Notwithstanding the clear policy, a recent audit conducted by OPD's Office of Inspector General (OIG) revealed significant gaps in OPD's OC spray tracking. The audit includes a series of concrete and reasonable recommendations to ensure that the Department as a whole is complying with the OC tracking system required by the Settlement Agreement.

### **Areas of Concern**

- **Persistent Inability to Reliably Track and Document Settlement Agreement Training**

In our Third Quarterly Report, the IMT expressed concern regarding OPD's progress in conducting and completing necessary training on new Settlement Agreement policies. We raised specific concerns regarding the reliability of OPD's documentation and tracking of the training provided. As we previously explained, in order to achieve compliance with the Settlement Agreement, OPD must provide training to its officers on how to implement the new policies and procedures. However, OPD has failed to provide the IMT with sufficiently reliable Department-wide training data to enable us to find the Department in compliance.

OPD has had difficulty producing requested data in a timely fashion and, once produced, the data has suffered from a number of deficiencies. The Training Division has faced several technological obstacles related to the tracking of Settlement Agreement training. These challenges, however, do not explain or justify the Division's continuing failure to implement a system that would allow it to track training reliably on a Department-wide basis.

A number of units, commanders, and managers have led commendably, taking their training obligations seriously and devising more reliable tracking methods. The IMT has been particularly impressed with the efforts of the Bureau of Field Operations (BFO) and the Communications Division of the Bureau of Services. The approaches and attitudes of BFO and the Communications Division regarding Settlement Agreement training stand in stark contrast to those of others in OPD, including a number of supervisors in the Bureau of Investigations (BOI).

The IMT has observed commanders' open disdain of Settlement Agreement training. Such attitudes have been directly and indirectly communicated to subordinate

members and employees and undermine the Department's reform efforts. In response to its continuing deficiencies in this area, OPD acknowledged in its recent Semi-Annual Report that in order to achieve compliance with the Settlement Agreement, "full support from every level of the organization is necessary." We agree and cannot stress strongly enough the role that leadership and accountability must play in order to make this a reality.

- **Failure to Complete Stop Data Forms**

The Settlement Agreement (Task 34) requires officers to complete a basic report for every vehicle and pedestrian stop, field investigation, and detention. The report is designed to capture basic data including the date, time, and location of the stop; purpose of the stop; the race/ethnicity and gender of the individual stopped; whether a search was conducted; and the outcome of the stop. In September 2003, OIG conducted an internal audit of officer compliance with Task 34. Despite the ease and simplicity of this Settlement Agreement requirement, the audit found that officers were failing to complete the required forms for nearly 75% of applicable stops.

Over a year after OIG's review, OPD's compliance with Task 34 has improved but remains inexcusably low. Despite OPD's clear policy and straightforward stop data form, thousands of stops appear to be going unreported. Through lackadaisical supervision and little to no accountability, OPD has fostered an environment where scores of officers and their supervisors feel comfortable simply disregarding OPD policy and the Settlement Agreement in this area. OPD's continuing compliance failures are not surprising in such an atmosphere.

In addition to violating the Settlement Agreement, OPD's continuing non-compliance with Task 34 calls into question the Department's commitment to deterring racial profiling, notwithstanding its previous publication of a strong anti-bias policy and technical guide. In order to demonstrate to its officers and the community that it is truly committed to bias-free policing, OPD must show significant improvement on this Task.

- **Quality of Internal Investigations**

The IMT reviewed all OPD internal investigations completed and reviewed through the Deputy Chief level between January 1 and July 8, 2004—a total of 72 cases. Our review of these 72 cases focused on the quality of OPD's internal investigations, including those completed at the Division Level as well as by OPD's Internal Affairs Division (IAD).

The IMT found varied and widespread deficiencies in OPD's internal investigations. Among the pervasive deficiencies we observed were: a failure to identify and interview witnesses, particularly civilian witnesses; a failure to gather, assess, or sometimes even acknowledge relevant evidence; poor quality investigative interviews;

dispositions inconsistent with the evidence; a failure to identify or investigate acts of misconduct; inappropriate involvement by supervisors; and Division level investigations of IA level allegations.

The quality of many investigations is so low that it calls into question the reliability of the investigative findings and case dispositions. In addition, the poor quality of investigations is so pervasive that it diminishes the overall credibility of OPD's internal investigation process. We discuss our findings more fully in the body of this report and in still more detail in a report provided to OPD. In addition, in accordance with Settlement Agreement sections XIII.H.3 and 5, we have recommended reopening five internal investigations and have provided OPD and the Court a confidential evaluation of each investigation.

The deficiencies we identified make clear that OPD can and must do a better job investigating misconduct. OPD is well-positioned to take on this challenge now. OPD's new internal investigations policy and manual can provide clear instructions for change, and the IMT has been impressed with the dedication and competence of the Lieutenant commanding IAD, as well as with many of the IAD investigators. Nevertheless, meaningful improvement in the quality of OPD's internal investigations will require the sustained commitment not only of IAD but of the entire Department. OPD and the City must make clear that they will demand thorough, high-quality investigations of misconduct, and support IAD and the Divisions when they deliver.

## **Compliance Overview**

A chart detailing OPD's compliance by Task can be found on page 16 of this Report.

### **Policy Compliance**

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of twenty Tasks. At the end of the combined fourth and fifth quarter reporting period, OPD has attained policy compliance on two additional Tasks, bringing it into compliance with a total of twenty-two Tasks. Given that forty-four Tasks have become due, this level and pace of compliance is not encouraging at first glance. However, it must be noted that all but a few of the delinquent Tasks will be addressed by OPD's completion of four lengthy and complex policies (General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Manual; General Order K-4, *Reporting and Investigating the Use of Force*; and the Discipline Matrix) involving the manner in which the Department handles its internal investigations, reviews uses of force, and administers discipline. Each of these documents addresses multiple tasks. As detailed in the body of this report, during this reporting period, OPD continued to work diligently on these documents but has not yet completed them.

## **Training Compliance**

OPD has initiated, and in a number of cases, may have completed training for a number of the new policies it has created. As discussed above, however, OPD continues to suffer from serious training verification deficiencies. Due to OPD's persistent failure to reliably document and track the training it has provided its officers, the IMT is unable to report training compliance for any of the Tasks requiring training.<sup>1</sup>

The IMT remains concerned about OPD's ability to quickly and reliably train officers in new policies, and will continue to closely monitor this aspect of compliance.

## **Actual Practice Compliance**

As noted above, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Span of Control for Supervisors (Task 20); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigation and Detentions (Task 34); and Personnel Practices (Task 44). The results of each of these reviews can be found in the individual Task updates discussed below. While OPD has made some progress in each of these areas, with the exception of Task 22, its actual practices do not yet comply with the Settlement Agreement.

In addition to analyzing OPD's actual practices in the areas listed above, the IMT assessed the quality of OPD's internal investigations. The results of this review are detailed in the Areas of Concern section of this Report. As discussed, OPD's internal investigations suffer from a number of fundamental deficiencies.

Overall, the IMT can confirm that OPD is in compliance with four Settlement Agreement requirements in actual practice: OPD/DA Liaison Commander (Task 22); Use of Camcorders (Task 32); Monitor Selection (Task 49); and Compliance Unit Liaison Policy (Task 50). This is one Task more than during the last reporting period.

## **Conclusion**

The City of Oakland and OPD are at a critical juncture. It has been nearly two years since the City agreed to make significant changes in how the Oakland Police Department operates. While progress has been made, as this Report indicates, there are troubling signs that progress is slowing in many areas and completely stagnant in others. It is essential that the City and Department recognize that only strong, dedicated

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<sup>1</sup> In order to obtain training compliance, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy related to the Task.

leadership, committed to fairness and accountability at all levels of the Department, can ensure successful implementation of the Settlement Agreement. Even more fundamentally, it is essential for the City and all stakeholders to recognize that the Settlement Agreement is a roadmap to an Oakland Police Department that will be better for its officers and the people of Oakland, and to dedicate themselves to its successful implementation accordingly.

## **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 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 Combined Fourth and Fifth Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from April 16, 2004, to October 15, 2004.

While this Report assesses OPD's compliance as of the last day of the fifth quarter reporting period—October 15, 2004—we also report on OPD's compliance efforts up through the Report's publication date, to the extent feasible. Where OPD was out of compliance as of the end of the fifth quarter, but has since come into compliance, the report so indicates.

In addition, as with our previous Quarterly Reports, rather than detailing the minutiae of every policy review and technical assistance discussion, we have opted for a format that results in a relatively short but, we hope, clear and comprehensive account of OPD's compliance status and efforts. We are of course available to discuss with the Court, parties, and stakeholders to the Settlement Agreement any aspect of this report in greater detail.

## **II. IMT MONITORING ACTIVITIES**

The IMT conducted a variety of on- and off-site monitoring activities during this reporting period. During a series of visits to Oakland, the IMT, among other activities, participated in ride-alongs with OPD officers; attended the Use of Force and Firearms Discharge Boards of Review; observed training sessions; reviewed and analyzed OPD documents and files, including investigations and performance appraisals; observed a demonstration of software related to the Personnel Information Management System (PIMS); attended hearings of the Citizens' Police Review Board (CPRB); and participated in the monthly meetings required by the Settlement Agreement.

While on-site, the IMT met with OPD's Training, Communications, and Internal Affairs Divisions; individual OPD officers; officer associations; civilian managers and employees; command officials, including Sergeants, Lieutenants, Captains, and Deputy Chiefs; and with Chief Richard Word. In addition, the IMT met with a variety of other stakeholders, including: the Oakland Police Officers' Association; Oakland community members and groups including the NAACP, Bay Area PoliceWatch, PUEBLO, and Neighborhood Crime Prevention Councils; the Mayor; City Council Members; Office of the City Attorney; the Public Defender; and CPRB.

During this reporting period, the IMT also spent considerable time off-site devoted to monitoring tasks. As during previous reporting periods, much of this time was spent reviewing materials relevant to the Settlement Agreement including: draft publications; MLL reports; Oleoresin Capsicum Tracking Reports; firearms discharge reports; Internal Affairs investigation files; OPD audits; and materials provided by officers and citizen groups. In addition to reviewing these documents off-site, the IMT also participated in teleconferences with OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Span of Control for Supervisors (Task 20); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigation and Detentions (Task 34); and Personnel Practices (Task 44). The results of each of these reviews can be found in the individual Task updates discussed below. While OPD has made some progress in each of these areas, with the exception of Task 22, its actual practices do not yet comply with the Settlement Agreement.

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

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

##### **1. Undertaking Management Assessment**

The Audit and Inspections Unit of OIG conducted an insightful managerial risk assessment of its Bureau of Field Operations (BFO) at the beginning of this reporting period. This assessment was not required by the Settlement Agreement, yet was undertaken by OPD in order to gather a variety of important information that will help the Department implement the Settlement Agreement. OPD's undertaking of the assessment demonstrates the type of proactive interest in and commitment to reform that is necessary to implement the Settlement Agreement successfully.

OIG selected BFO for the assessment because the Bureau is a central focus of the Settlement Agreement. Over a three-week period, OIG conducted nineteen interviews with BFO members, including its Deputy Chief, Captains, Lieutenants, Sergeants, and Officers. The information gathered during the assessment included information regarding support for the Settlement Agreement; perceptions of and communication about the Settlement Agreement; BFO's systems and controls relating to implementation; and obstacles that may affect implementation.

In addition to serving as a means for gathering information critical to Settlement Agreement implementation, the assessment afforded OPD an opportunity to further educate its members about the reforms, and to dispel misconceptions. OPD discovered that the members it interviewed supported the goals and provisions of the Settlement Agreement. It also discovered that while its command and supervisory personnel have developed some systems and controls to facilitate implementation, overall, the internal

controls necessary for implementation are not yet in place. The assessment also revealed a lack of the coordination and accountability necessary, at both the Department and Bureau levels, to ensure successful implementation of the Settlement Agreement. The assessment appeared to elicit frank feedback from members including concerns regarding compliance with various Settlement Agreement provisions and a perceived lack of support from Departmental leadership.

As part of its management assessment, OIG issued a host of detailed and thoughtful recommendations aimed at addressing the issues identified. All of the recommendations are intended to improve the Department and to increase the likelihood that OPD will timely satisfy the objectives of the Settlement Agreement. OIG issued a comprehensive report setting forth its findings and recommendations on July 9, 2004. Unfortunately, despite the demonstrated need, only a few of the recommendations have been implemented. The IMT encourages OPD and the City not to squander the hard work that went into conducting the management assessment. We challenge OPD to show the same proactive interest and commitment that produced the assessment by implementing the measures necessary to actually carry out the Settlement Agreement.

## **2. Self-Identification of Deficiencies in Tracking and Control of Oleoresin Capsicum Spray**

As we have previously reported, an important factor in a police department's ability to earn the trust and respect of the community it serves is its ability to self-identify and effectively respond to improper police practices. Police departments that have developed this capacity reap the benefits of greater community cooperation and improved officer morale. They also frequently benefit from a reduction, sometimes significant, in lawsuit payouts. Perhaps in recognition of these factors, many of the Settlement Agreement's provisions are aimed at enhancing OPD's ability to detect problematic police practices and incidents.

The IMT commends OPD for its recent self-identification of deficiencies in the Department's tracking and control of Oleoresin Capsicum Spray (OC spray). The Settlement Agreement requires OPD to control and track the use of OC spray canisters by officers. OPD developed a policy, Special Order 8061, designating OPD's Property and Evidence Unit (PEU) as the unit responsible for issuing and tracking the OC spray canisters used by officers.

A recent audit conducted by OPD's Office of Inspector General (OIG) revealed significant gaps in OPD's policy and procedures related to OC tracking. While the PEU has been complying with the new policy, OPD discovered that its Training Division has also been issuing OC canisters to officers. The Training Division, however, has been issuing the canisters without logging or tracking such distribution. Additionally, according to the audit, Training has not been keeping inventory records of OC received from vendors or delivered to PEU. As a result, the audit notes that "[a]t this time, it is



impossible to know the exact amount of OC Spray used by the Department during any given time period or to effectively track its use by specific individuals.”

The audit includes a series of concrete and reasonable recommendations to ensure that the Department as a whole is complying with the OC tracking system required by the Settlement Agreement. In particular, the audit concludes that the Training Division must develop and implement a system for tracking OC use and distribution. This will require amending Special Order 8061 or developing a new policy that focuses on the Training Division.

The IMT applauds OPD’s self-identification of deficiencies in this area and its thoughtful and constructive recommendations for achieving compliance.

## **B. Areas of Concern**

### **1. Persistent Inability to Reliably Track and Document Settlement Agreement Training**

In our Third Quarterly Report, the IMT expressed concern regarding OPD’s progress in conducting and completing necessary training on new Settlement Agreement policies. We raised specific concerns regarding the reliability of OPD’s documentation and tracking of the training provided. In its recent Semi-Annual Report, OPD acknowledged its continued shortcomings in this area.

As we previously explained, in order to achieve compliance with the Settlement Agreement, OPD must provide training to its officers on how to implement the new policies and procedures.<sup>2</sup> Unless and until OPD completes and accurately documents such training, the Department will remain out of compliance with the Settlement Agreement.

OPD has failed to provide the IMT with sufficiently reliable Department-wide training data to enable us to find the Department in compliance. OPD has had difficulty producing requested data in a timely fashion and, once produced, the data has suffered from a number of deficiencies. For example, while purporting to show a 95% or greater training level for several of the new policies, in many instances, the data provided has been rife with irreconcilable discrepancies such as totals that do not account for all relevant personnel or that contain other unexplained variances.

The Department-wide training data has been insufficient in other respects, including reporting of compliance levels based on inappropriately narrow interpretations regarding which personnel must receive training on particular policies. In some instances, this has been simply a problem in the way the data is reported. In other

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<sup>2</sup> In order to obtain a compliance finding for training, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy.

instances, however, it is unclear whether the Department is providing appropriate training to all relevant personnel.

The Training Division has faced several technological obstacles related to the tracking of Settlement Agreement training. These challenges, however, do not explain or justify the Division's continuing inability and/or unwillingness to implement a system that would allow it to track training reliably on a Department-wide basis.

A number of units, commanders, and managers have led commendably, taking their training obligations seriously and devising more reliable tracking methods. The IMT has been particularly impressed with the efforts of the Bureau of Field Operations (BFO) and the Communications Division of the Bureau of Services.

Using simple Excel spreadsheets, BFO has created a system for tracking the training provided to each of its more than 660 members and employees. BFO's system allows it to track and report the training by policy and individual, and to readily identify those employees requiring make-up training.

In addition to BFO, we have also been impressed by OPD's Communications Division. Communications has implemented an organized and apparently effective system for tracking the training of its personnel. More than that, however, it has demonstrated a refreshing commitment and "can do" attitude regarding Settlement Agreement training. Unlike some others in OPD, Communications has viewed the training as an opportunity, rather than a burden. Instead of rote recitation of curricula provided by the Training Division, Communications has thoughtfully identified the portions of new policies most applicable to its personnel and created curricula highlighting those portions. The Division has shown a genuine commitment not only to providing all of its personnel training, but to ensuring that the training is meaningful.

The approaches and attitudes of BFO and the Communications Division regarding Settlement Agreement training stand in stark contrast to those of others in OPD, including a number of commanders in the Bureau of Investigations (BOI). The IMT has observed commanders' open disdain of Settlement Agreement training. Such attitudes have been directly and indirectly communicated to subordinate members and employees and undermine the Department's reform efforts.

The successes of BFO and the Communications Division make OPD's continuing training failures particularly perplexing. In these and perhaps other OPD units, the Department has ready models upon which to build to enable it to come into compliance with the Settlement Agreement. This is unlikely to happen, however, as long as OPD fails to hold accountable those commanders and managers who do not fulfill the Department's expectations, including directives from the Chief and his designees.

In response to its continuing deficiencies in this area, OPD acknowledged in its recent Semi-Annual Report that in order to achieve compliance with the Settlement Agreement, “full support from every level of the organization is necessary.” We agree and cannot stress strongly enough the role that leadership and accountability must play in order to make this a reality.

## **2. Failure to Complete Stop Data Forms**

Task 34 (Vehicle Stops, Field Investigation and Detentions) requires officers to complete a basic report for every vehicle and pedestrian stop, field investigation, and detention. The report is designed to capture basic data including the date, time, and location of the stop; purpose of the stop; the race/ethnicity and gender of the individual stopped; whether a search was conducted; and the outcome of the stop. OPD has developed a short, simple, standardized form for officers to capture the required information. The Settlement Agreement requires that OPD maintain the data from these forms in a searchable database.

In September 2003, OIG conducted an internal audit of officer compliance with Task 34. Despite the ease and simplicity of this Settlement Agreement requirement, the audit found extremely low compliance rates. According to OIG’s review, officers were failing to complete the required forms for nearly 75% of applicable stops. In its Second Quarterly Report, the IMT lauded OPD for identifying this problem and for proposing a sensible plan to improve compliance.

Over a year after OIG’s review, simple arithmetic shows that compliance with Task 34 has improved but remains inexcusably low. During August 2004, OPD officers completed a total of 3109 stop data forms. Of these stops, approximately 1305 resulted in a citation.<sup>3</sup> However, during this same period, OPD officers wrote 3497 citations—over 2000 more citations than reflected by the stop data forms. This indicates that OPD officers completed stop data forms for only approximately 37% of the citations they issued.<sup>4</sup> Moreover, because OPD officers make vehicle and pedestrian stops where no citation is issued, these figures likely underestimate OPD’s non-compliance level. Thus, despite OPD’s clear policy and straightforward stop data form, thousands of stops appear to be going unreported.<sup>5</sup>

Due to a backlog in entering forms into its database, personnel absences, and unfamiliarity with the computer program, OPD was unable to respond to the IMT’s initial document request. OPD’s inability to respond reflects some legitimate resource constraints, but also reflects a lack of organizational will to comply with this Task.

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<sup>3</sup> Ninety-seven of the forms did not state whether a citation or other action resulted from the stop.

<sup>4</sup> According to OPD’s Traffic Division, the vast majority of citations result from vehicle or pedestrian stops. Thus, there should be a stop data form completed for the vast majority of citations.

<sup>5</sup> The data OPD produced for September 2004, albeit incomplete, showed similarly low compliance levels.

During the course of responding to the IMT's request, OPD discovered that some supervisors had been discarding data needed for auditing purposes. The IMT has no evidence that the data was maliciously discarded; however, the Department's behavior clearly reflects its lack of oversight and direction regarding this Task.

Despite further simplification of the reporting forms and the Chief's directive to commanders to take measures to ensure compliance, officers and commanders continue to flout this Settlement Agreement requirement. The IMT has observed numerous officers, including supervisory and commanding-officers, refer derisively to OPD's collection of stop data. One commander even referred to the Department's stop data collection efforts as "bullshit." Through lackadaisical supervision and little to no accountability, OPD has fostered an environment where scores of officers and their supervisors feel comfortable simply disregarding OPD policy and the Settlement Agreement in this area. OPD's continuing compliance failures are not surprising in such an atmosphere.

The Settlement Agreement required OPD officers to include their names on stop data forms after the first year of data collection. This requirement, if followed, will assist OPD in measuring and tracking compliance. Since OPD began its data collection in April 2003, it was required to begin enforcing this requirement no later than April 2004. Until recently, OPD has sent mixed messages to its officers regarding this requirement. The predictable outcome has been that compliance with this requirement has been spotty and many officers have felt free to not complete forms for every stop. Following a discussion with the IMT, OPD recently ordered all officers to place their names on the forms effective November 15, 2004. Additionally, in October 2004, OPD directed supervisors and commanders to take measures to ensure that their subordinates complete stop data forms for every stop.

In addition to violating the Settlement Agreement, OPD's continuing non-compliance with Task 34 calls into question the Department's commitment to deterring racial profiling, notwithstanding its previous publication of a strong anti-bias policy and technical guide. In order to demonstrate to its officers and the community that it is truly committed to bias-free policing, OPD must show significant improvement on this Task.

### **3. Quality of Internal Investigations**

The IMT reviewed all OPD internal investigations completed and reviewed through the Deputy Chief level between January 1 and July 8, 2004—a total of 72 cases. Our review of these 72 cases focused on the quality of OPD's internal investigations, including those completed at the Division Level as well as by OPD's Internal Affairs Division (IAD).<sup>6</sup>

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<sup>6</sup> The IMT previously reviewed the timeliness of OPD's internal investigations. As reported in our Second Quarterly Report, there are systemic deficiencies in the timeliness of OPD's internal investigations. OPD is currently making efforts to correct the delays in the investigative process and the IMT will conduct a

The IMT found varied and widespread deficiencies in OPD's internal investigations. The quality of many investigations is so low that it calls into question the reliability of the investigative findings and case dispositions. In addition, the poor quality of investigations is so pervasive that it diminishes the overall credibility of OPD's internal investigation process.<sup>7</sup>

The timing of our review permits OPD to consider the deficiencies we found as OPD develops and implements its new internal investigations policy and manual. More fundamentally, the nature of the deficiencies described in this report makes clear that a policy and manual are necessary but not sufficient. OPD must make a renewed and sustained commitment to conducting thorough and reliable internal investigations if it is to succeed in meeting its goal of an effective system of accountability.<sup>8</sup>

Below is a brief discussion of the deficiencies identified in our review. We have provided OPD with a more detailed report of our review. In addition, in accordance with Settlement Agreement sections XIII.H.3 and 5, we have recommended reopening five internal investigations and have provided OPD and the Court a confidential evaluation of each investigation.<sup>9</sup>

Among the pervasive deficiencies we observed in the internal investigations we reviewed were: a failure to identify and interview witnesses, particularly civilian witnesses; a failure to gather, assess, or sometimes even acknowledge relevant evidence; poor quality investigative interviews; dispositions inconsistent with the evidence; a

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follow-up review to determine whether timeliness has improved.

<sup>7</sup> While investigations begun more recently were, generally speaking, of better quality than older investigations, we found significant problems with newer investigations as well and there is no question that the deficiencies we have observed stem from current as well as past practices.

<sup>8</sup> IAD believes that the deficiencies identified by the IMT are due, in large part, to inadequate IAD staffing and resources. The IMT has not assessed the sufficiency of IAD staffing and makes no finding at this time regarding the sufficiency of IAD staffing or the resources committed to investigations of misconduct generally by OPD.

<sup>9</sup> In determining whether a case should be reopened, the IMT considered: 1) the nature of the allegations; 2) the nature of the investigative deficiencies; and 3) the potential for reopening to impact the outcome of the case.

In addition to the above listed factors, for this review the IMT considered IAD's resource constraints in deciding whether to recommend reopening cases. The IMT recognizes the difficulties IAD faces as it attempts to dispose of the backlog of old cases and begins to more thoroughly investigate a wider spectrum of complaints. Accordingly, the cases we recommend be reopened are illustrative of deficiencies we found to be pervasive in OPD's internal investigations, but represent only a small portion of the investigations we believe to be incomplete or otherwise inadequate.

failure to identify or investigate acts of misconduct; inappropriate involvement by supervisors; and Division level investigations of IA level allegations.

It is important to recognize that every misconduct investigation is reviewed by the subject officer/employee's entire chain of command. Thus, investigations containing the deficiencies we discuss below were routinely reviewed and approved by supervisors and commanders throughout OPD.

Failure to Identify and Interview Witnesses The failure to identify and interview witnesses is pervasive. Investigators routinely fail to adhere to the general principle that all witnesses should be identified and interviewed, and to the Settlement Agreement's specific requirement that the subject officer and all other officers on the scene of the incident be interviewed. See S.A. III.E.6. The IMT reviewed numerous cases in which investigators did not interview witnesses who should have been interviewed, or did not canvass to identify witnesses. In addition, OPD routinely relies on CPRB interviews, even where it deems those interviews deficient.

For example, in one IA case, the complainant alleged that officers used unnecessary force and caused property damage. The investigation notes that the complainant was unable to provide specific identifying information on the subject officers. Nevertheless, while OPD interviewed at least ten officers regarding the incident, it did not interview any non-officer witnesses other than the complainant, not even the other passengers who were in the car at the time of the incident, and for whom OPD had contact information. The investigation does not indicate why the investigator was unable to contact some of these witnesses. In addition, the investigation indicated that one passenger was not interviewed because he was afraid to go to OPD to be interviewed, but there is no indication of any attempt to interview this witness elsewhere.

Moreover, pursuant to the Settlement Agreement, all interviews must be recorded. S.A. III.H.1.b. It appears that witness interviews are not routinely recorded and that interviews via telephone are never recorded. While it may be appropriate to conduct some interviews over the telephone, these too must be recorded in accordance with the Settlement Agreement.

Failure to Gather, Assess, or Acknowledge Relevant Evidence In the cases we reviewed, OPD, without adequate explanation, often did not gather or assess relevant evidence. For example, hospital records and other medical evidence that may have verified or refuted complainants' claims of injury were often not obtained. Sometimes the investigation noted only that the investigator was "unable to obtain" such evidence, with no further explanation. In other instances, the investigative report failed to mention whether such information even existed. Frequently, documentation of the incident at issue (e.g. assignment cards; crime reports; radio purges) was absent without explanation. Schematics or photographs of the scene or the involved parties (beyond the complainant) were rare.

Investigators often did not assess the evidence or make credibility determinations, especially of subject/witness officers. There were many instances where it appeared that the investigator had not compared complainants' and officers' statements during interviews to earlier written statements to determine whether there were inconsistencies. Follow-up interviews were virtually non-existent. Investigators often appeared to discount without explanation evidence inconsistent with their findings and conclusions.<sup>10</sup> In addition, investigators appeared at times to inappropriately accept without question information supporting their conclusions.<sup>11</sup>

In numerous instances, OPD omitted from the investigative report information seemingly critical to a complete and fair evaluation of the complaint, even where a review of the investigative file and/or interview tapes made it clear that such information was known to the OPD investigator. For example, in one IA case, the complainant obtained the names and contact information of bystanders that had observed his allegedly improper search and detention. There is no indication that the investigator attempted to interview these persons and the investigative report does not mention their existence. In another case in which the complainant alleged improper force, it is virtually impossible to discern without listening to the interview tapes that: there were an additional 2-10 officers on the scene that were not identified or interviewed; there were several carloads of detainees that witnessed the incident and were not identified or interviewed; there were several neighbor witnesses that were not identified or interviewed; the Sergeant who participated in the arrest believed at the time of the incident that there may have been a videotape of it but did not report this; and the Sergeant who participated in the arrest took the complainant behind the jail to talk with another unidentified and uninterviewed officer in an attempt to "resolve" the matter.

These types of omissions undermine the integrity of OPD's internal investigations process and make it difficult, if not impossible, for commanders to determine whether the dispositions recommended by the investigator are appropriate.

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<sup>10</sup> For example, in one investigation the investigator does not note, or appear to consider, the inconsistency between a witness officer's statement that the subject officer hit the complainant in the torso (supporting complainant's statement) and the subject officer's statement that he only hit complainant in the face. In another case, the investigator does not consider a Deputy District Attorney's statement that complainant is "mentally slow" and grandparents' statement that they had given complainant a dollar to buy candy at store that evening in assessing the credibility of the complainant's assertion that complainant did not ask officer what drugs he wanted or direct officer to a drug dealer as officer stated in report but instead was at store to buy candy with dollar given to him by his grandparents. There is also no indication that the investigator attempted to determine whether the person arrested with drugs was in fact working with complainant, as the investigator speculates.

<sup>11</sup> In one IA case, the investigation report included references to statements by the officer accused of misconduct and his Sergeant (who are not medical experts) that swelling and abrasions on complainant's face were inconsistent with a kick to the face, as complainant alleged. In another case, OPD did not adequately inquire into the circumstances of an officer breaking his hand during an arrest in which the officer asserted he did not use force.

Dispositions Inconsistent with Evidence There were many instances where the disposition of an investigation does not appear to comport with the evidence. In most instances, because of the inadequacy of the investigation, it was impossible to determine for certain whether the disposition was correct. Nevertheless, in a few instances it appeared clear that allegations were not sustained where they should have been, and were sustained where they should not have been. In many cases, allegations appeared to be inappropriately deemed “unfounded,” or “exonerated” instead of “not sustained.” For example, in one case OPD exonerated the officers of an excessive force allegation without interviewing them or the complainant. The case involved an allegation of unnecessary force used against an intoxicated man walking into the public restroom in a park, which resulted in a broken leg (along with more minor injuries). OPD appears to have reviewed deposition testimony of the otherwise “uncooperative” complainant, and the officers’ crime report, but there is no indication OPD took other steps to resolve substantial factual discrepancies before exonerating the officers.

Poor Quality Interviews The IMT listened to the audio tapes and read the transcripts of dozens of OPD internal investigations interviews. We were discouraged by the low quality of many of the interviews of complainants, witnesses, and subject officers. Interviews were replete, for example, with instances in which investigators did not ask general questions necessary to ferret out relevant information; did not challenge nonresponsive or inconsistent answers; and inappropriately asked leading questions. Investigators did not make use of photographic line-ups or other investigative tools during interviews. It was clear that in many interviews the investigator and witness had numerous side conversations during which the tape recorder was turned off. In some instances the tape recording was halted when it was clear the interview continued. Pauses in interview recording were often not accompanied by a statement of the reason for or length of the interview interruption.

Failure to Identify MOR Violations and Subject Officers Another pervasive deficiency we observed was a failure to identify, and subsequent failure to investigate, both *Manual of Rules* (MOR) violations and officers who may have committed the misconduct at issue.

In some instances OPD appeared to artificially narrow complaints. For example, in one IA case, the complainant wrote a letter claiming he was beaten by officers during an arrest, badly injured and denied medical treatment. The complainant claims injuries including badly bruised eyes, “scars” on his arm and back, a bloody nose, a bump on his head, and a jaw still swollen five days after the incident. One officer testifies that the complainant was bloody when an officer lifted him from the ground and the investigator acknowledges that photographs appear to show a bloody eye. The investigative report does not even acknowledge the complainant’s allegation regarding denial of medical care and there is no indication the investigator attempted to obtain the complainant’s medical records from the jail or of treatment he purportedly received after obtaining a court order for treatment.



OPD investigators also appeared to overlook apparent violations revealed during the course of investigations. These often, but not always, involved possible reporting violations: instances where OPD officers appeared to respond to calls and stop, search, detain and/or handcuff individuals, sometimes at gunpoint, and failed to complete any documentation about the incident. OPD rarely noted or investigated apparent non-reporting violations.

In other instances, OPD investigators did not address apparent MOR violations that went beyond non-reporting. In one investigation of an allegedly improper detention, handcuffing, and vehicle search, one officer told the OPD investigator that the detention at issue lasted half an hour, while another officer stated that it lasted 45 minutes to an hour. The radio purge indicated that the detention lasted approximately an hour and a half, just as complainant had alleged in his complaint. There is no indication that the investigator attempted to determine whether the officers' inaccurate assessments were the result of faulty memory or intentional dishonesty. In another investigation, an officer states in the course of explaining that he may not have returned the complainant's driver's license (an allegation that was sustained), that when he keeps drivers' licenses, he mails them back. There is no indication that OPD investigated whether this officer in fact has repeatedly failed to return drivers' licenses to citizens, as his comment suggests.

The IMT also identified many instances where officers appear to have been inappropriately excluded as subject officers. For instance, where a complainant claims s/he was unnecessarily hit and kicked by several officers but cannot identify the officers, the investigator may investigate one officer for hitting and kicking, and two others for hitting, but not kicking. In other instances it appears that only officers who admit they used some level of force are investigated to determine whether that force was necessary. For example, in one case an officer stated during the investigation that he may have used force against the complainant. This officer is inexplicably excluded as a subject officer in the force investigation while other officers on the scene are included as subject officers. Moreover, the investigator concludes in the report that this officer denied using force. In still another investigation, OPD sustained allegations that two OPD correctional officers lied about the unnecessary force used by one of them, but for reasons that are not apparent from the investigation, did not address whether additional officers also lied in statements to IA, despite indications in the investigative file that they may have.

Inappropriate Involvement by Supervisors and Division Level Investigations of IA Level Allegations Our review revealed several instances of inappropriate involvement in investigations by supervising officers or, similarly, inappropriate assignment of complaints for Division Level Investigation (DLI). For example, in one case the Sergeant participated in the investigation review process, despite being one of the subjects of the investigation. In another case, an allegation of false arrest/harassment was assigned for DLI. These allegations amounted to allegations of Class I violations and should have been investigated by IAD. In another instance, an allegation that the officer performed an invasive search for drugs, reaching into the complainant's pants and

searching in between his buttocks for drugs, was initially assigned to DLI for investigation. To its credit, OPD reassigned this latter case to IAD after the CPRB and IMT raised concerns about such searches.

As IAD's very existence demonstrates, investigation of citizen complaints by individuals outside the subject officer's daily sphere is critical to the perception that a department's internal investigations system is fair and objective. Regardless of the resource constraints faced by IAD, it is imperative that it investigate certain types of allegations. Similarly, OPD exacerbates a perception of bias when it permits involvement, however slight, in a misconduct investigation by another officer alleged to have committed misconduct in that same case.

### Conclusion

The deficiencies we identified make clear that OPD can and must do a better job investigating misconduct. OPD is well-positioned to take on this challenge now. OPD's new internal investigations policy and manual can provide clear instructions for change, and the IMT has been impressed with the dedication and competence of the Lieutenant commanding IAD, as well as with many of the IAD investigators. Nevertheless, meaningful improvement in the quality of OPD's internal investigations will require the sustained commitment not only of IAD but of the entire Department. OPD and the City must make clear that they will demand thorough, high-quality investigations of misconduct, and support IAD and the Divisions when they deliver.

## **IV. COMPLIANCE OVERVIEW**

Our discussion of OPD's compliance efforts and status is organized around the twelve Settlement Agreement sections from which OPD derived fifty-one "Tasks." At the start of the monitoring process, the IMT reviewed OPD's Task designations, found the Task division to be workable, and in the interests of clarity and consistency, adopted the same designations.<sup>12</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.

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<sup>12</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.

Twenty-six new Settlement Agreement Tasks had due dates occurring during the fourth and fifth quarter reporting periods:

- 1) IAD Staffing and Resources (Task 1)
- 2) Timeliness Standards and Compliance with IAD Investigations (Task 2);
- 3) Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4)
- 4) Complaint Procedures for IAD (Task 5)
- 5) Methods for Receiving Citizen Complaints (Task 7)
- 6) Classifications of Citizen Complaints (Task 8)
- 7) Contact of Citizen Complainants (Task 9)
- 8) Procedure Manual for Investigations of Citizen Complaints (Task 10)
- 9) Summary of Citizen Complaints Provided to OPD Personnel (Task 11)
- 10) Disclosure of Possible Investigator Bias (Task 12)
- 11) Investigation of Allegations of *Manual of Rules* Violations Resulting from Lawsuits and Legal Claims (Task 14)
- 12) Reviewing Findings and Disciplinary Recommendations (Task 15)
- 13) Supporting IAD Process-Supervisor/Managerial Accountability (Task 16)
- 14) Members', Employees' and Supervisors' Performance Reviews (Task 21)<sup>13</sup>
- 15) Use of Force Reporting Policy (Task 24)
- 16) Use of Force Investigations and Report Responsibility (Task 25)
- 17) Use of Force Review Board (Task 26)
- 18) Oleoresin Capsicum Log and Checkout Procedures (Task 27)
- 19) Use of Force-Investigation of Criminal Misconduct (Task 28)
- 20) IAD Investigation Priority (Task 29)
- 21) Firearms Discharge Board of Review (Task 30)
- 22) Officer-Involved Shooting Investigation (Task 31)
- 23) Use of Camcorders (Task 32)
- 24) Field Training Program (Task 42)
- 25) Performance Appraisal Policy (Task 44)
- 26) Consistency of Discipline Policy (Task 45)

With the addition of these Tasks, a total of forty-four of the fifty-one Settlement Agreement Tasks have become due.

These forty-four Tasks are:

- 1) IAD Staffing and Resources (Task 1)
- 2) Timeliness Standards and Compliance with IAD Investigations (Task 2);
- 3) Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4)

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<sup>13</sup> The compliance deadline for the policy development component of Task 21, Members', Employees' and Supervisors' Performance Reviews, occurred during the third quarter reporting period. However, the implementation deadline for Task 21 occurred during the fourth quarter reporting period.

- 4) Complaint Procedures for IAD (Task 5)
- 5) Methods for Receiving Citizen Complaints (Task 7)
- 6) Classifications of Citizen Complaints (Task 8)
- 7) Contact of Citizen Complainants (Task 9)
- 8) Procedure Manual for Investigations of Citizen Complaints (Task 10)
- 9) Summary of Citizen Complaints Provided to OPD Personnel (Task 11)
- 10) Disclosure of Possible Investigator Bias (Task 12)
- 11) Investigation of Allegations of *Manual of Rules* Violations Resulting from Lawsuits and Legal Claims (Task 14)
- 12) Reviewing Findings and Disciplinary Recommendations (Task 15)
- 13) Supporting IAD Process-Supervisor/Managerial Accountability (Task 16)
- 14) Supervisory Span of Control and Unity of Command (Task 17)
- 15) Approval of Field-Arrest by Supervisor (Task 18)
- 16) Unity of Command (Task 19)
- 17) Span of Control for Supervisors (Task 20)
- 18) Members', Employees' and Supervisors' Performance Reviews (Task 21)
- 19) OPD/DA Liaison Commander (Task 22)
- 20) Command Staff Rotation (Task 23)
- 21) Use of Force Reporting Policy (Task 24)
- 22) Use of Force Investigations and Report Responsibility (Task 25)
- 23) Use of Force Review Board (Task 26)
- 24) Oleoresin Capsicum Log and Checkout Procedures (Task 27)
- 25) Use of Force-Investigation of Criminal Misconduct (Task 28)
- 26) IAD Investigation Priority (Task 29)
- 27) Firearms Discharge Board of Review (Task 30)
- 28) Officer-Involved Shooting Investigation (Task 31)
- 29) Use of Camcorders (Task 32)
- 30) Reporting Misconduct (Task 33)
- 31) Vehicle Stops, Field Investigation and Detentions (Task 34)
- 32) Use of Force Reports-Witness Identification (Task 35)
- 33) Procedures for Transporting Detainees and Citizens (Task 36)
- 34) Internal Investigations-Retaliation Against Witnesses (Task 37)
- 35) Citizens Signing Police Forms (Task 38)
- 36) Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39)
- 37) Field Training Program (Task 42)
- 38) Performance Appraisal Policy (Task 44)
- 39) Consistency of Discipline Policy (Task 45)
- 40) Promotional Consideration (Task 46)
- 41) Community Policing Plan (Task 47)
- 42) Department Management and Annual Management Report (Task 48)
- 43) Monitor Selection and Compensation (Task 49)
- 44) Compliance Unit Liaison Policy (Task 50)

As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

**A. Policy Compliance**

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of twenty Tasks. At the end of the combined fourth and fifth quarter reporting period, OPD has attained policy compliance on two additional Tasks, bringing it into compliance with a total of twenty-two Tasks. Given that forty-four Tasks have become due, this level and pace of compliance is not encouraging at first glance. However, it must be noted that all but a few of the delinquent Tasks will be addressed by OPD's completion of four lengthy and complex policies (General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Manual; General Order K-4, *Reporting and Investigating the Use of Force*; and the Discipline Matrix) involving the manner in which the Department handles its internal investigations, reviews uses of force, and administers discipline. Each of these documents addresses multiple tasks. As detailed in the body of this report, during this reporting period, OPD continued to work diligently on these documents but has not yet completed them.

The following table summarizes OPD's policy compliance with the Settlement Agreement requirements that have become due.<sup>14</sup>

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>
1	IAD Staffing and Resources	8/13/2004	
2	Timeliness Standards and Compliance with IAD Investigations	6/15/2004	
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	
5	Complaint Procedures for IAD	6/15/2004	
7	Methods for Receiving Citizen Complaints	6/15/2004	
8	Classifications of Citizen Complaints	6/15/2004	
9	Contact of Citizen Complainants	8/13/2004	

<sup>14</sup> In addition to attaining policy compliance with twenty-one of the forty-four Tasks listed in the Table, OPD has attained policy compliance with Task 6, Refusal to Accept or Refer Citizen Complaints, substantially ahead of schedule. This Task is not due until June 1, 2005.

10	Procedure Manual for Investigations of Citizen Complaints	8/13/2004	
11	Summary of Citizen Complaints Provided to OPD Personnel	8/13/2004	
12	Disclosure of Possible Investigator Bias	6/15/2004	
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	6/15/2004	
15	Reviewing Findings and Disciplinary Recommendations	6/15/2004	
16	Supporting IAD Process-Supervisor/Managerial Accountability	6/15/2004	
17	Supervisory Span of Control and Unity of Command	1/20/ 2004	√*
18	Approval of Field-Arrest by Supervisor	1/20/2004	√*
19	Unity of Command	1/20/2004	√
20	Span of Control	8/14/2003	√
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√
22	OPD/DA Liaison Commander	4/15/2003	√
23	Command Staff Rotation	1/20/2004	√
24	Use of Force Reporting Policy	7/20/2004	
25	Use of Force Investigations and Report Responsibility	7/20/2004	
26	Use of Force Review Board (UFRB)	7/20/2004	
27	Oleoresin Capsicum Log and Checkout Procedures	7/20/2004	√
28	Use of Force-Investigation of Criminal Misconduct	7/20/ 2004	
29	IAD Investigation Priority	7/20/2004	
30	Firearms Discharge Board of Review	7/20/2004	
31	Officer-Involved Shooting Investigation	7/20/2004	
32	Use of Camcorders	7/20/2004	√

33	Reporting Misconduct	8/25/2003	√
34	Vehicle Stops, Field Investigation and Detentions	8/25/2003	√
35	Use of Force Reports-Witness Identification	8/25/2003	√
36	Procedures for Transporting Detainees and Citizens	8/25/2003	√
37	Internal Investigations-Retaliation Against Witnesses	8/25/2003	√
38	Citizens Signing Police Forms	8/25/2003	√
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√
42	Field Training Program	4/16/2004	
44	Performance Appraisal Policy	7/7/2004	√
45	Consistency of Discipline Policy	6/15/2004	
46	Promotional Consideration	7/8/2003	
47	Community Policing Plan	8/1/2003	√
48	Departmental Management and Annual Management Report	7/02/2003	√
49	Monitor Selection and Compensation	4/15/2003	√
50	Compliance Unit Liaison Policy	3/4/2003	√

\*Indicates that policy compliance was achieved during this reporting period.

**B. Training Compliance**

OPD has initiated, and in a number of cases, may have completed training for a number of the new policies it has created. As discussed above, however, OPD continues to suffer from serious training verification deficiencies. Due to OPD's persistent failure to reliably document and track the training it has provided its officers, the IMT is unable

to report training compliance for any of the Tasks requiring training.<sup>15</sup>

The IMT remains concerned about OPD's ability to quickly and reliably train officers in new policies, and will continue to closely monitor this aspect of compliance.

### **C. Actual Practice Compliance**

As noted above, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Span of Control for Supervisors (Task 20); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigation and Detentions (Task 34); and Personnel Practices (Task 44). The results of each of these reviews can be found in the individual Task updates discussed below. While OPD has made some progress in each of these areas, with the exception of Task 22, its actual practices do not yet comply with the Settlement Agreement.

In addition to analyzing OPD's actual practices in the areas listed above, the IMT assessed the quality of OPD's internal investigations. The results of this review are detailed in the Areas of Concern section of this Report. As discussed, OPD's internal investigations suffer from a number of fundamental deficiencies.

Overall, the IMT can confirm that OPD is in compliance with four Settlement Agreement requirements in actual practice: OPD/DA Liaison Commander (Task 22); Use of Camcorders (Task 32); Monitor Selection (Task 49); and Compliance Unit Liaison Policy (Task 50). This is one Task more than during the last reporting period.

## **V. DETAILED COMPLIANCE REPORT**<sup>16</sup>

In the interest of completeness, we discuss below the requirements for each section of the Settlement Agreement and provide a brief statement of OPD's progress thus far.

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

Section III of the Settlement Agreement, Tasks 1–16, concerns OPD's Internal Affairs Division. The Settlement Agreement requires broad reform in the receipt and investigation of complaints of officer misconduct. This section also institutes

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<sup>15</sup> In order to obtain training compliance, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy related to the Task.

<sup>16</sup> The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.



mechanisms to ensure that commanders and first line supervisors are held accountable for misconduct by OPD officers under their command.

As a result of a series of extensions negotiated between the parties, eleven of the sixteen tasks in this Section became due during the Fourth Quarter reporting period.<sup>17</sup> OPD intends for General Order M-3, *Complaints Against Departmental Personnel or Procedures*, to address in whole or part each of the eleven tasks that have become due. While OPD has produced several drafts of M-3, and received extensive feedback from the IMT, it has not yet completed a draft of the policy that fully complies with the requirements of the Settlement Agreement. As a result, OPD has not yet achieved policy compliance with the tasks covered by M-3.

The IMT discussed its concerns about the timeliness of OPD's current system for investigating allegations of officer misconduct in its Second Quarterly Report. In response to our concerns, OPD took several steps, including accelerating development of an IAD manual and more closely tracking the progress of cases in Internal Affairs and at the Division level. As discussed above, in the Areas of Concern section of this Report, the IMT has grave concerns regarding the quality of OPD's internal investigations.

Our discussion here is limited to a reiteration of the Settlement Agreement requirements and a brief statement of OPD progress. We anticipate a fuller discussion in subsequent reports, once OPD completes and publishes a compliant policy governing these tasks and trains its personnel on the policy.

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

**a. Settlement Agreement Requirements**

- By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)

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<sup>17</sup>As discussed in our previous reports, the policy covering many of these Tasks was initially due December 3, 2003. However, OPD asked for and obtained a series of extensions postponing the due dates on the tasks associated with this Section of the Settlement Agreement.

- By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.

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

The revised compliance deadline for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented policies that comply with the Settlement Agreement. Previously, OPD was required to produce an IAD procedural manual by June 1, 2005. In its Second Quarterly Report, the IMT expressed serious concerns regarding the timeliness of OPD's internal affairs investigations and the lack of written guidance for conducting misconduct investigations. In order to help improve its internal investigations process, OPD committed to expediting production of the IAD procedural manual required by this Task. While OPD has been working diligently on this Task and has made substantial progress in its development of an IAD manual, it has not yet completed the manual. OPD has assigned additional staff to aid in case tracking and investigation, but has reported continuing difficulties.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policies, conducted appropriate training on the policies, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

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

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

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

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including the timeliness requirements. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft, including specific concerns about its proposed timelines.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

## **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. Work on this Task has not yet been started. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for the policy development components of this Task occurred during the last reporting period. The implementation deadlines occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. As discussed above, during the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. This draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including the complaint system and handling of informal complaints. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will

report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

- By June 15, 2004, OPD must develop a policy to provide immediate access to a supervisor to all citizens seeking to file a complaint. The Settlement Agreement sets forth certain criteria to be followed if there is delay greater than three hours in providing access to a supervisor or if the complainant refuses to travel to or wait for a supervisor.
- By June 15, 2004, OPD must develop a policy to provide Oakland City Jail inmates the opportunity to file a complaint against OPD officers/employees. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By June 15, 2004, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints, including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the "preponderance of evidence" standard; and permanently retain all notes related to the investigation. This provision also defines 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 October 1, 2004, OPD must implement the above referenced policies.

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD had previously drafted and published *Manual of Rules* insert

398.76, incorporating one part of this Task (complainant access to a supervisor). OPD also developed and, shortly following the end of the last reporting period, published Jail Policy & Procedure 05.01. Among other issues, this policy sets forth procedures for providing inmates of the Oakland City Jail the ability to file complaints against OPD officers and employees. The IMT determined that both policies comply with the Settlement Agreement. According to OPD, it has trained only approximately 55% of relevant personnel on the Jail policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find OPD in training compliance for this Task.

As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including the setting of standards for IAD investigations and dispositions of citizen complaints. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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. Nonetheless, OPD already has in place a policy that complies with the Settlement Agreement: *Manual of Rules* insert 398.76. The IMT commends OPD for being substantially ahead of schedule on this Task. In subsequent reports, the IMT will report whether training has been completed on the policy and whether OPD's actual practices comply with the Settlement Agreement.

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

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

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

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

The policy and implementation deadlines for this Task occurred during this reporting period. As previously noted, OPD is already in compliance with the requirement that IAD offices be located off-site. OPD, however, has not developed or implemented a policy that complies with the remaining requirements of this Task. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including procedures for receiving citizen complaints. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including classification of citizen complaints. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will



report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including timely contact of complainants to obtain critical information. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy and conducted appropriate training on the policy.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. 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.

Previously, OPD was required to produce an IAD procedural manual by June 1, 2005. In its Second Quarterly Report, the IMT expressed serious concerns regarding the timeliness of OPD’s internal affairs investigations and the lack of written guidance for conducting misconduct investigations. In order to help improve its internal investigations process, OPD committed to expediting production of the IAD procedural manual required by this Task. While OPD has been working diligently to draft the manual, as of the end of this reporting period, the manual had not yet been completed.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policies, conducted appropriate training on the policies, and whether OPD’s actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

- By August 13, 2004, OPD must, based on contemporary police standards and best practices,

develop a policy requiring that complaint investigators:

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including the treatment of OPD members and employees who are the subjects of complaints. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether

OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including disclosure of investigator bias. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including administrative investigation of allegations made in civil lawsuits and claims. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following

the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

- By June 15, 2004, 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 October 1, 2004, OPD must implement this policy.

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including command review of investigative findings and disciplinary recommendations. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The policy and implementation deadlines for this Task occurred during this reporting period. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs, including command accountability for supporting the IAD process and identifying misconduct. The IMT and Plaintiffs' Attorneys, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs' Attorneys granted an extension for OPD to rework the draft to address a variety of issues. At the end of the combined fourth and fifth quarter reporting periods, OPD produced another draft of M-3. While a significant improvement over previous drafts, the draft was still not fully compliant with the requirements of the Settlement Agreement. The IMT has provided OPD with detailed comments and recommendations on the draft and, following the conclusion of this reporting period, OPD produced a revised draft of M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

**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 promotes more consistent supervision by requiring the assignment of a single supervisor to each OPD member and employee. This section also requires mechanisms to improve the detection and communication of problems or potential problems, including regular performance review meetings and assignment of a liaison to the District Attorney’s and Public Defender’s Offices.

Two of these Tasks, Span of Control for Supervisors (Task 20) and OPD/DA Liaison Commander (Task 22), were due during the first reporting period. During the third reporting period, four additional Tasks became due: Supervisory Span of Control and Unity of Command (Task 17);<sup>18</sup> Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). During this reporting period, the final Task in this section, Members’, Employees’ and Supervisors’ Performance Reviews (Task 21), became due.

OPD has achieved policy compliance for all seven of the Tasks in this area. OPD has made substantial progress in training in this area as well, but as discussed above, has been unable to reliably track or verify the training to allow the IMT to find training compliance for any of the Tasks in this area. During this reporting period, the IMT examined OPD’s actual practices regarding supervisory span of control. The results of this review are discussed below under Task 20.

**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.

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<sup>18</sup> As noted above, Supervisory Span of Control and Unity of Command (Task 17) has no separate requirements, but will be completed once OPD has completed Tasks 18, 19, 21 and 23.



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

This Task has no separate requirements. Since OPD has developed and published compliant policies for Tasks 18, 19, 21 and 23, OPD has achieved policy compliance with this Task. During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on these policies and whether OPD's actual practices comply with these Settlement Agreement provisions.

### **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 occurred during the last reporting period. OPD drafted a policy, General Order M-18, *Arrest Approval and Report Review in the Field*, complying with a portion of this Task. The IMT determined that the policy complied with the Settlement Agreement. OPD published, distributed, and began training its personnel on this policy during this reporting period. OPD, however, has not yet completed the required training on the policy. According to OPD, it has trained only approximately 17% of relevant personnel on this policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on the policy and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the second reporting period. As previously reported, OPD achieved policy compliance with this Task by publishing and distributing the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; and BOI Policy 04-02, *Supervisory Span of Control*. While OPD has made progress in its training on this Task, it has not yet achieved training compliance. According to OPD, it has trained approximately 86% of relevant personnel on General Order A-3; approximately 92% of relevant personnel on BFO Policy 03-02; and only approximately 33% of relevant personnel on BOI policy 04-02.

During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on the policies and whether OPD's actual practices comply with this Settlement Agreement provision.

**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 the first reporting period. As previously reported, OPD achieved policy compliance with this Task by publishing and distributing the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; BOI Policy 04-02, *Supervisory Span of Control*. As noted above, while OPD has made progress in training, it has not yet achieved training compliance. According to OPD, it has trained approximately 86% of relevant personnel on General Order A-3; approximately 92% of relevant personnel on BFO Policy 03-02; and only approximately 33% of relevant personnel on BOI policy 04-02.

During this reporting period, the IMT reviewed OPD's compliance with Task 20 in actual practice. OPD's actual practices do not yet comply with Task 20, but it has made significant progress in providing closer, more consistent supervision as required by the Settlement Agreement. The IMT's review found that OPD has made great strides in *assigning* sufficient numbers of sergeants to permit adequate primary supervision of Patrol, Crime Reduction Teams (CRT), PAC Unit, and the Fugitive Squad. For the period covered by the IMT's review, OPD achieved the required 100% for its CRT and PAC squads. In addition, for 2004, OPD initially assigned sufficient sergeants to achieve 100% compliance in patrol.

However, OPD subsequently fell out of compliance in this area: as of August 13, 2004, six patrol squads no longer had permanently assigned sergeants. OPD reports that there is an insufficient number of sergeants to permit adequate assignment of sergeants, asserting that the City has rescinded numerous previously granted sergeant slots. The IMT has not independently verified this assertion nor assessed the impact of the City or OPD's overall staffing decisions.

In addition to requiring that OPD assign a sufficient number of sergeants to supervise officers, OPD must ensure that at least 85% of the squads covered by Task 20 are actually supervised by a primary sergeant. The IMT reviewed a sample of over 1800 out of 2412 shifts occurring in a twelve-week review period.<sup>19</sup> The IMT considered a squad in compliance with this task if a permanently assigned sergeant was in attendance

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<sup>19</sup> The Bureau of Field Operations (BFO) provided daily details for all but 18 of the 1484 patrol shifts reviewed (98.8%). The Fugitive Unit was able to provide documentation of 100% of the 60 shifts occurring during the twelve-week period. The documentation for the other squads varied widely and was less impressive. The BFO's CRT squads provided far less complete documentation, 77% overall. CRTs 4 and 6 provided the least complete documentation, providing information for only 45.8% and 52.1%, respectively, of squads during the twelve-week period assessed in detail. This compares to documentation of between 89.6% to 93.8% for the other CRTs. The PAC team provided documentation for 72.9% of the squads assessed. This lack of documentation may have significantly impacted compliance rates for the CRTs and PAC. The IMT attempted to minimize the impact of missing documentation by shifting its review of the CRTs, Fugitive Unit and PAC by a week. This shift allowed for more complete review of the CRT and PAC units.

and supervising on a given day. Over the twelve-week period we reviewed, the squads covered by Task 20 (Patrol/CRT/PAC/Fugitives Unit) were supervised by their primary sergeants for 65.8% of their shifts, well short of the 85% required for compliance.<sup>20</sup>

OPD's failure to assign permanent sergeants to squads has contributed and continues to contribute negatively to OPD's performance in this area. As of the date of our review of Task 20, the Fugitive Unit had already been without any assigned sergeant for 12 weeks this calendar year and six patrol squads had not had a permanently assigned sergeant for time periods ranging from one to 16 weeks. As of the date of the review, two patrol squads had been without permanently assigned supervisors for at least 13 and 16 weeks, respectively.

Following our review, we engaged in a constructive dialogue with OPD about strategies for achieving and documenting compliance with Task 20. OPD committed to working with the IMT to more clearly define primary supervisors and to improve the manner in which it documents daily squad assignments.

While OPD has not yet reached compliance for Task 20, we are encouraged by the progress it has made. We note that it is in this area (span of control for supervisors) where the direct impact of the Settlement Agreement has been most noticed and, in most instances, appreciated by OPD officers. The IMT is concerned about some evidence of backsliding (i.e. falling out of compliance in assigning sufficient sergeants); however, if this is corrected, OPD will be headed in the right direction overall for Task 20. We hope to confirm this in our next review of Task 20 compliance.

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

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

- By May 5, 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.

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<sup>20</sup> Unless otherwise noted, the percentages cited are based on a denominator that includes the shifts for which OPD was unable to provide documentation despite numerous attempts by the IMT to obtain it via OPD's Office of Inspector General. Because the IMT cannot confirm compliance without documentation, we must consider days for which there is no documentation not in compliance. The IMT did, however, calculate compliance percentages with the missing shifts excluded from the population. In patrol, this different consideration of missing shifts made little difference, given its high rate of documentation. However, the compliance rates varied significantly for units with lower levels of documentation such as CRT and PAC.

- By July 7, 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 July 7, 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 occurred during the last reporting period. As previously reported, OPD developed and published a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, well ahead of this deadline. Additionally, according to OPD, it has trained approximately 98% of relevant personnel on this policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.<sup>21</sup> While we are unable to find overall Departmental training in compliance, we note that OPD's largest bureau, the Bureau of Field Operations (BFO), has provided more reliable training data. This data shows that BFO had trained approximately 96% of BFO members and employees in this Task as of August 2, 2004.

During this reporting period, the IMT audited OPD's performance appraisals. The results of this review are summarized below in our discussion of Task 44.

During the upcoming quarters, the IMT will determine whether OPD has conducted appropriate training on the policy and whether OPD's actual practices comply with this Settlement Agreement provision.

### **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

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<sup>21</sup> As discussed above, in order to obtain a compliance finding for training, OPD must be able to demonstrate that it has trained 95% of relevant personnel on the relevant policy.

implement a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office. This unit or person is to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.

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

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

As previously reported, OPD developed and published a compliant policy incorporating this provision—General Order A-18, *Management Level Liaison*. Additionally, according to OPD, it has trained approximately 98% of relevant personnel on this policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

During this reporting period, the IMT reviewed the activities of the Management-Level Liaison (MLL) appointed by OPD pursuant to this Task. The MLL continues to obtain and review information from both the District Attorney and the Public Defender regarding cases that may indicate performance problems, misconduct, or indicia thereof. Since April 2004, the MLL has referred ten cases to OPD's Internal Affairs Division for further investigation based on this information. During the same time period, the MLL has referred an additional case for a Division level investigation. Additionally, as a result of the MLL's outreach efforts, an Alameda County judge contacted Internal Affairs directly to report apparent discrepancies in an officer's hearing testimony. The MLL has also continued to produce monthly memoranda detailing his activities, including whether any relevant cases have been received and how they should be handled.

The IMT is pleased to report that the MLL is meeting both the letter and the spirit of this Settlement Agreement provision.<sup>22</sup> Accordingly, once OPD is able to verify its training statistics, it will have achieved compliance for this Task in policy, training, and actual practice.

During the upcoming quarters, the IMT will determine whether OPD has conducted appropriate training on the policy and whether it continues to track cases as required by the Settlement Agreement. In addition, the IMT will monitor OPD's handling of matters the MLL has already identified for tracking.

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<sup>22</sup> A recent audit by OPD's Office of Inspector General also determined OPD's actual practices to be in compliance with the Settlement Agreement.

**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 occurred during the last reporting period. As previously reported, OPD published a command staff rotation policy that complies with the Settlement Agreement well in advance of the deadline.

During the upcoming quarters, the IMT will determine whether OPD's actual practices comply with this Settlement Agreement provision.

**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 mandating training in this area for supervisors.

All of these requirements became due during this reporting period. As previously reported, OPD has already achieved compliance with Task 32, which requires OPD to explore the use of camcorders in patrol vehicles. OPD, however, has not developed or implemented a policy that complies with the Settlement Agreement for any of the other Tasks in this section.

**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 occurred during this reporting period. OPD, however, has not yet developed or implemented a policy that complies with the Settlement Agreement. While OPD has been working to develop a use of force reporting policy and has prepared several internal drafts, as of the date of this Report, it has not yet completed development of the required policy or reporting forms.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policies, conducted appropriate training on the policies, and whether OPD's actual practices comply with this Settlement Agreement provision. In addition, the IMT will continue to monitor OPD's use of force tracking.



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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. As previously reported, OPD has revised and published a compliant policy relating to one discrete component of this Task. Special Order 8066, *Use of Force Reports-Witness Identification* pertains to the identification of witnesses during investigations. OPD has not completed training of relevant personnel on this policy or developed or implemented a policy that complies with the remaining portions of this Task. According to OPD, it has trained approximately 91% of the relevant personnel on Special Order 8066. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

As noted in our previous reports, OPD states that it intends to incorporate the provisions of the witness identification Special Order into its new use of force policies. While OPD has been working to develop a use of force reporting policy and has prepared several internal drafts, as of the date of this Report, it has not yet completed development of the required policy.

During the upcoming quarters, the IMT will review the draft policies and determine whether OPD has conducted appropriate training on the policies. The IMT will also determine whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

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

The compliance deadline for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented a policy that complies with the Settlement Agreement.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

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

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

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

The compliance deadlines for this Task occurred during this reporting period. As previously reported, OPD published Special Order 8061, *Control of Oleoresin Capsicum*, well in advance of the due date. Special Order 8061 makes OPD's Property and Evidence Unit (PEU) responsible for issuing OC canisters to OPD officers and tracking their use. The IMT reviewed this policy and determined it to be in compliance with the Settlement Agreement. In addition to developing the policy, PEU began preparing monthly reports regarding policy adherence and OC canister distribution. According to OPD, it has trained approximately 97% of relevant personnel on Special Order 8061. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

As discussed above, a recent audit conducted by OPD's Office of Inspector General revealed significant gaps in OPD's policy and procedures related to OC tracking. While PEU has been complying with the new policy, OPD discovered that its Training Division has also been issuing OC canisters to officers. The Training Division has been issuing the canisters without logging or tracking such distribution. Additionally,

according to the audit, Training has not been keeping inventory records of OC received from vendors or delivered to PEU. As a result, the audit notes that “[a]t this time, it is impossible to know the exact amount of OC Spray used by the Department during any given time period or to effectively track its use by specific individuals.”

The audit includes a series of concrete and reasonable recommendations to ensure that the Department as a whole is complying with the OC tracking system required by the Settlement Agreement. In particular, the audit concludes that the Training Division must develop and implement a system for tracking OC use and distribution. This will require amending Special Order 8061 or developing a new policy focusing on the Training Division.

The IMT applauds OPD’s self-identification of deficiencies in this area and its thoughtful and constructive recommendations for achieving compliance. During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on the policy and whether OPD’s actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. OPD has revised General Order M-4, *Coordination of Criminal Investigations* to incorporate the requirements of this Task. The IMT reviewed M-4 and determined that the current draft does not comply with the Settlement Agreement because it does not provide for the required reporting to the District Attorney’s Office.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD’s actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented policies that comply with the Settlement Agreement. OPD has reported that this Task will be addressed in General Orders M-3 and M-4, *Coordination of Criminal Investigations*. As noted above, OPD is in the process of revising these policies. However, as of the date of this Report, OPD has not yet completed development of the required policies.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policies, conducted appropriate training on the policies, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented policies that comply with the

Settlement Agreement. OPD has been working to revise General Order K-4, *Reporting and Investigating the Use of Force*, which includes the criteria for convening a Firearms Discharge Board of Review.<sup>23</sup> While OPD has prepared several internal drafts of the policy, as of the date of this Report, it has not yet completed development of the required policy.

The IMT is charged with assessing the timeliness and quality of Firearms Discharge Boards of Review. As we previously noted, there are a number of systemic deficiencies in OPD's Firearms Discharge Boards of Review, particularly related to their timeliness. OPD's current policies do not set forth deadlines for convening Review Boards. Accordingly, this is one issue that must be addressed as the policies are revised.

During the upcoming quarters, the IMT will continue to assess the timeliness and quality of Firearms Discharge Boards of Review and will report whether OPD's reviews of officer-involved shootings comply with the Settlement Agreement and best practices.

**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.

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<sup>23</sup> Since Special Order 5095, *Firearms Discharge Board of Review*, also covers this Task, it may need to be revised to reflect the revisions to K-4.

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

The compliance deadline for this Task occurred during this reporting period. OPD, however, has not yet developed or implemented policies that comply with the Settlement Agreement. OPD published two training bulletins related to this Task before the IMT began its work. The IMT provided comments on one of these training bulletins (Training Bulletin V-O), informing OPD that it did not sufficiently incorporate the requirements of the Settlement Agreement.

OPD will not be in compliance with the policy or training components of this Task until it makes the necessary revisions to the bulletin and retrains officers accordingly. Internal Affairs investigators, as required by this Task, have started responding to officer-involved shootings where a person is struck.

During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate retraining on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

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

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

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

The compliance deadline for this Task occurred during this reporting period. OPD achieved compliance with this Task ahead of schedule by producing research reports regarding the use and cost-effectiveness of camcorders in patrol vehicles. OPD concluded that it is not able at the present time to install camcorders in Patrol vehicles due to budgetary constraints.

On April 28, 2004, the City Council's Public Safety Committee unanimously endorsed a demonstration project that placed in-car cameras in several OPD patrol vehicles for 90 days. According to City officials, the project was a success and it intends to pursue efforts to equip all OPD patrol vehicles with cameras. The videotapes assisted supervisors with providing feedback to officers regarding tactics and were used in several criminal cases. Additionally, according to OPD, none of the officers who participated in the project received any complaints during the project period. Police agencies across the country have reaped these and other benefits from the use of video equipped patrol cars, including their ability to provide irrefutable evidence for use in internal investigations that can be used to prove or disprove a variety of allegations.

The IMT commends OPD for achieving compliance on this Task ahead of schedule and the City and OPD for their continued efforts in this area.

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

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

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

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

While OPD made some progress in training during this reporting period, it is still in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

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

**a. Settlement Agreement Requirements**

- By August 25, 2003, OPD must require its personnel to report misconduct to their supervisor and/or IAD, including, but not limited to, uses of force that appear inappropriate and arrests that appear improper.

- The Settlement Agreement requires that OPD have a procedure for officers to report misconduct confidentially, and sets forth particular criteria for this confidential reporting process.
- The Settlement Agreement further requires that OPD assess corrective action and/or discipline for failure to report misconduct.

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

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

OPD has not yet completed training on these policies. According to OPD, it has trained only approximately 31% of relevant personnel on MOR Sections 314.48 and 314.49; approximately 92% of relevant personnel on General Order D-16; and approximately 81% of relevant personnel on MOR Sections 370.18 and 370.27.

All of these policies are important. However, MOR Sections 314.48 and 314.49, requiring officers to report misconduct and providing protection for those who do, are essential for fostering an environment in which misconduct is not tolerated or condoned. The IMT continues to recommend that OPD prioritize its training obligations to ensure that training on these provisions is completed and properly documented as soon as possible.

During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on these policies and will monitor whether OPD's actual practices comply 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 the first reporting period. OPD published a policy (Special Order 8012, *Racial Profiling Stop-Data Collection Form*) that complied with the Settlement Agreement.

OPD replaced this Special Order with General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. As previously reported, General Order M-19 is in many respects a model policy. It provides a clear definition of prohibited conduct; straightforwardly sets forth the responsibilities of various Departmental subunits; and provides guidance in the form of examples of prohibited conduct. If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

During this reporting period, OPD published a technical guide, *Promoting Cooperative Strategies to Reduce Racial Profiling*. The technical guide was the culmination of months of work by a coalition of community/advocacy groups, corporations, the Oakland Police Officers Association and OPD. Together with M-19, the technical guide is an important contribution to nationwide efforts to reduce unjustified racial profiling. The guide reports and analyzes the results of the coalition's community and Departmental personnel surveys, as well as the results of OPD stop-data. This OPD-led coalition makes a series of recommendations for communities interested in combating racial profiling, including guidelines on collaborative and credible stop-data collection. This guide will likely become a significant resource used by communities interested in ending biased-based policing.

While OPD has achieved policy compliance for this Task, it has not yet achieved training or actual practice compliance. Training on M-19 was not initiated during this reporting period. Moreover, the Settlement Agreement requires that after the first year of data collection, OPD officers include their names on every stop data form. OPD has sent mixed messages regarding this requirement and, as a result, many officers have continued not to include their names on the forms. Following a discussion with the IMT, OPD recently ordered all officers to place their names on the forms effective November 15, 2004.

As discussed above in the Areas of Concern section of this Report, OPD's continued poor actual practices on this Task are of great concern to the IMT. During upcoming quarters, the IMT will determine whether OPD has completed appropriate training in this area. We will also monitor whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD achieved policy compliance by publishing Special Order 8066, *Use of Force-Witness Identification*, on April 12, 2004. While OPD has made progress in training on this policy, it has not yet completed training on the new policy. According to OPD, it has trained approximately 91% of relevant personnel on Special Order 8066. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

OPD has reported that it intends to incorporate the provisions of the witness identification Special Order into its new use of force policies. The Settlement Agreement requires that these policies be developed and implemented by July 20, 2004. As noted above, as of the date of this Report, OPD had not yet completed these policies.

During the upcoming quarters, the IMT will determine whether subsequent policies comport with the Settlement Agreement, whether appropriate training has been completed, and will monitor whether OPD's actual practices comply 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 the first reporting period. OPD achieved policy compliance by publishing Special Order 8055, *Transportation of Persons*, on November 25, 2003. According to OPD, it has achieved training compliance on this Task, having trained approximately 95% of relevant personnel on the new policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

During the upcoming reporting periods, the IMT will determine whether appropriate training has been completed and will monitor whether OPD’s actual practices comply with this Settlement Agreement provision.

**5. Internal Investigations-Retaliation Against Witnesses (Task 37; S.A. V.I.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 the first reporting period. While OPD has drafted policies reflecting the literal language of the Settlement Agreement, as previously reported, the IMT remains concerned about internal inconsistencies in the policies and the message that such inconsistencies send.

On November 23, 2003, OPD published Special Order 8092 consisting of two *Manual of Rules* revisions: MOR Section 398.73, *Retaliation Against Witnesses*, and MOR Section 398.74, *Retaliation Against Witnesses, Accountability*. The IMT provided comments to OPD on the MOR revisions while they were in draft form, noting that the revisions did not comply with the Settlement Agreement because they did not make dismissal the presumptive disciplinary penalty for retaliation. The published version of MOR Section 398.73 now complies with the Settlement Agreement.

However, the published version of MOR Section 398.74, while tracking the language of the Settlement Agreement, remains problematic because it is inconsistent with MOR Section 398.73. MOR Section 398.74 purports to describe the standard of accountability OPD has established for supervisors who fail to hold their subordinates responsible for retaliation. It is the IMT's understanding that OPD intends to hold supervisors as accountable for retaliation under their watch as it holds officers who engage in retaliation accountable. Because MOR Section 398.74 does not clarify that dismissal is the presumptive penalty for failing to take proper measures to prevent retaliation, it appears to establish a lower level of accountability for supervisors than OPD has established for officers. In the view of the IMT, this result is counter to the reforms and sends the wrong message throughout OPD.

According to OPD, it has achieved training compliance on this Task, having trained approximately 95% of relevant personnel on the new policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

It is possible that through training and the new disciplinary matrix, OPD will be able to resolve the apparent conflict between the policies. However, as of the date of this Report, the draft disciplinary matrix does not adequately address this issue. The draft matrix does not comply with this Task's core requirement because it fails to make dismissal the presumptive penalty for retaliation. Instead, it would permit a thirty day suspension and appears to make demotion, not termination, the presumptive penalty for retaliation.

During the upcoming reporting periods, the IMT will determine whether appropriate training has been completed and whether OPD's actual practices comply 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 on Statement Forms draw a diagonal stripe from the end of the written narrative to the bottom of the page and sign along the stripe. Citizen statements on offense reports must be signed by the citizen immediately following the statement.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD achieved policy compliance by publishing an *Information Bulletin on Citizens Signing Police Forms* on October 22, 2003. According to OPD, it has achieved training compliance on this Task, having trained approximately 95% of relevant personnel on the new policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

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

During the upcoming reporting periods, the IMT will determine whether appropriate training has been completed and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. **Settlement Agreement Requirements**

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

b. **Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD achieved policy compliance by publishing Special Order 8064, *Reporting Civil Actions Served*, on April 13, 2004, and Manual of Rules Section 314.28, *Notification*, on November 23, 2003. According to OPD, it has trained approximately 93% of relevant personnel on Special Order 8064. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

The draft General Order covering these requirements (General Order B-4, *Personnel Transfers and Loan Transfer Waiver Procedures*) continues to be “on hold” while discussions with the Oakland Police Officers’ Association (OPOA) regarding transfer policies ensue. Accordingly, OPD drafted Special Order 8064 as a stop-gap measure to cover this Task until a permanent policy can be drafted and implemented.

During the upcoming reporting periods, the IMT will monitor the development of General Order B-4. The IMT will further determine whether appropriate training has been completed and will monitor whether OPD’s actual practices comply 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 common as police departments seek to effectively gather and organize data traditionally recorded in a variety of formats and locations. It is widely believed that better tracking of this information facilitates consistency in performance evaluations, corrective actions, and other management decisions. OPD’s system, the Personnel Information Management System, or “PIMS,” is not due to be completed until mid-2005.

**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**

As previously reported, the development of PIMS appears to be on track. OPD has selected a software vendor and made further progress in developing the PIMS policy. During the fourth quarter reporting period, the IMT observed a demonstration by the vendor of PIMS-related software. Assuming the software is modified to incorporate the requirements of the Settlement Agreement and OPD’s unique needs, it has the ability to assist OPD with managing its personnel as required by this Task. This will only happen, however, if the software is accompanied by appropriate protocols, training, equipment, and user support. The IMT will continue to track interim progress closely.

**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 is being completed in conjunction with the PIMS database. See “Status of Compliance and Assessment” under Task 40, Personnel Information Management System (PIMS)-Purpose for Task 41’s status of compliance.

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

Section VIII of the Settlement Agreement, Task 42, requires OPD to make significant changes in the manner in which its Field Training Officers are selected, certified, trained, supervised, rotated and evaluated. These enhancements are designed to ensure that rookie officers receive field training from seasoned officers who have demonstrated their leadership abilities, professionalism and commitment to OPD values. In order to ensure that the training is effective, the Settlement Agreement also requires OPD to conduct daily audits and regular evaluations of all Field Training Officers. The compliance deadline for this section of the Settlement Agreement occurred during 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; the supervision and evaluation of FTOs; the length of time that trainee officers spend in the program; and the methods by which FTOs assess and evaluate trainee officers in field training. The Settlement Agreement sets forth



extensive requirements that must be part of this new Field Training Program.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. Because there are currently no police academies scheduled, the new FTO program has not been fully implemented or audited. As previously reported, OPD has held three focus group sessions for the members of the last Academy and provided the results to the Training Section and Bureau commanders. Additionally, OPD reports that, to the extent possible, it utilized the new procedures for an individual officer who was in training. OPD also reports that it provided training on the new Field Training Program to sergeants attending the Supervisor Transition Course.

OPD drafted General Order B-8, *Field Training Program* to reflect the new FTO policies and procedures. The IMT has reviewed two drafts of the policy and met with OPD's subject matter expert. Though the draft does not yet comply with the Settlement Agreement, as the IMT has detailed for OPD, it requires relatively minor adjustments to bring it into compliance.

It is imperative that OPD's FTO Program complies with the Settlement Agreement in policy and actual practice before the influx of recruits resulting from the recent ballot initiative begins field training.

During the upcoming reporting periods, the IMT will determine whether OPD makes the necessary changes to B-8; conducts appropriate training on the policy; and will monitor whether OPD's actual practices comply with these Settlement Agreement provisions.

**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 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. As previously reported, according to OPD, it has started to research best practices in instructor selection and training, and in the evaluation of the content and quality of training. When appropriate, the IMT will review the development and implementation of the required plans and policies to determine whether they comply with the Settlement Agreement.

The IMT will be focusing intently on OPD's Academy training during the next two quarters, because of both the impending due date and the expected influx of recruits. Like OPD's FTO Program, it is imperative that the Academy training plan comply with the Settlement Agreement before the next Academy is convened.

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

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

The Settlement Agreement's Performance Appraisal section, Task 44, requires OPD to write performance appraisals for each officer, documenting the officer's conduct and performance in a variety of areas. Such appraisals have 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. OPD achieved policy compliance on this Task ahead of schedule. However, the IMT is unable

to find Department-wide training compliance for Task 44 due to the unreliability of the data produced. Additionally, as discussed below, OPD's actual practices in this area do not yet comply with the Settlement Agreement.

The Settlement Agreement's Consistency of Discipline section, Task 45, requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. The timely and fair imposition of discipline is essential to ensure accountability. The compliance deadline for this Task occurred during this reporting period. OPD has been working diligently to create a discipline matrix to enable it to meet the mandates of Task 45. However, as of the date of this Report, the matrix had not yet been finalized.

The Settlement Agreement's Promotional Consideration section, Task 46, requires the Department to consider a variety of factors when making promotional decisions, including sustained misconduct cases, quality of citizen contacts, and support for Departmental integrity measures. The compliance deadline for this Task occurred during the first reporting period, however OPD has not yet implemented a compliant policy.

1. **Performance Appraisal Policy** (Task 44; S.A. X.A.)
  - a. **Settlement Agreement Requirements (see also Task 21)**
    - By July 7, 2004, OPD must write performance appraisals individually for each member/employee being evaluated. These performance appraisals must accurately reflect the quality of the member/employee's performance. The Settlement Agreement sets forth criteria for these performance appraisals, including documentation of complaints and patterns of conduct, and accountability of PSA lieutenants for the quality of community contacts by their beat officers. The Settlement Agreement further designates the supervisor responsible for completing the performance appraisal and requires OPD to conduct regular audits of the performance appraisal system to ensure compliance with the Settlement Agreement.
  - b. **Status of Compliance and Assessment**

The due date for this Task occurred during this Reporting period. OPD had developed a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, in advance of the due date.

While OPD has conducted extensive training during the past several months, it is still unable to provide sufficiently reliable verification of its training to enable the IMT to find OPD in compliance for Task 44 training. According to OPD, it has trained approximately 98% of relevant personnel on General Order B-6. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task. Yet while we are unable to find overall Departmental training in compliance, we note that OPD's largest bureau, the Bureau of Field Operations (BFO), has provided more reliable training data. This data shows that BFO had trained approximately 96% of BFO members and employees in this Task as of August 2, 2004.

During this reporting period, the IMT audited OPD's compliance with Task 44. Task 44 requires OPD supervisors to provide OPD members/employees with annual individual written performance appraisals that accurately reflect the quality of each member/employee's performance. In recent years, OPD experienced significant lapses in completing performance appraisals for its employees. Employees and members of all ranks and positions reported not having received a performance appraisal for years.

The IMT reviewed every tenth member/employee file through the first 712 members/employees listed on OPD's Employee Rating Report for June 2004. This sample produced a total of sixty-seven performance appraisals, including appraisals for both sworn and civilian members/employees and both officers and commanders. Of the 67 member/employee files reviewed by the IMT, 43 (64%) of the files contained current performance appraisals.

In addition to requiring annual written performance appraisals for every member/employee, the Settlement Agreement requires that the appraisals include sufficient documentation and consideration of the following categories of information: nature and progress of complaints and investigations; uses of force; sick and injured leave; certain drug and other arrests; and vehicle accidents. None of the current performance appraisals reviewed included all of the required elements (or all of the elements relevant to the job category of the particular member/employee). While not all of the categories were applicable to every member/employee, the first category—nature and progress of complaints and investigations—should have been included in every appraisal. Yet, 17 (40%) of the 43 current appraisals reviewed by the IMT had no or insufficient documentation and consideration of this category. The categories with the greatest deficiencies were those requiring documentation and consideration of arrests and uses of force. *None* of the officer appraisals reviewed included any evidence of documentation or consideration of the required drug arrests; only *one* of the officer appraisals included any indication of consideration of the other categories of arrests that must be considered; and only *three* of the officer or correctional officer appraisals reviewed included any indication of consideration of uses of force.

We reviewed a number of thoughtful and detailed appraisals that provided constructive analysis and feedback regarding member/employee performance. The vast majority of the appraisals, however, were perfunctory and superficial. Many of the appraisals contained virtually no specific information about the member/employee's performance, much less the particular consideration or documentation required by the Settlement Agreement. Based on our review, it is clear that OPD has emphasized completing the appraisals over ensuring that the appraisals include the information and documentation required by the Settlement Agreement.

This problem may have been exacerbated by OPD's reliance upon the new City-wide standardized appraisal form. With the exception of attendance, the standard questions contained on this form do not include the items required by the Settlement Agreement. In order to facilitate compliance, we recommend that OPD revise this form or create a supplemental appraisal form that explicitly elicits the information required by the Settlement Agreement.<sup>24</sup> Additionally, OPD should conduct the training necessary to ensure that supervisors include all required information and documentation in the appraisals they complete.

The reviewer signatures on the performance appraisals reviewed by the IMT were frequently illegible and were generally not accompanied by an employee identification number. This made it difficult to readily identify the reviewers or to determine whether the performance appraisals were completed and signed off by the appropriate individuals. The Settlement Agreement requires that every supervisor/manager in the direct chain of command, up to and including the Deputy Chief of that Bureau, review, sign and date every performance appraisal of every member/employee within his or her command. Despite the illegible signatures, we were able to discern that very few appraisals met this standard because, at a minimum, they rarely included the signature of a Deputy Chief.

The inability to read reviewer signatures hindered the Personnel Division's data entry and performance appraisal tracking efforts. Due to illegible signatures, Personnel was forced to spend time contacting individuals to identify the reviewers. In response, Personnel has been instructing reviewers to include their employee identification number and legibly printed name along with their signature. Additionally, Personnel has created a form that includes dedicated signature lines for each supervisor/manager, up to and including the Bureau Deputy Chief. The IMT supports these measures and believes that they will help to facilitate better performance appraisals and Settlement Agreement compliance.

While OPD has not yet achieved compliance with the basic requirement that every member/employee receive an annual performance appraisal, it has made significant progress. It has reinstated a structured performance appraisal system; completed

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<sup>24</sup> Since Section II of the standardized form consists of blank "Performance Objectives" and "Standards" boxes, the current form could, with appropriate guidance, be used to document the information required by the Settlement Agreement.

appraisals for hundreds of employees during the first six months of the year alone; and performed the significant data entry associated with tracking the status of completed and delinquent appraisals. Overall, the IMT found that although OPD's actual practices do not yet comply with Task 44, it has implemented a system that, if adhered to, will enable it to reach this goal.

Additionally, the IMT was informed of a few oral reprimands that were issued to commanders who failed to complete timely appraisals. However, the number of supervisors and commanders who are delinquent in completing appraisals for their subordinates far exceeds the number of oral reprimands that have been issued and thus calls into question whether oral reprimands are the appropriate or sufficient sanction. To ensure compliance with the new system, OPD must hold *all* supervisors and managers accountable when they do not complete appraisals for their subordinates as required.

During the upcoming reporting periods, the IMT will determine whether appropriate training has been completed, and will monitor whether OPD's actual practices come into compliance with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

Based on a series of extensions negotiated between the parties, OPD was required to develop a consistency of discipline policy and discipline matrix by June 15, 2004, and to complete training by July 1, 2004. OPD was not able to meet these extended deadlines.

Since the Settlement Agreement has been in effect, OPD has established a working group to address this task; written a white paper discussing disciplinary approaches taken by other departments; and hosted a conference on disciplinary matrices

in law enforcement. During the fourth quarter, OPD drafted a disciplinary matrix, policy, and training bulletin intended to promote consistency of discipline. As members of OPD's working group recognized, the initial drafts suffered from a number of serious deficiencies, including inappropriately lenient penalties for some violations; vague and ambiguous descriptions and inadequate definitions of violations; and inadequate guidance to supervisors/commanders about how to apply the matrix.

The IMT has provided OPD detailed feedback on the drafts and OPD's working group subsequently has met repeatedly to develop a disciplinary policy and matrix with which it is satisfied. The IMT supports and is encouraged by OPD's productive dialogue with stakeholders from the Department, local unions, and the City regarding the drafts, as well as by OPD's commitment to revising the initial drafts to address the identified deficiencies.

During the upcoming reporting periods, 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 has been conducted; and will monitor whether OPD's actual practices comply 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 the first reporting period. OPD, however, has not yet published a policy reflecting the requirements of this Settlement Agreement Task.

As we previously reported, OPD drafted a memorandum from the Office of the Chief of Police addressing these Settlement Agreement requirements. The IMT reviewed the memorandum and found that it was too vague to facilitate compliance with the Settlement Agreement. OPD subsequently decided not to publish the memorandum until the OPD policy defining Class I and Class II offenses is published in M-3, *Complaints Against Departmental Personnel or Procedures*. Accordingly, Task 46 will not be completed until M-3 has been developed. As discussed above, as of the date of this Report, OPD has not yet completed M-3. We will report on the status of this policy in our next quarterly report.

During the upcoming reporting periods, the IMT will determine whether the memorandum as published comports with the Settlement Agreement; whether appropriate training has been conducted; and will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

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

Section XI of the Settlement Agreement, Task 47, requires OPD to develop and implement a community policing plan to strengthen its relationships with communities in Oakland. This section requires a number of changes designed to provide officers with the opportunity to 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 the first reporting period.

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

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

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



officer assigned to a regular beat or geographic area of the City must attend a minimum of one community meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in “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 the first reporting period. OPD achieved policy compliance with this Task in April 2004 by publishing the following policies: General Order B-7, *Requests for Meetings and Public Appearances*; Bureau of Field Operations Policy 03-03, *Community Meetings*; and Training Bulletin III-A.5, *Community-Oriented Policing and the 2003 Reorganization of the Patrol Division*.

OPD, however, has not yet completed the required training on these policies. This may explain why the IMT continues to meet officers who are unfamiliar with the Settlement Agreement’s mandates in this area and who have not attended community meetings as required by Task 47. According to OPD, it has trained approximately 60% of relevant personnel on General Order B-7 and approximately 87% of relevant personnel on Training Bulletin III-A.5. According to OPD, it has trained approximately 96% of relevant personnel on BFO Policy 03-03. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this policy.

During the upcoming reporting periods, the IMT will determine whether OPD has completed the required training and will closely monitor and report on OPD’s community policing efforts, including the mechanisms it develops to measure its community policing and problem solving activities. We are aware that the City has authorized funding for and approved a contract to conduct a survey of the community’s satisfaction with OPD. Such a survey is one way for OPD to satisfy the Settlement Agreement’s requirement that the Department develop mechanisms to measure its community policing and problem solving activities. We applaud OPD and the City for working with community members in support of this innovative project. We understand, however, that the project has

stalled. We encourage OPD and the City to take the steps necessary to ensure that this worthwhile endeavor is completed. We will report on its status in a subsequent report.

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

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

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD achieved policy compliance with this Task when it published Departmental General Order A-7, *Annual Management and Departmental Report*, on November 24, 2003. According to OPD, it has trained approximately 92% of relevant personnel on this policy. OPD is in the process of gathering the documentation necessary to confirm its training figures to the IMT. Until OPD is able to provide sufficiently reliable verification that training has been provided to appropriate personnel, the IMT is unable to find training compliance for this Task.

During the upcoming reporting periods, the IMT will determine whether appropriate training has been completed, and will monitor whether OPD's actual practices comply 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 the first reporting period.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD obtained and remains in compliance with this Settlement Agreement Task. On July 15, 2003, the City Council approved the parties' selection of a Monitoring team. 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 the first reporting period. OPD is in compliance with this Task as it has not only established a Compliance Unit, but staffed it with diligent individuals who continue to work 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 a Compliance Unit to serve for the duration of the Settlement Agreement. The Compliance Unit will serve as the liaison between OPD, the Monitor and Plaintiffs' counsel, and will assist with OPD's compliance with the Agreement. Among the Compliance Unit's many duties is the preparation of a semi-annual report describing the steps taken, during that reporting period, to comply with the provisions of the Settlement Agreement.

**b. Status of Compliance and Assessment**

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

The IMT continues to be impressed with the work of the Compliance Unit/OIG. OIG's diligent staff performed a number of important Tasks this reporting period, including: coordinating overall compliance efforts; completing an assessment of OPD's acceptance and understanding of the Settlement Agreement; and conducting audits required by the Settlement Agreement and other Departmental objectives. OIG staff also drafted policies; participated in several working group meetings; continued to conduct weekly Settlement Agreement meetings with the Chief; and continued to facilitate monthly meetings with the Parties and IMT.

**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. As previously reported, OPD has already published a compliant policy for this Task—Special Order 8011, *Compliance Unit Liaison Policy*. OPD has also published Training Bulletin V-P, which provides guidance for conducting audits. To its credit, as noted above, OIG staff have already begun auditing OPD's compliance with the Settlement Agreement's provisions and have completed additional professional audit training. Additionally, OIG has developed a series of audit plans, criteria, and evaluation tools along with a schedule for conducting audits.

As discussed in the Commendations section of this Report, OIG has completed an invaluable assessment of OPD's acceptance and understanding of the Settlement Agreement. Since the last reporting period, it has also completed audits of Task 22 (OPD/DA Liaison Commander), Task 27 (Oleoresin Capsicum Log and Checkout Procedures), and of OPD's use of Mobile Data Terminals (MDTs). These audits were fair, reliable and insightful, and provided honest assessments and constructive recommendations for improvement. OIG has also undertaken a review of the status of Settlement Agreement training.

During upcoming reporting periods, the IMT will monitor this area to ensure that the required audits are conducted and will review the quality and content of the audits.

## **VI. CONCLUSION**

The City of Oakland and OPD are at a critical juncture. It has been nearly two years since the City agreed to make significant changes in how the Oakland Police Department operates. While progress has been made, as this Report indicates, there are troubling signs that progress is slowing in many areas and completely stagnant in others. It is essential that the City and Department recognize that only strong, dedicated leadership, committed to fairness and accountability at all levels of the Department, can ensure successful implementation of the Settlement Agreement. Even more fundamentally, it is essential for the City and all stakeholders to recognize that the Settlement Agreement is a roadmap to an Oakland Police Department that will be better for its officers and the people of Oakland, and to dedicate themselves to its successful implementation accordingly.