

SIXTH 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 is the Sixth Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from October 16, 2004, to May 15, 2005.

IMT's Monitoring Activities During the Sixth Reporting Period

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, attended a Command Staff Retreat focused on Settlement Agreement compliance; participated in ride-alongs with OPD officers; attended Firearms Discharge Boards of Review; observed a mass in-service training session and numerous other routine trainings and lineups; reviewed and analyzed OPD documents and files, including investigations, arrest reports, and personnel files; attended a presentation by the Training Division regarding handstrikes; attended and participated in a Public Safety Committee hearing; attended hearings of the Citizens' Police Review Board (CPRB); attended Management Assessment Program (MAP) meetings; observed several sessions of the Department's 154th Basic Academy and the Department's Sixth Academy for lateral hires, as described more fully in our description of Task 43 below; and participated in the monthly meetings required by the Settlement Agreement.

While on-site, the IMT met with OPD's Office of Inspector General, Training, Communications, and Internal Affairs Divisions; individual OPD officers; the Director of Administration; command officials, including Sergeants, Lieutenants, Captains, and each of the three Deputy Chiefs; and with Chief Wayne Tucker. In addition, the IMT met with a variety of other stakeholders, including: the Plaintiffs' Attorneys; Oakland community members and groups; the Mayor; City Administrator; City Council Members; Office of the City Attorney; the Public Defender's Office; and the District Attorney's Office.

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 conducting audits and reviewing materials relevant to the Settlement Agreement including: draft publications; training data; MLL reports; Oleoresin Capsicum Tracking Reports; firearms discharge reports; Internal Affairs investigation files; OPD Management Assessment Program documentation; and information provided by citizens. In addition to reviewing these documents off-site, the IMT also participated in regular

teleconferences with OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

The IMT conducted five actual practice compliance reviews this reporting period. The IMT reviewed: Approval of Field-Arrest by Supervisor (Task 18); Procedures for Transporting Detainees and Citizens (Task 36); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); Promotional Consideration (Task 46); and Departmental Management and Annual Management Report (Task 48).

OPD Accomplishments

Leadership by Chief Tucker

In February 2005, Mayor Brown appointed retired Alameda County Assistant Sheriff Wayne Tucker to serve as OPD's interim Chief of Police. Chief Tucker brought with him a valuable perspective on the challenges and opportunities facing the City of Oakland and OPD. Having served in the Sheriff's Department in Alameda County for thirty-eight years, Chief Tucker is a seasoned law enforcement professional with first-hand knowledge of policing in Oakland and familiarity with the City's diverse stakeholders.

Chief Tucker has expressed his commitment to accomplishing the reforms laid out in the Settlement Agreement and made clear to OPD's command staff and rank and file that he considers these reforms simply good policing. During his initial weeks on the job, compliance levels related to training, completion of stop data forms, and community meeting attendance have shown substantial improvement. In the IMT's view, much of this improvement is directly attributable to the focused and unambiguous leadership that Chief Tucker has provided.

The Chief, in words and action, has placed Settlement Agreement compliance among OPD's top priorities. As discussed below, Chief Tucker has engaged and challenged OPD's command officials and is insisting that they ask the same of their subordinates. Chief Tucker has infused the Department's compliance efforts with new levels of energy and direction. He has been able to build upon efforts initiated by City Administrator Deborah Edgerly, including a reorganization of Internal Affairs in response to concerns raised by the IMT in its last report. IAD is now commanded by a Captain and has an additional Lieutenant to assist in supervising the complaint process as well as the substance of IAD investigations. Additionally, Chief Tucker has reorganized the Department's largest bureau, the Bureau of Field Operations (BFO), to appoint a Captain to coordinate compliance efforts in BFO. This Captain has already instituted several measures to better track and more closely review the work of BFO commanders.

The energy and direction Chief Tucker has brought to the City's compliance efforts must be sustained if the Settlement Agreement's goals are to be accomplished. As evidenced by our concerns detailed below, OPD has significant ground to cover in order

to attain compliance with the Settlement Agreement. If the leadership offered by Chief Tucker during his first weeks continues, OPD stands a better chance of coming into meaningful and timely compliance with the Settlement Agreement.

Implementation of Management Assessment Program (MAP)

OPD's recent implementation of the Management Assessment Program (MAP) appears to have already benefited Settlement Agreement compliance, as well as OPD enforcement efforts generally. MAP consists of weekly meetings of the Chief and all OPD commanders. The MAP meetings focus on the Department's top goals, including the Settlement Agreement, crime reduction, and budget management. Each week participants are presented with "real-time" data showing snapshots of compliance levels in selected areas. MAP is beginning to enhance management accountability because commanders are expected to explain shortcomings in their areas and to provide remedial plans. Subsequent MAP meetings follow-up on the status of compliance until problems have been resolved. The Chief has made attendance at these meetings mandatory.

The MAP process has reinforced the importance of the Settlement Agreement to the organization and allowed for more dynamic and better coordinated compliance efforts. To date, MAP meetings have focused on completion of stop data forms, community meeting attendance, use of force tracking, timeliness of internal investigations, arrest approvals, completion of performance appraisals, training compliance, and policy updates. As discussed elsewhere in this Report, OPD's performance continues to lag in several of these areas. However, the sustained, directed, and open attention that these issues are receiving at the highest levels of the Department has started to reap impressive results in some cases. For example, officers appear to be completing a far greater number of stop data forms since MAP meetings focused on this issue and supervisory attention to the matter increased accordingly. Likewise, officers' attendance at community meetings, a Settlement Agreement requirement, appears to have improved dramatically since this Task was made the focus of the MAP meetings.

We commend OPD for implementing MAP and encourage the Department to continue developing mechanisms that enhance professional policing and management accountability throughout OPD.

Progress on Discipline Matrix

Task 45 (Consistency of Discipline) requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. As we have previously noted, a timely, fair, and consistent disciplinary process is critical for ensuring accountability. In the past two months, OPD has made important progress on the disciplinary matrix that OPD is creating to comply with Task 45.

The disciplinary matrix is a schedule detailing the specific progressive disciplinary levels that apply to particular *Manual of Rules* violations. A well-crafted

matrix that is appropriately applied will not only assist OPD's compliance with Task 45, but will help protect officers from being subjected to unfair and inconsistent discipline.

Prior to Chief Tucker's appointment, OPD had created a draft disciplinary matrix. However, the draft suffered from a number of serious deficiencies, including inappropriately lenient penalties for some violations. Chief Tucker has revised the draft to reflect professional and respectful policing values, recognizing that serious misconduct must be treated seriously. OPD's Office of Inspector General (OIG) has worked assiduously to facilitate input into the policy by relevant stakeholders, including the Department's three member/employee unions. The unions themselves have engaged in the process and offered constructive, valuable input.

The IMT has very recently been provided a draft of the disciplinary matrix and related policies and will report to the Court and parties regarding the draft's compliance with the Settlement Agreement's requirement of a fair and consistent disciplinary process.

Area of Concern

Internal Reviews and Investigations

The critical area of internal reviews and investigations has been an area of continuing difficulty for OPD. In three previous reports the IMT has reported its concern with various aspects of OPD's internal investigations, including investigation timeliness, investigation quality, and reviews conducted by the firearms discharge review board. During this reporting period, the IMT made several additional discoveries that exacerbated our previous concerns. As is our practice, we immediately informed OPD of our concerns. To their credit, the Department and City have taken several concrete remedial steps. We recognize the efforts that OPD has made throughout this reporting period and are encouraged by them. OPD's internal investigations process continues to be an area of concern, however, because many of the remedial actions OPD has taken remain in the initial or planning stages, and because the nature of the problems we found indicates that OPD has not yet developed the capacity to self-identify and proactively correct deficiencies in its internal investigations and review process.

The most significant internal investigations issues causing concern this reporting period were: 1) OPD's continued failure to conduct appropriate firearms discharge review boards, or otherwise conduct administrative investigations of officer-involved shootings; 2) the existence of several hundred complaints that were never investigated by OPD; and 3) OPD's failure to track or timely review officer-involved traffic accidents, resulting in a lack of accountability for preventable traffic accidents in 2003 and 2004.

- **Firearms Discharge Reviews**

In our Third Quarterly Report, the IMT reported significant concerns with OPD's review of officer-involved shootings, including untimely review boards; the lack of tracking of shooting reviews; insufficient involvement by relevant OPD components, most notably the Training and Internal Affairs Divisions; and deficiencies in shooting investigations. OPD did not dispute any of the IMT's findings. To the contrary, as the IMT noted in its report, many of these same issues had been previously identified by OPD's own Office of Inspector General (OIG). Nonetheless, with the exception of the timeliness and tracking of discharge reviews, OPD did not address the other serious deficiencies that were identified.¹

Since we reported our concerns nearly one year ago, the quality of OPD's firearms discharge investigations and review boards has remained consistently poor. The IMT observed a review board involving a shooting that left one citizen dead that was so deficient, and revealed such serious problems with OPD's officer-involved shooting investigations, that the IMT was compelled to immediately contact Chief Tucker to relay our concerns. As described below, the review board was replete with problems including: unaddressed serious conflicts of interest; reliance upon incomplete information in reaching its findings; and failure to address a number of basic, material issues.

In the review board, one of the involved officers presented evidence that OPD's Homicide Section possessed but did not provide to review board members. While the Homicide Section showed a video of the scene to the board, the board did not use the official documentation of the shooting to verify that statements made during the hearing by the involved officers were consistent with their statements made immediately following the shooting. The board did not have transcripts of interviews and had not listened to the tapes of interviews. The board chose not to address glaring issues about the troubling tactics, training, and policy issues involved in the fatal shooting. There were indications that some board members were not sufficiently confident of their expertise in the relevant areas to make training and tactics decisions, while others did not broach difficult topics or make difficult decisions. Given this dynamic, the lack of any administrative review rendered the board's review of the incident essentially useless from a training and prevention perspective. In short, nearly one year after receiving the IMT's report of the poor quality of OPD's reviews of its most critical incidents, the quality of OPD's firearms discharge review boards has not improved.

Despite this bleak assessment, we are encouraged that, in stark contrast to its response after our report a year ago, OPD immediately responded to our renewed concerns by completely reworking its entire officer-involved shooting review process. Chief Tucker promptly ordered an inquiry into the review board at issue and has ordered

¹ While the timeliness of OPD's firearms discharge review boards has improved, it is still not adequate. The most recent board we observed occurred four months after the shooting.

that the board reconvene. In addition, Chief Tucker has ordered a review of OPD's entire shooting review process.

Perhaps most significantly, OPD has begun conducting administrative investigations of shootings. Administrative investigations focus on the training, tactics, and policy issues that may have contributed to the shooting, rather than on whether the shooting was legally justifiable. Administrative investigations of critical incidents are important for a number of reasons. These investigations provide a department with information that may prevent future shootings that, while legally justifiable, may be entirely preventable. Administrative investigations also assist the City in preparing for defense of any civil action arising from the incident, in part, by facilitating the timely institution of new policies and training.

Members of the Internal Affairs Division (IAD), which is responsible for OPD's administrative investigations, have already attended training on conducting investigations of officer-involved shootings; "rolled-out" to the scene of a recent officer-involved shooting; and provided review reports. It appears that IAD's involvement in officer-involved shootings has already added value to these reviews. The IMT will continue to closely monitor OPD's efforts in this area.

OPD's decision to rework its firearms discharge review board is also significant. OPD is developing a policy which, if implemented, will result in a significantly more professional and comprehensive firearms discharge review board. The board will have access to all the materials assembled by Homicide and IAD, including photos, taped statements, and transcripts, prior to the review session itself. This will enable board members to be thoroughly familiar with the investigative materials, facilitating a broader discussion of more probing issues. Other changes will help ensure that the board fulfills its longstanding charge to consider not only whether the firearms discharge is legally justified, but also whether there are tactical, training, or policy issues that need to be addressed. The Training Division will be responsible for the board's written record and will participate as a non-voting member. Boards will be required to be convened within 30 days of the conclusion of the IAD and Homicide investigations. The IAD administrative review must be completed within seven days of the firearms discharge, while the Homicide Section must provide its review to the District Attorney's Office, Office of the City Attorney and IAD within 72 hours of the firearms discharge. OPD has stated its intention to begin immediately convening pending firearms discharge review boards pursuant to this new format. The IMT looks forward to observing and assessing these boards.

- **Uninvestigated Citizen Complaints**

OPD's Internal Affairs Division appropriately records all contacts with citizens in a database. This database is the same database that IAD uses to track internal investigations. During a routine review of this database, a member of the IMT's staff

noted numerous entries that appeared to be complaints but did not have identifying investigation case numbers (IAD case numbers). The IMT immediately contacted IAD and provided it with a 131-page list, compiled from IAD's database, of 775 entries made from January 2003 through early 2005 that did not have IAD case numbers.

IAD reviewed this 131-page list and determined that a significant number of entries constituted complaints that were never assigned case numbers and subsequently were not investigated. It appears that most of the 775 entries did not constitute complaints of misconduct. However, it appears that there were several hundred allegations of MOR violations that OPD did not investigate or otherwise resolve. According to IAD's initial analysis of the database, these allegations include numerous complaints alleging excessive force or bias. One case from 2003 alleged an inappropriate strip search. IAD is in the process of providing the IMT with its analysis of the database. The IMT will conduct its own independent review of the database entries once IAD's analysis is complete.

It appears that approximately half of the entries in the database record telephone contacts, while approximately 25% of the entries record in-person contacts. Other entries record: contacts by third parties, a witness, and OPD members/employees; the receipt of complaint forms; and, in two instances, the receipt of jail inmate complaint forms. The IMT has not determined how many of each type of entry constitute an uninvestigated complaint.

It appears that complaints were not investigated for a variety of reasons. In some instances, it appears that the person taking a complaint via telephone sent the caller a complaint form rather than taking the complaint via telephone. If the complaint form was not returned, no complaint was logged. While not taking a misconduct complaint via telephone may have been appropriate in some circumstances under OPD policy at the time, in other instances it appears that it was clearly inappropriate. In other cases, it appears that the person taking the call believed the caller was mentally ill or disabled and inappropriately decided not to document the call as a complaint on that basis. According to IAD, cases that were informally resolved were not always properly documented nor given an IAD case number. In other instances there is simply no explanation of why complaints of misconduct were not treated as such.

IAD is making considerable effort to contact the individuals whose complaints were never investigated. IAD investigators reportedly called every individual with a telephone number listed in the database, making approximately 600 telephone calls. IAD reports sending contact letters to approximately 150 complainants. Where IAD determined that the complaint alleged excessive force or bias, IAD reports that it called the individual, wrote a letter, and, where necessary, went to the complainant's residence to make personal contact. IAD reports having made at least 14 residence visits to follow up on complaints and is continuing to pursue cases.

As a result of its efforts, IAD reports that it already has opened up approximately 45 new investigations, and expects this number to rise, perhaps substantially. It appears that IAD's efforts have been hampered somewhat by the passage of time, which has adversely impacted IAD's ability to locate complainants. IAD reports that in many instances where its investigators have successfully contacted complainants, the complainant no longer wishes to pursue the complaint or indicates that the complaint already has been informally resolved (often without the proper documentation).

The existence of several hundred complaints that were never investigated or resolved in any manner is of course of high concern. IAD's response upon being informed of this problem is somewhat heartening. Nevertheless, this incident reflects the continuing challenges that OPD's IAD faces in its efforts to attain Settlement Agreement compliance.

- **Lack of Accountability for Preventable Traffic Accidents**

OPD's Training Division is responsible for reviewing traffic collisions (901s) involving OPD personnel to determine whether the collisions were preventable or otherwise indicate MOR violations. During this reporting period, the IMT learned that through 2003 and 2004, OPD had no mechanism for tracking on-duty traffic collisions involving OPD personnel, and that OPD did not hold anyone accountable for ensuring that such traffic collisions were reviewed in a timely manner. As a result of these systemic deficiencies, OPD failed to impose discipline before the one-year limitation imposed by Government Code § 3304 for the fourteen preventable traffic collisions that occurred in 2003 and three preventable collisions that occurred in early 2004. Moreover, OPD has not located the case files for many 2003 preventable traffic collisions, or for two 2004 traffic collisions.²

It appears that the Training Division's current Safety Coordinator has instituted a tracking system and is aware of the location and status of each 2005 traffic collision. The Deputy Chief of the Bureau of Services acted promptly, once informed of our concerns, to locate outstanding cases to prevent additional cases from falling outside the § 3304 deadline. We are encouraged by the Deputy Chief's and current Safety Coordinator's concerted efforts in this matter, although we remain concerned about the delays inherent in OPD's convoluted collision review process.

Of far greater concern, however, is OPD's lack of accountability over a two-year period (at least) in an area that is often one of the greatest sources of a City's fiscal liability. There is no indication that OPD has made any effort to hold accountable those responsible for the systemic failure to track and timely impose discipline for preventable traffic collisions. Nor is there any indication that OPD has sought to determine whether

² In addition to the above noted traffic collisions, all arising from the Bureau of Field Operations (BFO), there is one outstanding traffic collision from 2003 in the Bureau of Investigations (BOI).

any of the traffic collisions that have exceeded the § 3304 deadline might fall under one of § 3304's enumerated exceptions (such as being the subject of ongoing litigation).

We are encouraged that OPD has begun to get a handle on its traffic collisions. We remain concerned, however, that for years OPD routinely permitted its personnel to escape responsibility for causing preventable traffic accidents, and is now failing to take the steps necessary to ensure accountability for past actions.

Status of Compliance

Only one new Settlement Agreement Task had a due date occurring during the sixth reporting period: Academy and In-Service Training (Task 43). With the addition of this Task, a total of forty-five of the fifty-one Settlement Agreement Tasks have become due. 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. The chart on page 10 lists the forty-five tasks that have become due, their due date, and summarizes the current state of compliance.

Policy Compliance

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of twenty-one of the forty-four Tasks that had become due. As discussed above, an additional Task became due this reporting period, bringing the total number of Tasks that have become due to forty-five. At the end of this reporting period, OPD attained policy compliance with one additional Task—Academy and In-Service Training (Task 43). Accordingly, OPD has achieved policy compliance with a total of twenty-two of the forty-five Tasks that have become due. OPD also already has attained policy compliance with two Tasks that have not yet become due: Refusal to Accept or Refer Citizen Complaints (Task 6) and Compliance Audits and Integrity Tests (Task 51).³

As discussed in our last report, all but a few of the delinquent Tasks will be addressed by OPD's implementation of four lengthy and complex policies involving the manner in which the Department handles its internal investigations, reviews uses of force, and administers discipline: 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. Each of these documents addresses multiple tasks. As detailed in the body of this report, OPD has continued to work diligently on these policies and appears to be close to implementing them. The IMT recently determined that General Order M-3 is in compliance with the Settlement Agreement and OPD is expected to publish and begin training on this policy soon. The IMT is currently reviewing a recently provided draft of OPD's Discipline Matrix and related policies and is awaiting a draft of OPD's General Order K-4.

³ Task 6 has a due date of June 2005, and Task 51 has a due date of September 2005.

Training Compliance

OPD made impressive strides this reporting period in verifying that it has conducted training on new Settlement Agreement policies. During the last reporting period, OPD was unable to demonstrate training compliance for any of the Tasks requiring training. In stark contrast, during this reporting period, OPD has been able to demonstrate that it has trained 95% or more of relevant personnel on all but one of the policies that was outstanding as of the last reporting period. Training has not yet been completed for BOI 04-02, *Supervisory Span of Control*, which impacts training compliance for Tasks 19 and 20. As discussed above, OPD achieved policy compliance with one additional Task (Task 43) this reporting period. Training, however, has not yet been completed for this Task.

OPD's improvement in documenting Settlement Agreement training during this reporting period is a significant accomplishment resulting from focused problem-solving and diligent efforts by members of OPD's Training Division.

Actual Practice Compliance

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Approval of Field-Arrest by Supervisor (Task 18); Procedures for Transporting Detainees and Citizens (Task 36); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); Promotional Consideration (Task 46); and Departmental Management and Annual Management Report (Task 48). OPD was not in compliance in actual practice with any of the Tasks we reviewed. These reviews are discussed more fully in their individual Task updates below.

Overall, the IMT has found OPD 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 the same number of Tasks as during the last reporting period. While the IMT has not had an opportunity to verify OPD's report, according to OPD, it has also achieved actual practice compliance with Vehicle Stops, Field Investigation and Detentions (Task 34).

Conclusion

OPD accomplished more during the last two months of this reporting period than it had during all previous reporting periods combined. The IMT recognizes that this is due in no small part to the Court's admonishment of the OPD and the City in its February 2005 hearing. Nevertheless, the positive impact of Chief Tucker's unambiguous leadership and abilities should be acknowledged.

Our highlighted area of concern and OPD's lack of actual practice compliance with any of the tasks we audited demonstrate that the Police Department still has a

considerable amount of work to do if it hopes to achieve both the goals set out in the Settlement Agreement and a timely exit from the Court's jurisdiction. We commend the Police Department and City for its decision to energetically address these challenges. We will continue to provide close oversight and assistance to help ensure that these intentions are borne out and that OPD's implementation of the Settlement Agreement is timely and meaningful.

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 is the Sixth Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from October 16, 2004, to May 15, 2005.

In addition, as with our previous Reports, rather than detailing the minutiae of every policy review and technical assistance discussion, we have opted for a format that results in a relatively short but, we hope, clear and comprehensive account of OPD's compliance status and efforts. 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, attended a Command Staff Retreat focused on Settlement Agreement compliance; participated in ride-alongs with OPD officers; attended Firearms Discharge Boards of Review; observed a mass in-service training session and numerous other routine trainings and lineups; reviewed and analyzed OPD documents and files, including investigations, arrest reports, and personnel files; attended a presentation by the Training Division regarding handstrikes; attended and participated in a Public Safety Committee hearing; attended hearings of the Citizens' Police Review Board (CPRB); attended Management Assessment Program (MAP) meetings; observed several sessions of the Department's 154th Basic Academy and the Department's Sixth Academy for lateral hires, as described more fully in our description of Task 43 below; and participated in the monthly meetings required by the Settlement Agreement.

While on-site, the IMT met with OPD's Office of Inspector General, Training, Communications, and Internal Affairs Divisions; individual OPD officers; the Director of Administration; command officials, including Sergeants, Lieutenants, Captains, and each of the three Deputy Chiefs; and with Chief Wayne Tucker. In addition, the IMT met with a variety of other stakeholders, including: the Plaintiffs' Attorneys; Oakland community members and groups; the Mayor; City Administrator; City Council Members; Office of the City Attorney; the Public Defender's Office; and the District Attorney's Office.

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; training data; MLL reports; Oleoresin Capsicum Tracking Reports; firearms discharge reports; Internal Affairs investigation files; OPD Management Assessment Program documentation; and information provided by citizens. In addition to reviewing these documents off-site, the IMT also participated in regular 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: Approval of Field-Arrest by Supervisor (Task 18); Procedures for Transporting Detainees and Citizens (Task 36); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); Promotional Consideration (Task 46); and Departmental Management and Annual Management Report (Task 48). 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, its actual practices do not yet fully comply with the Settlement Agreement for any of the Tasks reviewed.

III. OPD ACCOMPLISHMENTS & AREA OF CONCERN

A. OPD Accomplishments

1. Leadership by Chief Tucker

In February 2005, Mayor Brown appointed retired Alameda County Assistant Sheriff Wayne Tucker to serve as OPD's interim Chief of Police. Chief Tucker brought with him a valuable perspective on the challenges and opportunities facing the City of Oakland and OPD. Having served in the Sheriff's Department in Alameda County for thirty-eight years, Chief Tucker is a seasoned law enforcement professional with first-hand knowledge of policing in Oakland and familiarity with the City's diverse stakeholders.

Chief Tucker has expressed his commitment to accomplishing the reforms laid out in the Settlement Agreement and made clear to OPD's command staff and rank and file that he considers these reforms simply good policing. During his initial weeks on the job, compliance levels related to training, completion of stop data forms, and community meeting attendance have shown substantial improvement. In the IMT's view, much of this improvement is directly attributable to the focused and unambiguous leadership that Chief Tucker has provided.

The Chief, in words and action, has placed Settlement Agreement compliance among OPD's top priorities. As discussed below, Chief Tucker has engaged and challenged OPD's command officials and is insisting that they ask the same of their subordinates. Chief Tucker has infused the Department's compliance efforts with new levels of energy and direction. He has been able to build upon efforts initiated by City Administrator Deborah Edgerly, including a reorganization of Internal Affairs in response to concerns raised by the IMT in its last report. IAD is now commanded by a

Captain and has an additional Lieutenant to assist in supervising the complaint process as well as the substance of IAD investigations. Additionally, Chief Tucker has reorganized the Department's largest bureau, the Bureau of Field Operations (BFO), to appoint a Captain to coordinate compliance efforts in BFO. This Captain has already instituted several measures to better track and more closely review the work of BFO commanders.

The energy and direction Chief Tucker has brought to the City's compliance efforts must be sustained if the Settlement Agreement's goals are to be accomplished. As evidenced by our concerns detailed below, OPD has significant ground to cover in order to attain compliance with the Settlement Agreement. If the leadership offered by Chief Tucker during his first weeks continues, OPD stands a better chance of coming into meaningful and timely compliance with the Settlement Agreement.

2. Implementation of Management Assessment Program (MAP)

OPD's recent implementation of the Management Assessment Program (MAP) appears to have already benefited Settlement Agreement compliance, as well as OPD enforcement efforts generally. MAP consists of weekly meetings of the Chief and all OPD commanders. The MAP meetings focus on the Department's top goals, including the Settlement Agreement, crime reduction, and budget management. Each week participants are presented with "real-time" data showing snapshots of compliance levels in selected areas. MAP is beginning to enhance management accountability because commanders are expected to explain shortcomings in their areas and to provide remedial plans. Subsequent MAP meetings follow-up on the status of compliance until problems have been resolved. The Chief has made attendance at these meetings mandatory.

The MAP process has reinforced the importance of the Settlement Agreement to the organization and allowed for more dynamic and better coordinated compliance efforts. To date, MAP meetings have focused on completion of stop data forms, community meeting attendance, use of force tracking, timeliness of internal investigations, arrest approvals, completion of performance appraisals, training compliance, and policy updates. As discussed elsewhere in this Report, OPD's performance continues to lag in several of these areas. However, the sustained, directed, and open attention that these issues are receiving at the highest levels of the Department has started to reap impressive results in some cases. For example, officers appear to be completing a far greater number of stop data forms since MAP meetings focused on this issue and supervisory attention to the matter increased accordingly. Likewise, officers' attendance at community meetings, a Settlement Agreement requirement, appears to have improved dramatically since this Task was made the focus of the MAP meetings.

We commend OPD for implementing MAP and encourage the Department to continue developing mechanisms that enhance professional policing and management accountability throughout OPD.

3. Progress on Discipline Matrix

Task 45 (Consistency of Discipline) requires OPD to revise its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner. As we have previously noted, a timely, fair, and consistent disciplinary process is critical for ensuring accountability. In the past two months, OPD has made important progress on the disciplinary matrix that OPD is creating to comply with Task 45.

The disciplinary matrix is a schedule detailing the specific progressive disciplinary levels that apply to particular *Manual of Rules* violations. A well-crafted matrix that is appropriately applied will not only assist OPD's compliance with Task 45, but will help protect officers from being subjected to unfair and inconsistent discipline.

Prior to Chief Tucker's appointment, OPD had created a draft disciplinary matrix. However, the draft suffered from a number of serious deficiencies, including inappropriately lenient penalties for some violations. Chief Tucker has revised the draft to reflect professional and respectful policing values, recognizing that serious misconduct must be treated seriously. OPD's Office of Inspector General (OIG) has worked assiduously to facilitate input into the policy by relevant stakeholders, including the Department's three member/employee unions. The unions themselves have engaged in the process and offered constructive, valuable input.

The IMT has very recently been provided a draft of the disciplinary matrix and related policies and will report to the Court and parties regarding the draft's compliance with the Settlement Agreement's requirement of a fair and consistent disciplinary process.

B. Area of Concern

1. Internal Reviews and Investigations

The critical area of internal reviews and investigations has been an area of continuing difficulty for OPD. In three previous reports the IMT has reported its concern with various aspects of OPD's internal investigations, including investigation timeliness, investigation quality, and reviews conducted by the firearms discharge review board. During this reporting period, the IMT made several additional discoveries that exacerbated our previous concerns. As is our practice, we immediately informed OPD of our concerns. To their credit, the Department and City have taken several concrete remedial steps. We recognize the efforts that OPD has made throughout this reporting period and are encouraged by them. OPD's internal investigations process continues to be an area of concern, however, because many of the remedial actions OPD has taken remain in the initial or planning stages, and because the nature of the problems we found indicates that OPD has not yet developed the capacity to self-identify and proactively correct deficiencies in its internal investigations and review process.

The most significant internal investigations issues causing concern this reporting period were: 1) OPD's continued failure to conduct appropriate firearms discharge review boards, or otherwise conduct administrative investigations of officer-involved shootings; 2) the existence of several hundred complaints that were never investigated by OPD; and 3) OPD's failure to track or timely review officer-involved traffic accidents, resulting in a lack of accountability for preventable traffic accidents in 2003 and 2004.

Firearms Discharge Reviews

In our Third Quarterly Report, the IMT reported significant concerns with OPD's review of officer-involved shootings, including untimely review boards; the lack of tracking of shooting reviews; insufficient involvement by relevant OPD components, most notably the Training and Internal Affairs Divisions; and deficiencies in shooting investigations. OPD did not dispute any of the IMT's findings. To the contrary, as the IMT noted in its report, many of these same issues had been previously identified by OPD's own Office of Inspector General (OIG). Nonetheless, with the exception of the timeliness and tracking of discharge reviews, OPD did not address the other serious deficiencies that were identified.⁴

Since we reported our concerns nearly one year ago, the quality of OPD's firearms discharge investigations and review boards has remained consistently poor. The IMT observed a review board involving a shooting that left one citizen dead that was so deficient, and revealed such serious problems with OPD's officer-involved shooting investigations, that the IMT was compelled to immediately contact Chief Tucker to relay our concerns. As described below, the review board was replete with problems including: unaddressed serious conflicts of interest; reliance upon incomplete information in reaching its findings; and failure to address a number of basic, material issues.

In the review board, one of the involved officers presented evidence that OPD's Homicide Section possessed but did not provide to review board members. While the Homicide Section showed a video of the scene to the board, the board did not use the official documentation of the shooting to verify that statements made during the hearing by the involved officers were consistent with their statements made immediately following the shooting. The board did not have transcripts of interviews and had not listened to the tapes of interviews. The board chose not to address glaring issues about the troubling tactics, training, and policy issues involved in the fatal shooting. There were indications that some board members were not sufficiently confident of their expertise in the relevant areas to make training and tactics decisions, while others did not broach difficult topics or make difficult decisions. Given this dynamic, the lack of any administrative review rendered the board's review of the incident essentially useless from a training and prevention perspective. In short, nearly one year after receiving the IMT's

⁴ While the timeliness of OPD's firearms discharge review boards has improved, it is still not adequate. The most recent board we observed occurred four months after the shooting.

report of the poor quality of OPD's reviews of its most critical incidents, the quality of OPD's firearms discharge review boards has not improved.

Despite this bleak assessment, we are encouraged that, in stark contrast to its response after our report a year ago, OPD immediately responded to our renewed concerns, Chief Tucker promptly ordered an inquiry into the review board at issue and has ordered that the board reconvene. In addition, Chief Tucker has ordered a review of OPD's entire shooting review process.

Perhaps most significantly, OPD has begun conducting administrative investigations of shootings. Administrative investigations focus on the training, tactics, and policy issues that may have contributed to the shooting, rather than on whether the shooting was legally justifiable. Administrative investigations of critical incidents are important for a number of reasons. These investigations provide a department with information that may prevent future shootings that, while legally justifiable, may be entirely preventable. Administrative investigations also assist the City in preparing for defense of any civil action arising from the incident, in part, by facilitating the timely institution of new policies and training.

Members of the Internal Affairs Division (IAD), which is responsible for OPD's administrative investigations, have already attended training on conducting investigations of officer-involved shootings; "rolled-out" to the scene of a recent officer-involved shooting; and provided review reports. It appears that IAD's involvement in officer-involved shootings has already added value to these reviews. The IMT will continue to closely monitor OPD's efforts in this area.

OPD's decision to rework its firearms discharge review board is also significant. OPD is developing a policy which, if implemented, will result in a significantly more professional and comprehensive firearms discharge review board. The board will have access to all the materials assembled by Homicide and IAD, including photos, taped statements, and transcripts, prior to the review session itself. This will enable board members to be thoroughly familiar with the investigative materials, facilitating a broader discussion of more probing issues. Other changes will help ensure that the board fulfills its longstanding charge to consider not only whether the firearms discharge is legally justified, but also whether there are tactical, training, or policy issues that need to be addressed. The Training Division will be responsible for the board's written record and will participate as a non-voting member. Boards will be required to be convened within 30 days of the conclusion of the IAD and Homicide investigations. The IAD administrative review must be completed within seven days of the firearms discharge, while the Homicide Section must provide its review to the District Attorney's Office, Office of the City Attorney and IAD within 72 hours of the firearms discharge. OPD has stated its intention to begin immediately convening pending firearms discharge review boards pursuant to this new format. The IMT looks forward to observing and assessing these boards.

Uninvestigated Citizen Complaints

OPD's Internal Affairs Division appropriately records all contacts with citizens in a database. This database is the same database that IAD uses to track internal investigations. During a routine review of this database, a member of the IMT's staff noted numerous entries that appeared to be citizen complaints but did not have identifying investigation case numbers (IAD case numbers). The IMT immediately contacted IAD and provided it with a 131-page list, compiled from IAD's database, of 775 entries made from January 2003 through early 2005 that did not have IAD case numbers.

IAD reviewed this 131-page list and determined that a significant number of entries constituted complaints that were never assigned case numbers and subsequently were not investigated. It appears that most of the 775 entries did not constitute complaints of misconduct. However, it appears that there were several hundred allegations of MOR violations that OPD did not investigate or otherwise resolve. According to IAD's initial analysis of the database, these allegations include numerous complaints alleging excessive force or bias. One case from 2003 alleged an inappropriate strip search. IAD is in the process of providing the IMT with its analysis of the database. The IMT will conduct its own independent review of the database entries once IAD's analysis is complete.

It appears that approximately half of the entries in the database record telephone contacts, while approximately 25% of the entries record in-person contacts. Other entries record: contacts by third parties, a witness, and OPD members/employees; the receipt of complaint forms; and, in two instances, the receipt of jail inmate complaint forms. The IMT has not determined how many of each type of entry constitute an uninvestigated complaint.

It appears that complaints were not investigated for a variety of reasons. In some instances, it appears that the person taking a complaint via telephone sent the caller a complaint form rather than taking the complaint via telephone. If the complaint form was not returned, no complaint was logged. While not taking a misconduct complaint via telephone may have been appropriate in some circumstances under OPD policy at the time, in other instances it appears that it was clearly inappropriate. In other cases, it appears that the person taking the call believed the caller was mentally ill or disabled and inappropriately decided not to document the call as a complaint on that basis. According to IAD, cases that were informally resolved were not always properly documented nor given an IAD case number. In other instances there is simply no explanation of why complaints of misconduct were not treated as such.

IAD is making considerable effort to contact the individuals whose complaints were never investigated. IAD investigators reportedly called every individual with a telephone number listed in the database, making approximately 600 telephone calls. IAD

reports sending contact letters to approximately 150 complainants. Where IAD determined that the complaint alleged excessive force or bias, IAD reports that it called the individual, wrote a letter, and, where necessary, went to the complainant's residence to make personal contact. IAD reports having made at least 14 residence visits to follow up on complaints and is continuing to pursue cases.

As a result of its efforts, IAD reports that it already has opened up approximately 45 new investigations, and expects this number to rise, perhaps substantially. It appears that IAD's efforts have been hampered somewhat by the passage of time, which has adversely impacted IAD's ability to locate complainants. IAD reports that in many instances where its investigators have successfully contacted complainants, the complainant no longer wishes to pursue the complaint or indicates that the complaint already has been informally resolved (often without the proper documentation).

The existence of several hundred complaints that were never investigated or resolved in any manner is of course of high concern. IAD's response upon being informed of this problem is somewhat heartening. Nevertheless, this incident reflects the continuing challenges that OPD's IAD faces in its efforts to attain Settlement Agreement compliance.

Lack of Accountability for Preventable Traffic Accidents

OPD's Training Division is responsible for reviewing traffic collisions (901s) involving OPD personnel to determine whether the collisions were preventable or otherwise indicate MOR violations. During this reporting period, the IMT learned that through 2003 and 2004, OPD had no mechanism for tracking on-duty traffic collisions involving OPD personnel, and that OPD did not hold anyone accountable for ensuring that such traffic collisions were reviewed in a timely manner. As a result of these systemic deficiencies, OPD failed to impose discipline before the one-year limitation imposed by Government Code § 3304 for the fourteen preventable traffic collisions that occurred in 2003 and three preventable collisions that occurred in early 2004. Moreover, OPD has not located the case files for many 2003 preventable traffic collisions, or for two 2004 traffic collisions.⁵

It appears that the Training Division's current Safety Coordinator has instituted a tracking system and is aware of the location and status of each 2005 traffic collision. The Deputy Chief of the Bureau of Services acted promptly, once informed of our concerns, to locate outstanding cases to prevent additional cases from falling outside the § 3304 deadline. We are encouraged by the Deputy Chief's and current Safety Coordinator's concerted efforts in this matter, although we remain concerned about the delays inherent in OPD's convoluted collision review process.

⁵ In addition to the above noted traffic collisions, all arising from the Bureau of Field Operations (BFO), there is one outstanding traffic collision from 2003 in the Bureau of Investigations (BOI).

Of far greater concern, however, is OPD's lack of accountability over a two-year period (at least) in an area that is often one of the greatest sources of a City's fiscal liability. There is no indication that OPD has made any effort to hold accountable those responsible for the systemic failure to track and timely impose discipline for preventable traffic collisions. Nor is there any indication that OPD has sought to determine whether any of the traffic collisions that have exceeded the § 3304 deadline might fall under one of § 3304's enumerated exceptions (such as being the subject of ongoing litigation).

We are encouraged that OPD has begun to get a handle on its traffic collisions. We remain concerned, however, that for years OPD routinely permitted its personnel to escape responsibility for causing preventable traffic accidents, and is now failing to take the steps necessary to ensure accountability for past actions.

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.⁶

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.

Only one new Settlement Agreement Task had a due date occurring during the sixth reporting period: Academy and In-Service Training (Task 43).

With the addition of this Task, a total of forty-five of the fifty-one Settlement Agreement Tasks have become due. 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. The chart below lists the forty-five tasks that have become due, their due date, and summarizes the current state of compliance:

⁶ Section XV of the Settlement Agreement imposes additional obligations on the parties (e.g. semi-annual status reports to the Court and meet-and-confer obligations). Because the IMT agrees with OPD that there is no need to "task" these obligations, they are not included in the description of compliance efforts and status. Nevertheless, failure to abide by these provisions would of course constitute a violation of the Settlement Agreement.

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>	<u>Training Compliance</u>	<u>Actual Practice**</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			
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	√	N/A	N/A
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	√	√*	√ (10/04)
23	Command Staff Rotation	1/20/2004	√	<i>N/A</i>	
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	√	<i>N/A</i>	√ (10/03)
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			
43	Academy & In-Service Training	2/15/2005	√*		
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	√	N/A	√ (8/03)
50	Compliance Unit Liaison Policy	3/4/2003	√	N/A	√ (8/03)

*Indicates that compliance was achieved during this reporting period.

**As of last compliance review.

A. Policy Compliance⁷

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of twenty-one of the forty-four Tasks that had become due. As discussed above, an additional Task became due this reporting period, bringing the total number of Tasks that have become due to forty-five. At the end of this reporting period, OPD attained policy compliance with one additional Task—Academy and In-Service Training (Task 43). Accordingly, OPD has achieved policy compliance with a total of twenty-two of the forty-five Tasks that have become due. OPD also already has attained policy compliance with two Tasks that have not yet become due: Refusal to Accept or Refer Citizen Complaints (Task 6) and Compliance Audits and Integrity Tests (Task 51).⁸

As discussed in our last report, all but a few of the delinquent Tasks will be addressed by OPD’s implementation of four lengthy and complex policies involving the manner in which the Department handles its internal investigations, reviews uses of force, and administers discipline: 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. OPD has continued to work diligently on these policies and appears to be close to implementing them. The IMT recently determined that General Order M-3 is in compliance with the Settlement Agreement and OPD is expected to publish and begin training on this policy soon. The IMT is currently reviewing a recently provided draft of OPD’s Discipline Matrix and related policies and is awaiting a draft of OPD’s General Order K-4.

⁷ In order to attain policy compliance, OPD must publish a policy or other appropriate directive (e.g. General Order, Training Bulletin, Manual, etc.) that accurately reflects the requirements of the Settlement Agreement Task.

⁸ Task 6 has a due date of June 2005, and Task 51 has a due date of September 2005.

B. Training Compliance⁹

OPD made impressive strides this reporting period in verifying that it has conducted training on new Settlement Agreement policies. During the last reporting period, OPD was unable to demonstrate training compliance for any of the Tasks requiring training. In stark contrast, during this reporting period, OPD has been able to demonstrate that it has trained 95% or more of relevant personnel on all but one of the policies that was outstanding as of the last reporting period. Training has not yet been completed for BOI 04-02, *Supervisory Span of Control*, which impacts training compliance for Tasks 19 and 20. As discussed above, OPD achieved policy compliance with one additional Task (Task 43) this reporting period. Training, however, has not yet been completed for this Task.

OPD's improvement in documenting Settlement Agreement training during this reporting period is a significant accomplishment resulting from focused problem-solving and diligent efforts by members of OPD's Training Division.

C. Actual Practice Compliance

During this reporting period, the IMT reviewed OPD's actual practices in the following areas: Approval of Field-Arrest by Supervisor (Task 18); Procedures for Transporting Detainees and Citizens (Task 36); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); Promotional Consideration (Task 46); and Departmental Management and Annual Management Report (Task 48). 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, its actual practices do not yet comply with the Settlement Agreement in any of the areas.

Overall, the IMT has found OPD 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 the same number of Tasks as during the last reporting period. While the IMT has not had an opportunity to verify OPD's report, according to OPD, it has also achieved actual practice compliance with Vehicle Stops, Field Investigation and Detentions (Task 34).

⁹ 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.

V. DETAILED COMPLIANCE REPORT¹⁰

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 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 last reporting period.¹¹ 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 became due. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates the requirements of several of these Tasks. Once OPD publishes this General Order it will be in policy compliance with several additional Tasks, as discussed below.

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.)

¹⁰ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

¹¹ 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 the last reporting period. OPD, however, has not yet developed or implemented policies that comply with the Settlement Agreement. OPD has produced two drafts of the manual on which the IMT has provided OPD with detailed comments. OPD has been working diligently to revise the manual, but as of the end of this reporting period, the manual had not yet been completed.

During this reporting period, OPD restructured the Internal Affairs Division to increase its level of command staff supervision and to heighten the stature of the Division within the Department. The Division, formerly headed by one Lieutenant, is now led by a higher ranking command official—a Captain. OPD has added an additional Lieutenant to the Division and divided oversight of administrative and investigative responsibilities between the two Lieutenants. The IMT supports these efforts and has been favorably impressed by the enthusiasm and commitment of the Captain newly in charge of the Division.

Additionally, during this reporting period, OPD began providing additional training to both IAD and division-level investigators. Some IAD staff received “interview and interrogation” training and general Internal Affairs training. IAD investigators, commanders and designated sergeants attended a one day specialized course regarding the roles and responsibilities of internal investigators. The IMT attended this training and believes that it served as valuable initial training for OPD investigators, but that more extensive skill-based training is needed for many investigators.

While these are promising developments, as discussed above, significant problems still exist in the manner in which OPD investigates and generally manages allegations of officer misconduct. OPD and the City have recently committed to retaining outside consultants to assist IAD in developing efficient and effective processes for investigating misconduct. We commend the Department for recognizing the value of outside expertise and encourage it to move forward quickly on this matter.

During the upcoming reporting periods, 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates Task 2. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. As discussed above, it appears that too many internal investigations continue to exceed reasonable timeframes and, in some instances, the statutory deadline for imposing discipline. Chief Tucker has expressed particular concern regarding this issue and is requiring commanders to report to him on a weekly basis the status of investigations.

During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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. During the upcoming reporting periods, 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 and implementation deadlines for this Task occurred during the last reporting period. The IMT has determined that OPD's General Order M-3.1, *Informal Complaint Resolution Process*, which incorporates a portion of this Task, complies with the Settlement Agreement. OPD also has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates the remainder of Task 4. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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 the last 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, at the beginning of this 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this policy.

OPD also has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates a portion of this Task. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to quickly implement General Order M-3. During the upcoming reporting periods, the IMT will determine whether OPD has implemented the required policies, conducted appropriate training on General Order M-3, 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 the last reporting period. As previously noted, OPD is already in compliance with the requirement that IAD offices be located off-site. In addition, OPD now has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates the remainder of Task 7. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates most Task 8 requirements. The remaining Task 8 requirements are included in Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, currently under review by the IMT.

During the upcoming reporting periods, 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.

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 the last reporting period. Task 9 requirements are included in Training Bulletin V-T.1, *Internal Investigation Procedure Manual*, currently under review by the IMT.

During the upcoming reporting periods, 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.

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 the last 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.

OPD has produced two drafts of the manual on which the IMT has provided OPD with detailed comments. OPD has been working diligently to revise the manual, but as of the end of this reporting period, the manual had not yet been completed.

During the upcoming reporting periods, 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates portions of this Task. The remaining Task 11 requirements are included in related policies currently under review by the IMT.

During the upcoming reporting periods, the IMT will determine whether OPD has developed the required policies, conducted appropriate training, 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates Task 12. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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 reporting periods, 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 the last reporting period. OPD has completed a compliant draft of General Order M-3,

Complaints Against Departmental Personnel or Procedures, which incorporates Task 14. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates Task 15. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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 the last reporting period. OPD has completed a compliant draft of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates Task 16. Once OPD publishes this General Order it will be in policy compliance with this Task.

We encourage OPD to implement General Order M-3 quickly. During the upcoming reporting periods, the IMT will determine whether OPD has implemented 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),¹² Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). During the last reporting period, the final Task in this section, Members', Employees' and Supervisors' Performance Reviews (Task 21), became due.

¹² 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.

OPD has achieved policy compliance for all seven of the Tasks in this area. Additionally, during this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel for all but two of the Tasks requiring training in this section.

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

a. **Settlement Agreement Requirements**

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

b. **Status of Compliance and Assessment**

This Task has no separate requirements. Since OPD has developed and published compliant policies for Tasks 18, 19, 21 and 23, OPD has achieved policy compliance with this Task.

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 third reporting period. OPD drafted a policy, General Order M-18, *Arrest Approval and Report Review in the Field*, complying 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 the last reporting period. OPD has made significant progress in training on this Task. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this policy. OPD recently redrafted M-18 to improve documentation related to arrests and supervisory approval. The IMT is reviewing the revised policy to ensure that it still comports with the Settlement Agreement.

During this reporting period, the IMT audited OPD's compliance in actual practice with Task 18. Task 18 requires a supervisor to respond to the scene of, at least, the following categories of arrests: 1) all felonies; 2) all arrests for Penal Code §§ 69, 148, 243 (b)(c); all investigated uses of force; and 4) all drug offenses (a marijuana arrest requires supervisory approval only where the subject is taken into custody for that offense).¹³ This requirement applies unless community unrest or other conditions at the scene make supervisory response impractical.

Based on the documentation we were provided, the average rate of supervisory response to the scene was 70.7%. Accordingly, OPD is not yet in compliance with the requirement that supervisors respond to the scene of designated arrests. While it is possible that supervisors responded to the scene of more incidents, such response could not be verified through any of the documentation provided. The IMT reviewed all available documentation (including arrest reports, crime reports, witness statements, supplemental reports, and the radio purge) for every arrest.

Supervisory response was lowest for felony arrests. Supervisors responded to the scene of only 44.2% of the felony arrests. Response to the scene for arrests for Penal Code §§ 69, 148, 243 (b)(c) was significantly higher. Supervisors responded to the scene of 68% of these arrests. In sharp contrast to these response rates, OPD supervisors responded to the scene of 100% of the investigated uses of force that occurred during the review period.

In addition to requiring that supervisors respond to the scene to approve arrests, Task 18 requires supervisors to review the arrest documentation in order to: 1) determine whether probable cause for the arrest/reasonable suspicion for the stop is articulated; 2) ensure available witnesses are identified; and 3) approve or disapprove the arrest in the field.

¹³ For purposes of this review, we did not review supervisory response to drug offenses. We will review such response in a subsequent audit.

The average rate at which probable cause for the arrest/reasonable suspicion for the stop was sufficiently documented was 95%. Accordingly, OPD is in compliance with this component of Task 18. Moreover, all of the use of force incidents had sufficient documentation of probable cause/reasonable suspicion.

OPD was not in compliance with respect to documentation regarding the identification of witnesses. In part, this may be due to officers' failure to document when there are no witnesses to an incident. Frequently, the reports were simply silent on this point with no documentation one way or the other regarding the presence or absence of witnesses to the incident. Overall, the average rate at which available witnesses were identified (or ruled out) in the documentation was 44.3%. Available witnesses were identified somewhat more often in the use of force cases. Of these cases, 66.7% had documentation regarding available witnesses.

In addition to the above, Task 18 requires the responding supervisor to log the time of his or her contact with the arresting officer. Our review found that OPD is not in compliance with this portion of Task 18. The average rate at which there was some form of documentation regarding the time the supervisor was in contact with the arresting officer is 76.6%. However, this contact took various forms. While many of the contacts occurred in the field as required by Task 18, others appeared to have taken place by phone, radio, or other means.

To help improve OPD's compliance with Task 18, we recommended that OPD ensure that officers use updated consolidated arrest reports (CARS) because these forms have a designated box for the approving supervisor to sign, including a place to log the time. Likewise, we recommended that OPD update the forms that it uses when arresting juveniles to provide for similar approval boxes.

We also recommended that OPD officers and supervisors be instructed that they should always document the presence or absence of witnesses. When there are no witnesses to an incident, this should be documented on the CAR and/or offense report.

During the upcoming reporting periods, the IMT will determine whether OPD has completed appropriate training on the revised 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*. OPD has made significant progress in training on this Task. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on General Order A-3 and BFO Policy 03-02. OPD has not yet completed training personnel on BOI 04-02.

During the upcoming reporting periods, the IMT will determine whether OPD has completed appropriate training on BOI 04-02, 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*. OPD has made significant progress in training on this Task. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on General Order

A-3 and BFO Policy 03-02. OPD has not yet completed training of personnel on BOI Policy 04-02.

The IMT conducted an actual practices review of Task 20 in September 2004. As of that review, OPD had not yet reached actual practice compliance for Task 20. However, we were encouraged by the progress it had made. As we previously reported, the IMT was concerned about some evidence of backsliding (i.e. falling out of compliance in assigning sufficient sergeants). If this has been corrected, OPD is headed in the right direction overall for Task 20.

During the upcoming reporting periods, the IMT will determine whether OPD has completed appropriate training on BOI 04-02, and whether OPD's actual practices comply with this Settlement Agreement provision.

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.
- 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 third 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.

During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

The IMT audited OPD's performance appraisals in October 2004. According to more recent analyses, within the past year, OPD appears to have cut in half the number of performance appraisals that are delinquent. During this reporting period, however, OPD continued to struggle to complete timely performance appraisals for its personnel. According to OPD's Personnel Division, as of March 10, 2005, 11% of the Department's performance appraisals were delinquent.

During the upcoming reporting periods, the IMT will determine 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 implement a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office. This unit or person is to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.
- The MLL is required to meet and cooperate with the Monitor. The District Attorney and Public Defender offices may attend these meetings.

b. Status of Compliance and Assessment

As previously reported, OPD developed and published a compliant policy incorporating this provision—General Order A-18, *Management Level Liaison*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on 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. 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. During this reporting period, the MLL initiated quarterly reporting as well. The first quarterly report provided a useful summary

of MLL activity during the previous quarter, including the types of cases that came under review, the source of referrals, the number of cases resolved by the MLL, the number of cases referred to IAD, the status of the cases referred to IAD, developing trends, and MLL recommendations.

A total of twelve cases were referred to IAD by the MLL last year. During the first three months of 2005, the MLL reviewed five cases and referred four of them to IAD for investigation. Of the five cases that were reviewed by the MLL, two were referred by the Public Defender's Office, one by the District Attorney's Office and two were identified by the MLL based on cases that were not charged due to inadmissible searches. Based on his quarterly review, the MLL observed that three of the five cases involved search issues. Accordingly, the MLL recommended that OPD develop a line-up presentation regarding vehicle and walking stop searches.

It appears that the MLL continues to meet both the letter and the spirit of this Settlement Agreement provision in actual practice. During the upcoming reporting periods, the IMT will monitor whether OPD 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.

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 third 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 reporting periods, 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 the last 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 yet 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 the last 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, as of the date of this Report, it has not yet completed development of the required policy or reporting forms.

During this reporting period, OPD produced a draft Use of Force Handbook containing drafts of the policies required under this and related Tasks. The drafts, however, did not comply with the Settlement Agreement. As part of our assessment of the drafts, it was necessary to review OPD's other use of force policies to ensure that they do not conflict with the newly drafted policies or with the Settlement Agreement. In addition to the policies contained in the draft Use of Force Policy Handbook, we identified over thirty additional general and special orders, memoranda, and training bulletins relating to use of force by OPD officers. When presenting the new draft policies, OPD initially indicated no intention of withdrawing old use of force policies, including policies dating as far back as the 1960's, 1970's, and early 1980's. In addition to conflicting with the new policies and with professional policing standards, some of these policies include references to tools and techniques that have been banned or are no longer in use in Oakland. As a result, when read together, OPD's old and new use of force policies lack cohesion and uniformity in form, tone, and substance. This inconsistency results in use of force protocols that provide confusing, contradictory instructions to officers, undermine Settlement Agreement compliance, and present significant risk management issues for the City.

The IMT has provided OPD with detailed comments regarding the draft use of force policies. In response, OPD is working diligently to prepare new drafts and to rescind and/or update all of its use of force policies and procedures. This is a significant and important undertaking and one that is essential for managing use of force issues appropriately.

As discussed in our previous reports, OPD has not had in place a reliable system for tracking uses of force. As a result, OPD was unable quickly or reliably to determine how frequently officers used force or the identity of who had been involved in use of force incidents. During this reporting period, the Department implemented a temporary system to ensure that every report of a use of force is centrally filed with copies forwarded to IAD, Training, OIG, the Office of the Chief of Police, and the Chair of the Use of Force Review Board. Additionally, according to OPD, it intends to prepare monthly, quarterly, and annual reports regarding uses of force. OPD also beta-tested a computerized use of force tracking system this reporting period. While these are positive developments, they have not been memorialized in any official policy yet. The IMT has recommended to OPD that this occur in order to help ensure that this system does not break down.

During the upcoming reporting periods, 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 the last 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this policy.

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. As discussed above, while OPD has been working to develop a use of force reporting policy and has prepared several drafts, as of the date of this Report, it has not yet completed development of the required policy.

During the upcoming reporting periods, 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 the last reporting period. OPD, however, has not yet developed or implemented a policy that complies with the Settlement Agreement. As discussed above, while OPD has been working to develop a use of force reporting policy, including a policy regarding the Use of Force Review Board, and has prepared several drafts, as of the date of this Report, it has not yet completed development of the required policy.

During the upcoming reporting periods, 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 the last 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this policy.

During this reporting period, the PEU continued preparing monthly reports regarding policy adherence and OC canister distribution. Additionally, during this reporting period, OPD published Special Order 8221, to address gaps in OPD's OC policy and procedures discovered during one of OPD's own audits. As discussed in our last Report, OPD discovered that its Training Division had been issuing OC canisters without logging or tracking such distribution. Additionally, according to the audit,

Training had not been keeping inventory records of OC received from vendors or delivered to PEU. The audit included 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 concluded that the Training Division must develop and implement a system for tracking OC use and distribution. OPD's implementation of Special Order 8221 establishes such a system.

The IMT applauds OPD's self-identification of deficiencies in this area and for its prompt remedial action. During the upcoming reporting periods, the IMT will determine 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 the last reporting period. OPD initially revised General Order M-4, *Coordination of Criminal Investigations* to incorporate the requirements of this Task. The IMT reviewed M-4 and determined that the draft did not comply with the Settlement Agreement because it did not provide for the required reporting to the District Attorney's Office. In response, OPD drafted a separate policy, General Order M-4.1, *Criminal Investigations Involving Law Enforcement or a Member or Employee of the Department*, focusing on the handling of criminal misconduct investigations. OPD has completed a draft of the policy that complies with the requirements of the Settlement Agreement. Once OPD publishes this General Order it will be in policy compliance with this Task.

During the upcoming reporting periods, the IMT will determine whether OPD has implemented this policy, conducted appropriate training, 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 the last reporting period. OPD, however, has not yet developed or implemented policies that comply with the Settlement Agreement. OPD initially reported that this Task will be addressed in General Orders M-3 and M-4, *Coordination of Criminal Investigations*. This Task is now incorporated in one of the IAD policies currently under review by the IMT.

During the upcoming reporting periods, the IMT will determine whether OPD has developed the required policies, conducted appropriate training, 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 the last 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.¹⁴ While OPD has prepared several 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. During this reporting period, the IMT attended one of the Review Boards. As discussed above in the Area of Concern section, there continue to be several systemic deficiencies in OPD's Firearms Discharge Boards of Review, many of which we brought to the Department's attention nearly a year ago. We have discussed these issues at length and OPD is in the process of revamping its entire process of investigating and reviewing firearms discharges and other lethal uses of force.

During the upcoming reporting periods, the IMT will determine whether OPD has developed the required policy and conducted appropriate training. The IMT will also 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

¹⁴ 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.

Attorney's office.

b. Status of Compliance and Assessment

The compliance deadline for this Task occurred during the last 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.

As discussed above, there continue to be a number of systemic deficiencies in OPD's system for investigating and reviewing officer-involved shootings, many of which we brought to the Department's attention nearly a year ago. We have discussed these issues at length and OPD is in the process of revamping its entire process of investigating and reviewing firearms discharges and other lethal uses of force.

As required by this Task, this reporting period, Internal Affairs investigators began to respond to officer-involved shootings.

During the upcoming reporting periods, 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 the last 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.

As discussed in our last Report, 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 City has informed the IMT that it is committed to moving forward on this front. According to the City Manager, the City has identified funding to purchase video equipment for the patrol cars and is attempting to identify additional funds to support maintenance and infrastructure related to the project.

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-Retaliations Against Witnesses; and Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process.

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

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.

During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

During the upcoming reporting periods, the IMT 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 began training officers on the policy shortly following its publication.

On November 15, 2004, OPD replaced this Special Order with General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. During this reporting period, the IMT attended a mass training of OPD members, including officers from OPD's Crime Reduction Teams, on this policy. The training was skillfully delivered and facilitated, informing officers not only of the technical requirements of OPD's policies and procedures but explaining why and how data collection contributes to good policing. As previously reported, General Order M-19 is in many respects a model policy. It provides a clear definition of prohibited conduct; straightforwardly sets forth the responsibilities of various Departmental subunits; and provides guidance in the form of examples of prohibited conduct. If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

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

Despite these positive efforts, OPD's low compliance in actual practice with the requirements of this Task has concerned the IMT. As we reported in our last Report, we found that officers were failing to complete the stop data forms required by this Task for more than 60% of applicable stops. As discussed in above in the OPD Accomplishments section, OPD made compliance with this Task a focus point of the MAP process and, as a result, compliance appears to have improved dramatically. OPD reports that the number of forms being completed by officers and reviewed by their supervisors has increased significantly during this reporting period. The IMT has not had an opportunity to verify OPD's report that it has achieved actual practice compliance with Task 34.

During upcoming reporting periods, the IMT will confirm 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on 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 required that these policies be developed and implemented by July 20, 2004. As noted above, OPD has not yet completed these policies.

During the upcoming reporting periods, the IMT will determine whether subsequent policies comport with the Settlement Agreement, 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

During this reporting period, the IMT audited OPD's compliance in actual practice with Task 36. Task 36 requires officers to log in and out on the radio when transporting a detainee or other civilian. This requirement applies unless the transport is done by wagon. In order to obtain a finding of compliance, OPD's officers must comply with this requirement in 95% or more of applicable transports. Based on the documentation we were provided, members and employees logged both in and out as required at a rate of 63%. The logging rate varied somewhat by type of arrest. Officers logged in and out as required in 50% of the arrests involving an investigated use of force; 65% of the felony arrest transports; and in 74% of the transports for arrests for PC §§ 69, 148, and 243 (b)(c). Accordingly, OPD is not yet in compliance with the requirement that officers log in and out on the radio when transporting a detainee or other civilian.

Task 36 requires that radio reports regarding applicable transports include the following information: time, mileage, location, purpose of transport, gender of individual being transported, and identification of the member or employee involved in the transport. In order to obtain a finding of compliance, these elements must be included in at least 95% of the radio reports. Based on the documentation we were provided, the overall rate at which required elements were included in the radio reports was 60.4%. Accordingly, OPD is not yet in compliance with this component of Task 36.

In order to improve compliance with the requirements of this Task, we recommended that OPD explore whether a communications protocol should be established prompting dispatchers to elicit the information required by this Task. The protocol should specify a consistent format for entering the data. This is particularly important for mileage, location, and purpose. Based on the radio purges we reviewed, when this information was reported, frequently it was reported and/or documented in an inconsistent fashion. For example, mileage reports ranged from complete mileage readings to partial readings of just one or two digits. It was often difficult to discern from the partial readings the actual distance that the transport involved. Likewise, mileage reports were often given at only one location instead of at both the originating and concluding locations as required. Location and purpose information were also reported and/or documented inconsistently.

In conjunction with a communications protocol, we also recommended that OPD provide officers with refresher training regarding what information they are required to provide when performing transports, and hold officers accountable where they do not comply with this OPD policy. This appears to be especially necessary with respect to providing gender information, which was not provided and/or documented on the purges in more than half of the incidents reviewed.

The requirements of Task 36 are simple, straightforward, and, if followed, would provide the City and OPD with important risk management protection. In recent years, the City has faced costly litigation related to transport time and distance issues. The low compliance levels by officers with these requirements is counter to basic law enforcement practices and exposes the City and OPD to unnecessary liability.

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. As previously reported, OPD implemented policies reflecting the literal language of the Settlement Agreement that are inconsistent with one another. The IMT remains concerned about the messages the inconsistency sends.

During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

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.

It is possible that through training and proper application of the new disciplinary matrix, OPD will be able to resolve the apparent conflict between the policies. During the upcoming reporting periods, the IMT will determine 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on 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 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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on 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 this reporting period, the IMT conducted a review of OPD’s compliance with Task 39. Task 39 requires that all OPD personnel report, within 72 hours, being arrested or sued/served with civil or administrative process related to their employment or containing allegations that rise to the level of a *Manual of Rules* violation. Members of particular units have heightened reporting obligations, requiring the member to report, within 72 hours, if they have been served with civil or administrative process regardless of whether the suit/service was related to his/her employment or contained allegations that rise to the level of a *Manual of Rules* violation.

The IMT previously established two compliance criteria for this task. First, OPD personnel must report arrests, lawsuits, and being served with administrative process as required by the Settlement Agreement at least 95% of the time. Second, OPD personnel must be held accountable for failure to report such arrests, lawsuits, and service with process 100% of the time.

Our review assessed OPD’s 2004 completed notification-related investigations. We identified seven notification-related cases that involved personnel who were arrested or served with civil process. In five of these seven cases (71%), personnel reported as required by the Settlement agreement. This falls short of the 95% set by the IMT’s first compliance criteria for this task.

OPD appears to do a good job of holding its members/employees accountable for not reporting being arrested, sued, or served—when IAD learns of the non-reporting. Our review indicated that OPD sustained two of the three cases (67%) where it was alleged that OPD personnel had not reported being arrested or sued/served in accordance with the Settlement Agreement. We found OPD’s decision not to sustain the third case to be reasonable. We found further that the decision not to include a notification allegation in the other four cases involving arrested or sued/served personnel was appropriate. In two of these cases the officer reported the arrest to the Department within 24 hours. In the other two cases, the officer/employee was aware that other individuals had informed OPD of the incident, making it impossible to know whether the officer otherwise would have reported the incident within 72 hours as required.

The efficacy of OPD's notification requirements is significantly undermined, however, by the fact that OPD's enforcement of this requirement relies upon officer self-reporting and ad hoc reporting by sister law enforcement agencies. OPD takes few proactive steps to ensure that non-reporting members/employees are detected. Inevitably, this will permit officers and employees who have been arrested or sued to escape notice.

More troubling than OPD's lack of specific enforcement measures in this area is that, until we started this review and began asking questions, OPD seemed to have given little thought to how it would ensure that its members/employees comply with this requirement. We found that few in the Department, even at high levels, knew what the Department currently does to enforce its notification requirements. No one in the Department was able to say with certainty what the Department is authorized to do to enforce its notification requirements. Information initially provided by Department officials on this topic often proved, upon further IMT inquiry, to be inaccurate as often as it was accurate. OPD was not complying with the one Special Order it had implemented that required a proactive measure. To OPD's credit, once we began asking questions, there was immediate recognition that proactive measures are necessary for both Settlement Agreement compliance and the efficacy of the requirement. Because OPD has not implemented or adequately considered proactive steps to ensure that OPD personnel properly report being arrested, sued, or served with administrative process, we must find OPD out of compliance in actual practice with the IMT's second compliance element for this Task. Once OPD explores the feasibility of proactive measures and implements those that appear reasonable and effective, the IMT will more likely be able to find OPD in compliance with this Task. The IMT review included several recommendations that we encourage OPD to consider.

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 due to be completed in 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

The compliance deadline for this Task has not yet occurred. The development of PIMS appears to remain on track. The IMT has some concern about OPD's policy development in this area and will continue to track interim progress closely. Upon implementation of the system, the IMT will monitor whether OPD's training and actual practices comply with the Settlement Agreement.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

This Task 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 the last 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 the last reporting period. OPD drafted General Order B-8, *Field Training Program* to reflect the new FTO policies and procedures. The IMT reviewed the policy and found that it complies with the Settlement Agreement. Once OPD publishes this General Order it will be in policy compliance with this Task. OPD has not yet conducted training on the policy. The program has undergone significant changes and the IMT has been impressed with the Department’s thoughtful approach to its design and implementation. During this reporting period, OPD conducted an FTO certification course and certified a new group of FTOs.

During the upcoming reporting periods, the IMT will determine whether OPD implements the required policy, 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 occurred during this reporting period. The Tasks related to this section of the Settlement Agreement became due beginning in February 2005. Additionally, on February 28, 2005, OPD welcomed its One Hundred Fifty-Fourth Basic Academy class. The class is the Department's first Academy class in several years.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this Task occurred during this reporting period. OPD published General Order, B-20, *Departmental Training Program*. The IMT reviewed the policy and found that it complies with the Settlement Agreement. OPD has not yet provided all of the required training on this policy, but the training is well underway. As required by the Settlement Agreement, B-20 establishes enhanced criteria for instructor selection and training. These criteria include factors such as disciplinary history, citizen complaints, awards and commendations, educational background, sick leave usage, and general professionalism. OPD initially did not intend to apply these criteria to the instructors for the current Academy class. However, following discussion with the IMT, OPD evaluated all of the approximately 100 instructors for the current Academy using the criteria set forth in the new policy. As a result of its review and analysis, it has excluded several instructors from its Academy roster.

During this reporting period, the IMT attended several Academy sessions, including classes on professionalism and ethics, cultural diversity, community policing, use of force, and arrest and control procedures. We have been pleased to observe several excellent presentations. We have also, however, observed some instruction that has not been up to par, including one instance where the instructor provided the students with incorrect information regarding proper law enforcement procedures. When brought to its attention, the Training Division took prompt remedial action by reinstructing the students regarding proper standards and procedures. We noted the Training Division Commander observing an Academy session after we raised concerns with a session we had observed. Because the instruction we have observed has been somewhat uneven, it is critical that OPD audit as many of the courses as possible to ensure that its instructors are living up to appropriate standards. OPD should document its observations and audits of the training and instruction being provided in both the Basic and Lateral Academies.

During the upcoming reporting periods, the IMT will monitor whether OPD conducts appropriate training on B-20. In addition, we will continue to monitor the content and quality of instruction provided in the Academy and in OPD's in-service training.

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. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task. As discussed below, however, 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 the last 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 has 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 the last reporting period. OPD developed a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, in advance of the due date. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

The IMT audited OPD's compliance with Task 44 in October 2004. The IMT found that only 64% of the personnel files we reviewed contained current performance appraisals. As discussed in our audit report, the quality of the performance appraisals was even more deficient.

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. As compared to this time last year, OPD has cut in half the number of performance appraisals that are delinquent. During this reporting period, however, OPD continued to struggle to complete timely performance appraisals for its personnel. According to OPD's Personnel Division, as of March 10, 2005, 11% of the Department's performance appraisals were delinquent.

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 last reporting period, 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.

As noted above in the OPD Accomplishments section, the IMT is encouraged by OPD's recent progress on Task 45. The IMT has provided OPD detailed feedback on the drafts of Task 45-related policies and OPD has been meeting with relevant stakeholders regarding the same. OPD very recently provided a draft of Task 45-related policies to the IMT for a compliance assessment.

During the upcoming reporting periods, the IMT will closely monitor OPD's development of its disciplinary system. The IMT will determine whether OPD's discipline policies comport with the Settlement Agreement; whether appropriate training is 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 finalized. As discussed above, as of the date of this Report, OPD has not yet implemented M-3.

During this reporting period, the IMT reviewed all of the promotions made by OPD from January 1, 2004–January 15, 2005. A total of 18 promotions were made during the period: 13 Sergeants; 4 Lieutenants; and 1 Captain. For each of the 18 individuals, we reviewed available performance appraisals, disciplinary histories, and any available promotional documents, including matrices used by the Chief and/or City Administrator.

During the period we were conducting this review, the City Administrator was acting as the functional Chief of Police. Moreover, independently, she also has the ultimate authority for approving or disapproving promotions. We interviewed the City Administrator to determine whether each promotional decision included consideration of the required elements. Based on our interview of the City Administrator and review of available promotional matrices used by the Chief of Police and City Administrator, the IMT determined that most of the Settlement Agreement's required factors were considered when making the promotions. However, OPD is not yet in compliance with this Task because *none* of the promotions included consideration of the Task's first element: commitment to community policing.

Based on our review, we recommended that both promotional authorities (the Chief and City Administrator) modify their promotional matrices to incorporate explicitly each of the elements required by the Settlement Agreement. We also recommended that the City update its promotional announcements to inform candidates that their suitability for promotion will include an assessment of the elements required by the Settlement Agreement.

Additionally, we recommended that the Department and City consider each candidate's recent performance, including any pending complaints. Likewise, we recommended that feedback from the candidate's recent supervisors be elicited and considered. While information from each candidate's most recent performance evaluation generally was considered, in some instances, the evaluations were several years old.

We are aware that Chief Tucker already has put into place a number of measures designed to strengthen the promotions process, including structured recorded oral interviews that include questions relating to Settlement Agreement topics. We support such measures and believe that they will likely assist the Department to achieve compliance on this Task in short order.

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*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

As we discussed in our last Report, the City has authorized funding for and approved a contract to conduct a survey of the community's satisfaction with OPD. We applaud OPD and the City for working with community members in support of this innovative project and look forward to learning the results of the survey.

During this reporting period, as part of the MAP process, OPD recognized that it was out of compliance with the community meetings portion of this Task and worked to improve compliance. According to OPD, while its officers did not attend the requisite number of community meetings last quarter, attendance now has reached compliant levels. The IMT has not yet had an opportunity to verify OPD's claims, but this is another example of the value of the MAP process. It provides a focused vehicle for identifying and rectifying compliance issues.

During the upcoming reporting periods, the IMT will monitor and report on OPD's community policing efforts, including the mechanisms it develops to measure its community policing and problem solving activities. We will also monitor community meeting attendance by OPD officers.

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 Reports*, on November 24, 2003. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this Task.

During this reporting period, the IMT reviewed OPD's compliance with this Task. Task 48 requires that each functional unit within OPD prepare a management report every 12 months. Each report must include relevant operating data and must highlight ongoing or extraordinary problems and noteworthy accomplishments. Task 48 further requires that Division commanders individually meet with the Chief of Police and their respective Deputy Chief to thoroughly review the management report for their Divisions. The IMT's monitoring standards for this Task require that: 1) annual reports be submitted for 100% of OPD's functional units; 2) 95% of the reports include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments; and 3) 95% of Division Commanders/Managers meet with the Chief of Police to thoroughly discuss their annual reports.

The IMT found that OPD is in compliance with Task 48's requirement that each functional unit submit an annual management report. We found that OPD is not in compliance with Task 48's requirement that each annual management report include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. We also found that OPD is not in compliance with Task 48's requirement that each Division Commander meet with the Chief of Police to discuss the annual management report.

Our review showed that only six of the 27 annual reports (22%) adequately addressed relevant operating data, ongoing or extraordinary problems, and noteworthy accomplishments.¹⁵

¹⁵ To determine what constitutes "relevant operating data," "ongoing or extraordinary problems," and "noteworthy accomplishments," the IMT adopted OPD's criteria contained in General Order A-7, *Annual Management and Departmental Reports* (14 Nov 03). This General Order includes a list, with examples, of the "mandatory information" that must be included in each Annual Management Report. Mandatory information includes: Staffing; Fiscal Management Report; Training Received/and or Provided by Unit Personnel; Significant Accomplishments; Productivity Performance Data; Other Performance Data; and Plans and Goals. GO A-7 includes a description and examples of each type of information. Accordingly, inclusion in each management report of the mandatory information required by General Order A-7 constitutes inclusion of the relevant operating data, ongoing or extraordinary problems, and noteworthy

While most reports were lacking basic operating data in a number of areas, the most striking deficiency was the overwhelming failure to mention any type of "Other Performance Data." This category is defined in GO A-7 as "data which indicates a need for corrective action, i.e., uses of force, discharging of firearms, personnel complaints, vehicle pursuits, and preventable vehicle collisions." This information, which should be at every supervisor's fingertips, and is central to compliance with nearly every Settlement Agreement Task, was only *mentioned* in six of the 27 reports. The impact this failure had on compliance with this Task is also striking: if each report had covered this topic adequately, even with no other improvements, OPD's compliance rate would have doubled.

The reports tended to be consistent in both their strengths and weaknesses. The reports' discussions of staffing (particularly staffing setbacks) and Significant Accomplishments were generally adequate. Nearly every report outside BOS failed to make any mention of its unit's fiscal management plan. Given the Department's current concerns with fiscal management, this issue should be a priority for every supervisor, and this should have been reflected in the annual reports. The reports usually mentioned training, but often failed to provide the detail necessary to make the reference useful. Few reports, for example, actually described the subject of the training, the number of persons trained, and the length of the training, as required by GO A-7. Without this level of detail it would be difficult for anyone reviewing the report to assess, even generally, whether better or different training for the unit might be in order.

It was readily apparent that many of these reports were completed perfunctorily and with little effort. For example, the category of plans and goals was rarely given anything but the most formulaic response. This is unfortunate, as a thoughtful description of a commander's strategic planning for the coming year can act as a roadmap to the unit and a useful evaluation tool for the Chief of Police. Basic productivity-related data for investigative units, such as officer caseload; length of time taken to complete cases; solving rate (for Robbery Division); and the results of internal investigations (for IAD) was absent. In many instances, the IMT is aware of good work being done by units that is not apparent from a review of the unit's report. In this respect, these reports do a disservice to OPD's officers and other employees.

There were heartening exceptions to the generally poor quality of these management reports. Two units, the Communications Division and the Personnel

accomplishments required by the Settlement Agreement.

To determine whether a report adequately addressed relevant operating data, ongoing or extraordinary problems and noteworthy accomplishments, two IMT reviewers evaluated and scored each annual report in each of the seven areas listed above. If an area was not covered it was scored "0"; if covered but inadequately, it scored "1"; if covered adequately it scored "2." Reports that scored ≥ 9.8 points out of the 14 points possible (70%) were deemed adequate.

Section, achieved 100% ratings, while a third, the Records Division, achieved a 93% rating. Still, the state of the reports in general indicates that some OPD supervisors and commanders may not recognize the value of good annual reports as planning documents and valuable community relations tools, and are not committing the necessary time to this Task.

The IMT also found OPD out of compliance with Task 48's requirement that Division Commanders meet with the Chief to discuss their reports. General Order A-7 requires that the meetings between Division Commanders, Deputy Chiefs, and the Chief of Police discussing the management reports occur within the first three weeks of March. According to General Order A-3, there were a total of 16 division commanders/civilian managers within OPD in 2004.¹⁶ According to the Bureau Chiefs, the BFO and BOS Deputy Chiefs and all but one Division manager in their Bureaus have met with the Chief. The BOI Deputy Chief and Commanders have not met with the Chief to discuss their annual reports but are scheduled to meet with the Chief of Police. We have not been advised whether the Chief has met or plans to meet formally with the OCOP subcomponents (including OIG and IAD) to discuss their annual reports. Consequently, OPD is not in compliance with this portion of Task 48.

The other component of compliance with Task 48 is that the review of the reports be "thorough." The IMT did not assess the quality of the review of the annual management reports. This assessment will be more appropriate and productive once the reports themselves are more thorough and OPD is closer to compliance with this task.

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

¹⁶ OPD Divisions in 2004 included: 1) Administrative and Technical Services Division; 2) Budget and Accounting Division; 3) Communications Division; 4) Jail Division; 5) Personnel and Training Division; 6) Records Division; 7) Research and Planning Division; 8) First Watch Patrol Division; 9) Third Watch Patrol Division; 10) Second Watch Patrol/Neighborhood Services Division; 11) Field Support Division; 12) Special Operations Division; 13) Criminal Investigation Unit; 14) Property and Evidence Unit; 15) Criminalistics Division; and 16) Intelligence Division. See General Order A-3 at 2.

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; spearheading the compliance portions of the weekly MAP meetings; and conducting audits required by the Settlement Agreement and other Departmental objectives. OIG staff also drafted policies; participated in several working group meetings; 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 and in our previous Reports, 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.

OIG facilitates the weekly MAP meetings by gathering and synthesizing Department-wide data in order to provide weekly snapshots regarding compliance issues.

OIG has also taken the lead in preparing and implementing comprehensive plans to achieve compliance with the Settlement Agreement.

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

OPD accomplished more during the last two months of this reporting period than it had during all previous reporting periods combined. The IMT recognizes that this is due in no small part to the Court's admonishment of the OPD and the City in its February 2005 hearing. Nevertheless, the positive impact of Chief Tucker's unambiguous leadership and abilities should be acknowledged.

Our highlighted area of concern and OPD's lack of actual practice compliance with any of the tasks we audited demonstrate that the Police Department still has a considerable amount of work to do if it hopes to achieve both the goals set out in the Settlement Agreement and a timely exit from the Court's jurisdiction. We commend the Police Department and City for its decision to energetically address these challenges. We will continue to provide close oversight and assistance to help ensure that these intentions are borne out and that OPD's implementation of the Settlement Agreement is timely and meaningful.