

**SEVENTH STATUS 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 Seventh Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from May 16, 2005, through December 1, 2005.

IMT's Monitoring Activities During the Seventh Reporting Period

The IMT conducted a variety of on- and off-site monitoring activities during this reporting period. The IMT, among other activities, attended several OPD Management Assessment Program and Crime-Stop meetings; participated in ride-alongs with OPD officers, including recently certified Field Training Officers; attended Firearms Discharge, Use of Force, and In-Custody Death Boards of Review; attended line-ups on all three patrol shifts; observed OPD's preparation for and conduct during an anti-war demonstration; attended critical incident briefings; observed OPD's on-scene criminal and administrative investigations of officer-involved shootings and an in-custody death; reviewed and analyzed OPD documents and files, including draft policies, investigations, and arrest and use of force reports; observed several sessions of the Department's Academy; attended promotions and graduation ceremonies; and participated in the monthly meetings required by the Settlement Agreement.

During this reporting period, the IMT met with OPD's Office of Inspector General, Training, Communications, and Internal Affairs Divisions; individual OPD officers on all three Watches; OPD's Field Training Program Coordinator; 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 City Administrator; 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; Field Training Officer files; MLL reports; Oleoresin Capsicum Tracking Reports; firearms discharge and other use of force 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.

As discussed in this Report, the IMT assessed OPD's progress on each of the fifty-one Settlement Agreement Tasks. As part of our assessment this reporting period, we conducted actual practice compliance reviews of seven tasks: Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Command Staff Rotation (Task 23); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Retaliation Against Witnesses (Task 37); Field Training Program (Task 42); and Community Policing Plan (Task 47). Additionally, we interviewed OPD patrol officers on all three patrol shifts to assess their understanding of OPD policies and procedures related to Settlement Agreement Tasks.

OPD Accomplishments

Greater Incorporation of Compliance Mechanisms

In our last report, we commended OPD for implementing its Management Assessment Program (MAP). MAP consists of bi-weekly meetings of the Chief and OPD's commanders and managers focusing on the Department's top priorities, including Settlement Agreement compliance. As we previously discussed, MAP presents data showing current compliance levels of selected Settlement Agreement tasks and requires commanders to explain deficiencies in their areas and to provide remedial plans. From its inception, we witnessed early positive outcomes that result from this type of enhanced management accountability and regular, focused attention of the Department's leaders.

During this reporting period, OPD continued its MAP sessions. At recent MAP meetings, as well as elsewhere in the Department, we have observed commanders engaged in robust problem solving and planning discussions. A number of individuals throughout the Department appear to be growing into their new roles and stepping up as leaders in ways that we had not seen before.

To ensure that the message of reform is reaching beyond the command-level MAP meetings, OPD recently held a day-long meeting with all OPD sergeants to discuss Settlement Agreement requirements. Sergeants were addressed by OPD's Chief and the Deputy Chief of the Patrol Division, as well as other commanders, on a variety of Settlement Agreement related topics.

OPD has also incorporated additional compliance mechanisms into its daily operations. OPD's Office of Inspector General (OIG) created a comprehensive compliance plan that makes individual managers or commanders responsible for assessing the status of compliance of each Settlement Agreement task. These compliance assessors are responsible for identifying deficiencies and proposing and implementing the steps necessary to achieve compliance. The compliance assessors are spread throughout OPD and prepare bi-weekly reports detailing the status of OPD's compliance on each

task. Every Captain and Deputy Chief within OPD is responsible for reviewing and ensuring the timeliness of compliance assessors' reports for at least two Settlement Agreement tasks. Such a comprehensive compliance plan is long overdue. The IMT applauds the compliance plan because we believe that the plan, coupled with sustained leadership, offers OPD a necessary roadmap towards compliance.

OIG continues to conduct objective, comprehensive audits of OPD's compliance with various Settlement Agreement provisions. Such audits serve a critical function. These audits have been unbiased, exacting, and have proposed concrete, sensible remedial actions where warranted. On more than one occasion, the audits have revealed significant operational concerns unrelated to Settlement Agreement compliance. Such efforts serve OPD well and enhance its professionalism and infrastructure. OIG continues to be a strong point for OPD and we expect this to continue under its new Captain. He has already proven himself extremely capable and committed to OPD's successful implementation of the Settlement Agreement.

The IMT also commends the increased compliance assistance of the Office of the City Attorney (OCA). The OCA attorneys representing OPD have become more involved in this project on a day-to-day basis, working closely with OPD officials throughout the Department. The OCA is working both "behind the scenes" with OPD in drafting policies, evaluating practices, and enforcing Departmental values, and is providing critical insight and perspective both in OPD's interactions with the IMT and its responses to inquiries from the Court. These attorneys do not hesitate to assertively question the IMT if they are concerned about our requirements, findings, or proposals and do so in a manner that is constructive and beneficial to the shared goals of professional policing and Settlement Agreement compliance. We have gained a better understanding of the Department's genuine concerns as a result of this increased interaction between OPD and OCA, and believe that the quality of OPD's new policies and submissions to the Court, among other aspects of OPD's efforts in this area, has improved as well. We commend OCA and OPD for bringing about this improved relationship and encourage them to build on it going forward.

Increasing Interactions with Outside Agencies and Professional Organizations

It may seem minor, but OPD's increased interaction with policing organizations of all types is a significant step towards the cultural change necessary to fulfill the letter and intent of the Settlement Agreement. In our experience, law enforcement agencies that communicate with each other to exchange ideas and learn from each other's experiences; that interact with professional policing organizations; and that avail themselves of training programs and experts in the field to assist them in addressing challenges, are more able to solve problems and avoid pitfalls in the future than departments that remain insular with a "that's how we do it here" attitude.

Accordingly, we are encouraged that in the past several months, OPD appears to have taken increasing advantage of the professional resources and networking and training opportunities available to law enforcement agencies. During this reporting period, all levels of command staff have attended gatherings of police professionals and training geared towards the specific challenges OPD faces. Recently, for example, twelve OPD commanders attended a three-day training on compliance auditing. Several OPD members attended an international policing conference and participated in sessions on police reform; management accountability; and assessing supervisory performance. OCA attorneys working with OPD have attended California Commission on Police Officer Standards and Training (POST) events to enable them to better represent their client. An OPD sergeant attended training in Canada on the critically important topic of proper Taser use, and returned with ideas about how OPD's Taser use should be modified to be safer--ideas that are now being implemented in OPD. OPD's Internal Affairs Division has visited a number of law enforcement agencies to learn how they conduct internal investigations and has hired an expert to assist it in improving OPD's internal investigations.

OPD's increased communications with other law enforcement agencies and policing organizations are, in our view, signs of real change underway at OPD. If OPD continues to thoughtfully interact with conscientious law enforcement agencies and professional organizations we expect it will gain insights in what to do—and not do—to achieve sustainable compliance with the Settlement Agreement.

Areas of Concern

Reporting Misconduct

Two audits we conducted this reporting period underscored that OPD officers frequently do not report the misconduct they observe or otherwise encounter and OPD does not hold them accountable for such reporting failures. Moreover, when officers report they have suffered retaliation for reporting misconduct, OPD's internal investigations of the alleged retaliation are too deficient to provide any level of confidence that officers guilty of retaliation are held accountable.

As discussed below in the summary of our Task 33 audit, and more completely in the audit report itself, OPD members often do not report the misconduct they observe or otherwise encounter. In cases where OPD sustains misconduct, its investigators often do not ask the probing questions necessary to establish exactly what witness members/employees on the scene observed or knew. Instead, OPD settles for ambiguous, vague, and, at times, implausible answers, thereby avoiding the critical determination of whether officers saw misconduct and failed to report it. Even in cases where OPD sustains misconduct and the investigation indicates that officers observed the sustained misconduct but did not report it, OPD does not always hold the officers accountable.

OPD officers appear to take seriously reporting some types of misconduct, such as DUI and domestic violence arrests. However, OPD officers do not readily report other

types of misconduct, such as improper uses of force or improper searches, and OPD rarely holds officers accountable for failing to do so.

Our Task 33 audit highlighted another concern: that some OPD members/employees may not report misconduct in some instances because they fail to recognize that the level and type of force used was improper. Such instances underscore the need to implement OPD's revised use of force policies as quickly as possible.

Our Task 37 audit, also summarized below, indicated that when officers do report misconduct, and allege they suffer retaliation as a result, OPD does not investigate these claims sufficiently. As a result, the Department likely fails to hold some officers accountable for retaliation and reduces confidence in its ability to protect those who properly report misconduct.

Ensuring that officers report improper uses of force, wrongful arrests and searches, and other misconduct is an essential requirement if OPD is to protect individual rights and achieve the reputation for integrity that its good officers deserve. One of the surest ways to increase the level of reporting misconduct is to hold officers accountable when they do not report it. OPD's current internal investigations, however, do not allow for sufficient accountability. OPD must do a better job ensuring that officers report misconduct and that they are fully protected from retaliation when they do so.

Continuing Delays in Policy Creation and Implementation

Up to a year and a half has elapsed since the compliance deadlines for three critical Settlement Agreement areas: investigating misconduct and administering discipline; reporting and investigating use of force; and tracking personnel management information. Yet, the Department still has not implemented the policies required by the Settlement Agreement. While OPD has made a number of significant changes in its practices in these areas, it has yet to institutionalize these practices into policy. The consequences of the unacceptable and continuing delay in policy implementation have ongoing repercussions and present serious risk management concerns for the Department and the City.

We commend OPD for its recent completion of the internal investigation and disciplinary policies required by the Settlement Agreement; however, these policies have not yet been implemented. There is no question that the problems we have repeatedly noted in OPD's internal investigation and disciplinary system have been exacerbated by the continuing lack of clear, uniform standards and guidelines governing the conduct of internal investigations and the administration of employee discipline. The delays in implementing the new disciplinary matrix setting forth penalty ranges for sustained misconduct have hindered the Department's ability to establish a disciplinary system that ensures fairness and consistency. OPD has set an aggressive training schedule for implementing its internal investigations and disciplinary policies, aiming to complete training of all employees by the end of the year. The IMT cannot state strongly enough

how critical it is to the reform efforts that the training on these policies be completed and that the policies be fully implemented without further delay.

We are even more concerned about OPD's delay in implementing the use of force policies required by the Settlement Agreement. As a result of OPD's delay in implementing these policies, officers are not yet required to report every time they use force. Likewise, OPD still does not subject every use of force to a thorough or contemporaneous supervisory review or investigation. Instead, OPD continues to operate under use of force protocols which provide confusing, contradictory, and overly permissive instructions to officers who, in turn, continue to use force inconsistent with professional policing practices. The IMT met repeatedly with the OPD staff drafting these policies and provided OPD with detailed comments on draft use of force policies in May and June 2005, but OPD has yet to complete the policies, or even provide the IMT another draft of these policies. We are aware that OPD is working on its use of force policies and shares our concern regarding their delay. These good intentions, however, cannot make up for the very real negative impact from the delay in changing the way OPD officers use, report, and review force. It is imperative that OPD complete and implement the use of force policies as soon as possible.

Finally, the deadline for the Department to implement its Personnel Information Management System (PIMS) was nearly five months ago. OPD, however, has not yet drafted the required policy, let alone implemented the computerized system required by the Settlement Agreement for supervising and managing personnel to minimize the risk of misconduct. As discussed in the task update below, OPD has created an interim system designed to perform many of the functions that will eventually be performed by PIMS, and has begun to analyze personnel data to identify and address at-risk behavior. This process, however, is frustrated by the lack of department-wide policy guidance regarding how to analyze this information and impose remedial action where warranted. OPD has reported problems with the contractor outside OPD's control and has stated that it intends to complete the PIMS policy by the beginning of 2006. PIMS represents one of the most important and promising reforms required by the Settlement Agreement. Accordingly, OPD should act aggressively to ensure that PIMS does not lag further behind.

Update on Concerns Regarding OPD's Internal Investigations

In our Sixth Report, we discussed as an Area of Concern various aspects of OPD's Internal Reviews and Investigations. We discussed problems in three areas: 1) OPD investigations and reviews of officer-involved shootings (OIS); 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. In this report we provide an update of OPD's progress addressing these areas of concerns since our last report.

Firearms Discharge Reviews

Our Third and Sixth Reports discussed significant concerns with OPD's review of officer-involved shootings, including untimely review boards; the failure to track shooting reviews; insufficient involvement by OPD's Training and Internal Affairs Divisions; and deficiencies in shooting investigations.

The IMT continued to attend Firearms Discharge Boards of Review during this reporting period. We have observed progress in the manner in which the Board reviews shootings although it continues to struggle to conduct its reviews in a timely fashion. The IMT is completing a comprehensive review of OPD's shootings that have taken place since the entry of the Settlement Agreement, the results of which will be reported to the parties and the Court.

We are pleased to report that the Boards have begun a more exacting review of officer-involved shootings and that OPD is now tracking all officer-involved shootings. In contrast to past practice, complete investigative files, including transcripts of interviews among other information, are provided to each Board reviewer in advance of the Board's meeting. In addition to the three Deputy Chiefs, representatives from both Training and Internal Affairs have been participating in the reviews.

With respect to OPD's investigations of shootings, the Criminal Investigation Division (CID) continues to play the leading role and has made several positive advances since our last Report. It is now conducting video walk-throughs of all shooting scenes and has ceased its practice of automatically Mirandizing officers before taking their statements. The Internal Affairs Division continues to respond to the scene of all shootings and has started to conduct parallel administrative investigations focused on policy, training, and tactical issues involved in shootings. IAD has already identified a number of important issues through its newly expanded role. OPD has recently improved its technology enabling IAD to monitor statements as they are taken by criminal investigators. A number of OPD commanders and investigators are visiting another law enforcement agency to learn how its shooting boards are conducted.

During this reporting period, the Board found shootings in two separate incidents to be out of policy. According to OPD commanders, the Board's out of policy findings mark the first time in recent memory that the Board has found an officer-involved shooting to be out of policy. Chief Tucker overturned the Board's out of policy determination on one of these shootings. The Board referred another shooting to Internal Affairs to investigate the conduct of the involved supervisors. We will continue to monitor IAD's review of the incident and report on it in future updates.

Uninvestigated Citizen Complaints

Since we reported our discovery of hundreds of allegations of misconduct that OPD did not investigate, OPD has undertaken considerable efforts to assess the extent of

the problem; ameliorate its failure to investigate complaints of misconduct; hold accountable those responsible for this failure; and make changes necessary to ensure that all allegations of misconduct are properly handled in the future. OPD has reported to the Court, and continues to report, its efforts in this area. Because OPD is directly reporting this information to the Court, we will not duplicate the entirety of that report here and will instead underscore only a few points.

- OPD determined pursuant to its analysis of the 775 data entries that 550 entries related to allegations of misconduct, including several hundred complaints of misconduct were not properly handled. OPD efforts to analyze and accurately assess each data entry were considerable.
- Many allegations of misconduct were not investigated, at least in part, because OPD policy at the time did not require that allegations of misconduct from some sources (e.g. telephone complaints or third-party complaints) be investigated. Under OPD's new internal investigations policy pursuant to the Settlement Agreement, misconduct complaints from all sources are required to be investigated.
- OPD has or is investigating dozens of cases as a result of its review of the 775 data entries. OPD's ability to pursue and appropriately resolve many complaints has been compromised by the length of time that has passed since the complaint was made. This delay also compromises OPD's ability to hold officers accountable for proven misconduct because of the one-year limit on imposing discipline under Government Code § 3304.
- In addition to the allegations of misconduct that OPD was not required to investigate under then-existing OPD policy, there were numerous allegations that were handled improperly even under existing policy. OPD has retained outside investigators to determine which OPD members and employees are responsible for improperly handling these complaints, causing legitimate complaints of misconduct to remain unaddressed. These outside investigators are expected to report their findings to OPD and the Court by February, 2006.
- In September, 2005, OPD discovered a "tickler" file containing approximately 75 additional uninvestigated complaints. OPD's response to this discovery is set out more fully in its November 21st Interim Report on the Status and Results of the IAD Database Audit.
- OIG has conducted and continues to conduct an extensive inspection of IAD and OPD offices, desks, and city-owned vehicles, to ensure that there are no additional complaints of misconduct or investigative files unaccounted for.
- After OIG began the above noted inspection, IAD provided OIG a file containing at least an additional 36 allegations of misconduct from 2003-2005 that should

have been investigated. OIG and IAD's commander continue to assess the remainder of the documents to ensure their handling comports with current OPD policy. Most of these allegations of misconduct are contained in "Letters of Advisement" written by supervisors and commanders to record their observations of conduct or allegations of misconduct made to them by citizens. Two aspects of this discovery are most discouraging to the IMT. First, this file contained allegations of misconduct as recent as this year that should have been investigated, even though the Settlement Agreement had been in effect for over two years by that point. Second, despite the intensive focus of uninvestigated complaints improperly handled by IAD in early-Spring of this year, this file went unmentioned and unaddressed until OIG's audit of IAD's intake procedures this Fall. While OPD protocols for handling complaints made via Letters of Advisement are admittedly ambiguous, there has been no satisfactory explanation why IAD did not make this file known to either OIG or the IMT during the close review of just such complaints. OPD has stated that supervisors and commanders will be held accountable for improperly handling allegations of misconduct in these Letters of Advisement and the IMT will monitor this closely.

- OPD and IAD have made or are in the process of making extensive changes to how allegations of misconduct are received, tracked, and investigated as a result of the deficiencies revealed by the discovery of uninvestigated complaints. These changes are discussed in OPD's interim status reports to the Court.
- In addition to these changes, the implementation of General Order M-3 and related internal investigations policy will clarify OPD's strong policy requiring that all members and employees report misconduct and that all allegations of misconduct, regardless of the means by which they arrive at IAD, are investigated. OPD intends to conduct an all-day training on General Order M-3 for all supervisors and commanders in early December, and will conduct a two-hour training for all other members and employees shortly thereafter. This is the most extensive training to date on any policy adopted pursuant to the Settlement Agreement.

The steps OPD has taken since our last report to completely remake its internal investigations process so that it is more responsive to citizen complaints are encouraging; however, the challenges remaining should not be underestimated. Extensive additional review by the IMT once these new processes are fully implemented will be required before we can determine whether OPD has in place a complaint intake and investigative process that responsibly and effectively responds to complaints received by OPD in compliance with the Settlement Agreement.

Review of Officer-Involved Traffic Accidents

We previously reported OPD's failure to track or timely review officer-involved traffic accidents. OPD lost or otherwise mishandled accident files, allowing the statutory

deadline for imposing discipline to lapse for fourteen preventable accidents in 2003 and for three preventable accidents in 2004. OPD's Training Division Coordinator has instituted a tracking system that appears to be working well. According to the Coordinator, no new traffic cases have exceeded the 3304 deadline since implementation of the system. OPD has started to hold commanders accountable for allowing the 3304 deadline to elapse in investigations. The Department now investigates such failures and has begun to administer discipline where appropriate.

Status of Compliance

Six new Settlement Agreement Tasks had a due date occurring during the seventh reporting period: IAD Integrity Tests (Task 3); Refusal to Accept or Refer Citizen Complaints (Task 6); Documentation of Pitchess Responses (Task 13); Personnel Information Management System (PIMS) – Purpose (Task 40); Use of Personnel Information Management System- PIMS (Task 41); and Compliance Audits and Integrity Tests (Task 51). With the addition of these Tasks, all 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 11 lists the fifty-one tasks with their due dates 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-two of the forty-five tasks that had become due. As discussed above, six additional tasks became due this reporting period, bringing the total number of tasks that have become due to fifty-one. As previously reported, OPD attained policy compliance with two tasks that became due during this reporting period, well in advance of their due date: Refusal to Accept or Refer Citizen Complaints (Task 6) and Compliance Audits and Integrity Tests (Task 51). Additionally, at the end of this reporting period, OPD attained policy compliance with nineteen additional tasks— IAD Staffing and Resources (Task 1); Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Complaint Procedures for IAD (Task 5); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Contact of Citizen Complainants (Task 9); Procedure Manual for Investigations of Citizen Complaints (Task 10); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Disclosure of Possible Investigator Bias (Task 12); Documentation of Pitchess Responses (Task 13); Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Reviewing Findings and Disciplinary Recommendations (Task 15); Supporting IAD Process-Supervisor/Managerial Accountability (Task 16); IAD Investigation Priority (Task 29); Field Training Program (Task 42); Consistency of Discipline Policy (Task 45); and Promotional Consideration (Task 46). Accordingly, OPD has achieved policy compliance with a total of forty-three of the fifty-one tasks that have become due.

The delinquent tasks will be addressed by OPD's implementation of critical policies involving the manner in which the Department reviews uses of force, handles criminal misconduct, and administers its Personnel Information Management System (PIMS). The IMT continues to await drafts of these policies, having provided OPD detailed comments regarding the use of force policies in May and June, 2005. As discussed above, the IMT is extremely concerned about the egregious delays in completing and publishing these policies and urges OPD to complete and implement them as quickly as possible.

Training Compliance

As discussed above, OPD has achieved policy compliance with forty-three Settlement Agreement tasks. Thirty-six of these tasks require training prior to implementation. As illustrated in the chart on page 11, OPD has achieved training compliance on seventeen of these tasks. OPD's training compliance remains conditional for all but six of the seventeen tasks for which it has achieved training compliance. These six tasks are discussed below.

During this reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Settlement Agreement requirements in light of the training that has been provided to them. In particular, we interviewed officers regarding their understanding of the following Settlement Agreement tasks: Approval of Field-Arrest by Supervisor (Task 18); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigations and Detentions (Task 34); Use of Force Reports—Witness Identification (Task 35); Procedures for Transporting Detainees and Citizens (Task 36); Retaliation Against Witnesses (Task 37); Citizens Signing Police Reports (Task 38); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing (Task 47).

The IMT was impressed with the level of understanding possessed by officers regarding many Settlement Agreement requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of the following tasks: Oleoresin Capsicum Log and Checkout Procedures (Task 27); Use of Force Reports—Witness Identification (Task 35); Procedures for Transporting Detainees and Citizens (Task 36); Citizens Signing Police Reports (Task 38); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing (Task 47). As a result, the IMT is changing its conditional training compliance determination for these tasks to an unconditional in-compliance finding.

Based on our interviews, officers do not yet possess a sufficient understanding of Settlement Agreement requirements for the following tasks: Approval of Field-Arrest by Supervisor (Task 18); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigations and Detentions (Task 34); and Retaliation Against Witnesses (Task 37).

With respect to Task 18, every officer interviewed knew that they are required to contact their sergeants when making a felony arrest. Far fewer officers, however, knew that they should contact their sergeants for all drug arrests or for arrests for Penal Code §§ 69, 148, and 243 (b)(c). In terms of the required arrest documentation, officers were aware that they should document probable cause, but most did not appear to understand OPD's requirement to document witnesses to the arrest. While officers appear to understand Task 33's requirement to report misconduct and the consequences for failing to report it, they do not appear to understand the difference between confidential and anonymous reporting. When asked about Task 34, contrary to OPD policy and the Settlement Agreement, a number of officers reported that they did not have to complete stop data forms unless they were making a self-initiated stop. Finally, while officers appear to understand what constitutes retaliation under Task 37, many officers were unaware that the presumptive penalty for engaging in retaliation is termination. Accordingly, for these four tasks, OPD's training compliance will remain in a conditional status.

The IMT urges OPD to provide refresher training in these areas. Not doing so may jeopardize the Department's ability to achieve compliance in actual practice, as officers may violate Settlement Agreement requirements due to a lack of understanding.

Actual Practice Compliance

During this reporting period, the IMT conducted reviews of OPD's actual practice in the following seven areas: Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Command Staff Rotation (Task 23); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Retaliation Against Witnesses (Task 37); Field Training Program (Task 42); and Community Policing Plan (Task 47). With the exception of Tasks 33 and 37, OPD has made notable progress in all of these areas. As discussed below, OPD is in actual practice compliance with Tasks 14 and 23 and with significant portions of Task 42 and 47.

Overall, the IMT has found OPD in compliance with seven Settlement Agreement requirements in actual practice: Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); OPD/DA Liaison Commander (Task 22); Command Staff Rotation (Task 23); Use of Camcorders (Task 32); Monitor Selection (Task 49); Compliance Unit Liaison Policy (Task 50); and Compliance Audits and Integrity Tests (Task 51). This is three more tasks than during the last reporting period.

Conclusion

OPD's increased energy and improved attitude towards Settlement Agreement reform continued during this reporting period. More importantly, OPD's stated commitment to reform is beginning to have some impact on OPD police practices. While

this impact is still modest, OPD continues to move forward, providing reason to believe that the Settlement Agreement might soon begin to have the broad positive impact on OPD's interactions with the Oakland community that it was intended to have.

The most pressing challenge for OPD is to fully implement the Settlement Agreement's requirements related to the use, reporting, and review of force, and its requirements regarding internal investigations. Both OPD's short term success in timely exit from the Settlement Agreement, and its long term success in instituting sustainable reforms will likely depend on its ability to effectively implement these areas of the Settlement Agreement within the next few months.

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 Seventh Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from May 16, 2005, to December 1, 2005.

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. The IMT, among other activities, attended several OPD Management Assessment Program and Crime-Stop meetings; participated in ride-alongs with OPD officers, including recently certified Field Training Officers; attended Firearms Discharge, Use of Force, and In-Custody Death Boards of Review; attended line-ups on all three patrol shifts; observed OPD's preparation for and conduct during an anti-war demonstration; attended critical incident briefings; observed OPD's on-scene criminal and administrative investigations of officer-involved shootings and an in-custody death; reviewed and analyzed OPD documents and files, including draft policies, investigations, and arrest and use of force reports; observed several sessions of the Department's Academy; attended promotions and graduation ceremonies; and participated in the monthly meetings required by the Settlement Agreement.

During this reporting period, the IMT met with OPD's Office of Inspector General, Training, Communications, and Internal Affairs Divisions; individual OPD officers on all three Watches; OPD's Field Training Program Coordinator; 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 City Administrator; 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; Field Training Officer files; MLL reports;

Oleoresin Capsicum Tracking Reports; firearms discharge and other use of force 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.

As discussed in this Report, the IMT assessed OPD's progress on each of the fifty-one Settlement Agreement Tasks. As part of our assessment this reporting period, we conducted actual practice compliance reviews of seven tasks: Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Command Staff Rotation (Task 23); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Retaliation Against Witnesses (Task 37); Field Training Program (Task 42); and Community Policing Plan (Task 47). Additionally, we interviewed OPD patrol officers on all three patrol shifts to assess their understanding of OPD policies and procedures related to Settlement Agreement Tasks.

III. OPD ACCOMPLISHMENTS & AREA OF CONCERN

A. OPD Accomplishments

Greater Incorporation of Compliance Mechanisms

In our last report, we commended OPD for implementing its Management Assessment Program (MAP). MAP consists of bi-weekly meetings of the Chief and OPD's commanders and managers focusing on the Department's top priorities, including Settlement Agreement compliance. As we previously discussed, MAP presents data showing current compliance levels of selected Settlement Agreement tasks and requires commanders to explain deficiencies in their areas and to provide remedial plans. From its inception, we witnessed early positive outcomes that result from this type of enhanced management accountability and regular, focused attention of the Department's leaders.

During this reporting period, OPD continued its MAP sessions. At recent MAP meetings, as well as elsewhere in the Department, we have observed commanders engaged in robust problem solving and planning discussions. A number of individuals throughout the Department appear to be growing into their new roles and stepping up as leaders in ways that we had not seen before.

To ensure that the message of reform is reaching beyond the command-level MAP meetings, OPD recently held a day-long meeting with all OPD sergeants to discuss Settlement Agreement requirements. Sergeants were addressed by OPD's Chief and the Deputy Chief of the Patrol Division, as well as other commanders, on a variety of Settlement Agreement related topics.

OPD has also incorporated additional compliance mechanisms into its daily operations. OPD's Office of Inspector General (OIG) created a comprehensive compliance plan that makes individual managers or commanders responsible for assessing the status of compliance of each Settlement Agreement task. These compliance assessors are responsible for identifying deficiencies and proposing and implementing the steps necessary to achieve compliance. The compliance assessors are spread throughout OPD and prepare bi-weekly reports detailing the status of OPD's compliance on each task. Every Captain and Deputy Chief within OPD is responsible for reviewing and ensuring the timeliness of compliance assessors' reports for at least two Settlement Agreement tasks. Such a comprehensive compliance plan is long overdue. The IMT applauds the compliance plan because we believe that the plan, coupled with sustained leadership, offers OPD a necessary roadmap towards compliance.

OIG continues to conduct objective, comprehensive audits of OPD's compliance with various Settlement Agreement provisions. Such audits serve a critical function. These audits have been unbiased, exacting, and have proposed concrete, sensible remedial actions where warranted. On more than one occasion, the audits have revealed significant operational concerns unrelated to Settlement Agreement compliance. Such efforts serve OPD well and enhance its professionalism and infrastructure. OIG continues to be a strong point for OPD and we expect this to continue under its new Captain. He has already proven himself extremely capable and committed to OPD's successful implementation of the Settlement Agreement.

The IMT also commends the increased compliance assistance of the Office of the City Attorney (OCA). The OCA attorneys representing OPD have become more involved in this project on a day-to-day basis, working closely with OPD officials throughout the Department. The OCA is working both "behind the scenes" with OPD in drafting policies, evaluating practices, and enforcing Departmental values, and has provided critical insight and perspective both in OPD's interactions with the IMT and its responses to inquiries from the Court. These attorneys do not hesitate to assertively question the IMT if they are concerned about our requirements, findings, or proposals and do so in a manner that is constructive and beneficial to the shared goals of professional policing and Settlement Agreement compliance. We have gained a better understanding of the Department's genuine concerns as a result of this increased interaction between OPD and OCA, and believe that the quality of OPD's new policies and submissions to the Court, among other aspects of OPD's efforts in this area, has improved as well. We commend OCA and OPD for bringing about this improved relationship and encourage them to build on it going forward.

Increasing Interactions with Outside Agencies and Professional Organizations

It may seem minor, but OPD's increased interaction with policing organizations of all types is a significant step towards the cultural change necessary to fulfill the letter and intent of the Settlement Agreement. In our experience, law enforcement agencies that communicate with each other to exchange ideas and learn from each other's

experiences; that interact with professional policing organizations; and that avail themselves of training programs and experts in the field to assist them in addressing challenges, are more able to solve problems and avoid pitfalls in the future than departments that remain insular with a “that’s how we do it here” attitude.

Accordingly, we are encouraged that in the past several months, OPD appears to have taken increasing advantage of the professional resources and networking and training opportunities available to law enforcement agencies. During this reporting period, all levels of command staff have attended gatherings of police professionals and training geared towards the specific challenges OPD faces. Recently, for example, twelve OPD commanders attended a three-day training on compliance auditing. Several OPD members attended an international policing conference and participated in sessions on police reform; management accountability; and assessing supervisory performance. OCA attorneys working with OPD have attended California Police Officer Standards and Training (POST) events to enable them to better represent their client. An OPD sergeant attended training in Canada on the critically important topic of proper Taser use, and returned with ideas about how OPD’s Taser use should be modified to be safer--ideas that are now being implemented in OPD. OPD’s Internal Affairs Division has visited a number of law enforcement agencies to learn how they conduct internal investigations and has hired an expert to assist it in improving OPD’s internal investigations.

OPD’s increased communications with other law enforcement agencies and policing organizations are, in our view, signs of real change underway at OPD. If OPD continues to thoughtfully interact with conscientious law enforcement agencies and professional organizations we expect it will gain insights in what to do—and not do—to achieve sustainable compliance with the Settlement Agreement.

B. Areas of Concern

Reporting Misconduct

Two audits we conducted this reporting period underscored that OPD officers frequently do not report the misconduct they observe or otherwise encounter and OPD does not hold them accountable for such reporting failures. Moreover, when officers report they have suffered retaliation for reporting misconduct, OPD’s internal investigations of the alleged retaliation are too deficient to provide any level of confidence that officers guilty of retaliation are held accountable.

As discussed below in the summary of our Task 33 audit, and more completely in the audit report itself, OPD members often do not report the misconduct they observe or otherwise encounter. In cases where OPD sustains misconduct, its investigators often do not ask the probing questions necessary to establish exactly what witness members/employees on the scene observed or knew. Instead, OPD settles for ambiguous, vague, and, at times, implausible answers, thereby avoiding the critical determination of whether officers saw misconduct and failed to report it. Even in cases where OPD

sustains misconduct and the investigation indicates that officers observed the sustained misconduct but did not report it, OPD does not always hold the officers accountable.

OPD officers appear to take seriously reporting some types of misconduct, such as DUI and domestic violence arrests. However, OPD officers do not readily report other types of misconduct, such as improper uses of force or improper searches, and OPD rarely holds officers accountable for failing to do so.

Our Task 33 audit highlighted another concern: that some OPD members/employees may not report misconduct in some instances because they fail to recognize that the level and type of force used was improper. Such instances underscore the need to implement OPD's revised use of force policies as quickly as possible.

Our Task 37 audit, also summarized below, indicated that when officers do report misconduct, and allege they suffer retaliation as a result, OPD does not investigate these claims sufficiently. As a result, the Department likely fails to hold some officers accountable for retaliation and reduces confidence in its ability to protect those who properly report misconduct.

Ensuring that officers report improper uses of force, wrongful arrests and searches, and other misconduct is an essential requirement if OPD is to protect individual rights and achieve the reputation for integrity that its good officers deserve. One of the surest ways to increase the level of reporting misconduct is to hold officers accountable when they do not report it. OPD's current internal investigations, however, do not allow for sufficient accountability. OPD must do a better job ensuring that officers report misconduct and that they are fully protected from retaliation when they do so.

Continuing Delays in Policy Creation and Implementation

Up to a year and a half has elapsed since the compliance deadlines for three critical Settlement Agreement areas: investigating misconduct and administering discipline; reporting and investigating use of force; and tracking personnel management information. Yet, the Department still has not implemented the policies required by the Settlement Agreement. While OPD has made a number of significant changes in its practices in these areas, it has yet to institutionalize these practices into policy. The consequences of the unacceptable and continuing delay in policy implementation have ongoing repercussions and present serious risk management concerns for the Department and the City.

We commend OPD for its recent completion of the internal investigation and disciplinary policies required by the Settlement Agreement; however, these policies have not yet been implemented. There is no question that the problems we have repeatedly noted in OPD's internal investigation and disciplinary system have been exacerbated by the continuing lack of clear, uniform standards and guidelines governing the conduct of internal investigations and the administration of employee discipline. The delays in

implementing the new disciplinary matrix setting forth penalty ranges for sustained misconduct have hindered the Department's ability to establish a disciplinary system that ensures fairness and consistency. OPD has set an aggressive training schedule for implementing its internal investigations and disciplinary policies, aiming to complete training of all employees by the end of the year. The IMT cannot state strongly enough how critical it is to the reform efforts that the training on these policies be completed and that the policies be fully implemented without further delay.

We are even more concerned about OPD's delay in implementing the use of force policies required by the Settlement Agreement. As a result of OPD's delay in implementing these policies, officers are not yet required to report every time they use force. Likewise, OPD still does not subject every use of force to a thorough or contemporaneous supervisory review or investigation. Instead, OPD continues to operate under use of force protocols which provide confusing, contradictory, and overly permissive instructions to officers who, in turn, continue to use force inconsistent with professional policing practices. The IMT met repeatedly with the OPD staff drafting these policies and provided OPD with detailed comments on draft use of force policies in May and June 2005, but OPD has yet to complete the policies, or even provide the IMT another draft of these policies. We are aware that OPD is working on its use of force policies and shares our concern regarding their delay. These good intentions, however, cannot make up for the very real negative impact from the delay in changing the way OPD officers use, report, and review force. It is imperative that OPD complete and implement the use of force policies as soon as possible.

Finally, the deadline for the Department to implement its Personnel Information Management System (PIMS) was nearly five months ago. OPD, however, has not yet drafted the required policy, let alone implemented the computerized system required by the Settlement Agreement for supervising and managing personnel to minimize the risk of misconduct. As discussed in the task update below, OPD has created an interim system designed to perform many of the functions that will eventually be performed by PIMS, and has begun to analyze personnel data to identify and address at-risk behavior. This process, however, is frustrated by the lack of department-wide policy guidance regarding how to analyze this information and impose remedial action where warranted. OPD has reported problems with the contractor outside OPD's control and has stated that it intends to complete the PIMS policy by the beginning of 2006. PIMS represents one of the most important and promising reforms required by the Settlement Agreement. Accordingly, OPD should act aggressively to ensure that PIMS does not lag further behind.

Update on Concerns Regarding OPD's Internal Investigations

In our Sixth Report, we discussed as an Area of Concern various aspects of OPD's Internal Reviews and Investigations. We discussed problems in three areas: 1) OPD investigations and reviews of officer-involved shootings (OIS); 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. In this report we provide an update of OPD's progress addressing these areas of concerns since our last report.

Firearms Discharge Reviews

Our Third and Sixth Reports discussed significant concerns with OPD's review of officer-involved shootings, including untimely review boards; the failure to track shooting reviews; insufficient involvement by OPD's Training and Internal Affairs Divisions; and deficiencies in shooting investigations.

The IMT continued to attend Firearms Discharge Boards of Review during this reporting period. We have observed progress in the manner in which the Board reviews shootings although it continues to struggle to conduct its reviews in a timely fashion. The IMT is completing a comprehensive review of OPD's shootings that have taken place since the entry of the Settlement Agreement, the results of which will be reported to the parties and the Court.

We are pleased to report that the Boards have begun a more exacting review of officer-involved shootings and that OPD is now tracking all officer-involved shootings. In contrast to past practice, complete investigative files, including transcripts of interviews among other information, are provided to each Board reviewer in advance of the Board's meeting. In addition to the three Deputy Chiefs, representatives from both Training and Internal Affairs have been participating in the reviews.

With respect to OPD's investigations of shootings, the Criminal Investigation Division (CID) continues to play the leading role and has made several positive advances since our last Report. It is now conducting video walk-throughs of all shooting scenes and has ceased its practice of automatically Mirandizing officers before taking their statements. The Internal Affairs Division continues to respond to the scene of all shootings and has started to conduct parallel administrative investigations focused on policy, training, and tactical issues involved in shootings. IAD has already identified a number of important issues through its newly expanded role. OPD has recently improved its technology enabling IAD to monitor statements as they are taken by criminal investigators. A number of OPD commanders and investigators are visiting another law enforcement agency to learn how its shooting boards are conducted.

During this reporting period, the Board found shootings in two separate incidents to be out of policy. According to OPD commanders, the Board's out of policy findings mark the first time in recent memory that the Board has found an officer-involved shooting to be out of policy. Chief Tucker overturned the Board's out of policy determination on one of these shootings. The Board referred another shooting to Internal Affairs to investigate the conduct of the involved supervisors. We will continue to monitor IAD's review of the incident and report on it in future updates.

Uninvestigated Citizen Complaints

Since we reported our discovery of hundreds of allegations of misconduct that OPD did not investigate, OPD has undertaken considerable efforts to assess the extent of the problem; ameliorate its failure to investigate complaints of misconduct; hold accountable those responsible for this failure; and make changes necessary to ensure that all allegations of misconduct are properly handled in the future. OPD has reported to the Court, and continues to report, its efforts in this area. Because OPD is directly reporting this information to the Court, we will not duplicate the entirety of that report here and will instead underscore only a few points.

- OPD determined pursuant to its analysis of the 775 data entries that 550 entries related to allegations of misconduct, including several hundred complaints of misconduct were not properly handled. OPD efforts to analyze and accurately assess each data entry were considerable.
- Many allegations of misconduct were not investigated, at least in part, because OPD policy at the time did not require that allegations of misconduct from some sources (e.g. telephone complaints or third-party complaints) be investigated. Under OPD's new internal investigations policy pursuant to the Settlement Agreement, misconduct complaints from all sources are required to be investigated.
- OPD has or is investigating dozens of cases as a result of its review of the 775 data entries. OPD's ability to pursue and appropriately resolve many complaints has been compromised by the length of time that has passed since the complaint was made. This delay also compromises OPD's ability to hold officers accountable for proven misconduct because of the one-year limit on imposing discipline under Government Code § 3304.
- In addition to the allegations of misconduct that OPD was not required to investigate under then-existing OPD policy, there were numerous allegations that were handled improperly even under existing policy. OPD has retained outside investigators to determine which OPD members and employees are responsible for improperly handling these complaints, causing legitimate complaints of misconduct to remain unaddressed. These outside investigators are expected to report their findings to OPD and the Court by February, 2006.
- In September, 2005, OPD discovered a “tickler” file containing approximately 75 additional uninvestigated complaints. OPD's response to this discovery is set out more fully in its November 21st Interim Report on the Status and Results of the IAD Database Audit.

- OIG has conducted and continues to conduct an extensive inspection of IAD and OPD offices, desks, and city-owned vehicles, to ensure that there are no additional complaints of misconduct or investigative files unaccounted for.
- After OIG began the above noted inspection, IAD provided OIG a file containing at least an additional 36 allegations of misconduct from 2003-2005 that should have been investigated. OIG and IAD's commander continue to assess the remainder of the documents to ensure their handling comports with current OPD policy. Most of these allegations of misconduct are contained in "Letters of Advisement" written by supervisors and commanders to record their observations of conduct or allegations of misconduct made to them by citizens. Two aspects of this discovery are most discouraging to the IMT. First, this file contained allegations of misconduct as recent as this year that should have been investigated, even though the Settlement Agreement had been in effect for over two years by that point. Second, despite the intensive focus of uninvestigated complaints improperly handled by IAD in early-Spring of this year, this file went unmentioned and unaddressed until OIG's audit of IAD's intake procedures this Fall. While OPD protocols for handling complaints made via Letters of Advisement are admittedly ambiguous, there has been no satisfactory explanation why IAD did not make this file known to either OIG or the IMT during the close review of just such complaints. OPD has stated that supervisors and commanders will be held accountable for improperly handling allegations of misconduct in these Letters of Advisement and the IMT will monitor this closely.
- OPD and IAD have made or are in the process of making extensive changes to how allegations of misconduct are received, tracked, and investigated as a result of the deficiencies revealed by the discovery of uninvestigated complaints. These changes are discussed in OPD's interim status reports to the Court.
- In addition to these changes, the implementation of General Order M-3 and related internal investigations policy will clarify OPD's strong policy requiring that all members and employees report misconduct and that all allegations of misconduct, regardless of the means by which they arrive at IAD, are investigated. OPD intends to conduct an all-day training on General Order M-3 for all supervisors and commanders in early December, and will conduct a two-hour training for all other members and employees shortly thereafter. This is the most extensive training to date on any policy adopted pursuant to the Settlement Agreement.

The steps OPD has taken since our last report to completely remake its internal investigations process so that it is more responsive to citizen complaints are encouraging; however, the challenges remaining should not be underestimated. Extensive additional review by the IMT once these new processes are fully implemented will be required before we can determine whether OPD has in place a complaint intake and investigative

process that responsibly and effectively responds to complaints received by OPD in compliance with the Settlement Agreement.

Review of Officer-Involved Traffic Accidents

We previously reported OPD's failure to track or timely review officer-involved traffic accidents. OPD lost or otherwise mishandled accident files, allowing the statutory deadline for imposing discipline to lapse for fourteen preventable accidents in 2003 and for three preventable accidents in 2004. OPD's Training Division Coordinator has instituted a tracking system that appears to be working well. According to the Coordinator, no new traffic cases have exceeded the 3304 deadline since implementation of the system. OPD has started to hold commanders accountable for allowing the 3304 deadline to elapse in investigations. The Department now investigates such failures and has begun to administer discipline where appropriate.

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.¹

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.

Six new Settlement Agreement Tasks had a due date occurring during the seventh reporting period: IAD Integrity Tests (Task 3); Refusal to Accept or Refer Citizen Complaints (Task 6); Documentation of Pitchess Responses (Task 13); Personnel Information Management System (PIMS) – Purpose (Task 40); Use of Personnel Information Management System (PIMS) (Task 41); and Compliance Audits and Integrity Tests (Task 51).

¹ 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.

With the addition of these tasks, all 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 following chart lists the fifty-one tasks with their due dates and summarizes the current state of compliance:

<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	√*		
3	IAD Integrity Tests	6/1/2005	√*		
4	Complaint Control System for IAD and Informal Complaint Resolution Process	6/15/2004	√*		
5	Complaint Procedures for IAD	6/15/2004	√*		
6	Refusal to Accept or Refer Citizen Complaints	6/1/2005	√	√(c)	
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	√*		
13	Documentation of Pitchess Responses	7/1/2005	√*		
14	Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims	6/15/2004	√*		√(11/05)
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	√	√(c)	
19	Unity of Command	1/20/2004	√		
20	Span of Control	8/14/2003	√		
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√	√(c)	
22	OPD/DA Liaison Commander	4/15/2003	√	√(c)	√(10/04)
23	Command Staff Rotation	1/20/2004	√	N/A	√(11/05)
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	√	N/A	√(10/03)
33	Reporting Misconduct	8/25/2003	√	√(c)	
34	Vehicle Stops, Field Investigation and Detentions	8/25/2003	√	√(c)	
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	√	√(c)	
38	Citizens Signing Police Forms	8/25/2003	√	√	

39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√	√	
40	Personnel Information Management System (PIMS) – Purpose	6/28/2005			
41	Use of Personnel Information Management System (PIMS)	6/28/2005			
42	Field Training Program	4/16/2004	√*	√(c)*	
43	Academy & In-Service Training	2/15/2005	√	√(c)*	
44	Performance Appraisal Policy	7/7/2004	√	√(c)	
45	Consistency of Discipline Policy	6/15/2004	√*		
46	Promotional Consideration	7/8/2003	√*	N/A	
47	Community Policing Plan	8/1/2003	√	√	
48	Departmental Management and Annual Management Report	7/02/2003	√	√(c)	
49	Monitor Selection and Compensation	4/15/2003	√	N/A	√ (8/03)
50	Compliance Unit Liaison Policy	3/4/2003	√	N/A	√ (8/03)
51	Compliance Audits and Integrity Tests	9/1/2005	√	N/A	√ (10/05)

* Indicates that compliance was achieved during this reporting period.

** As of last compliance review.

(c) Indicates conditional training compliance. This status indicates that OPD has provided the IMT with sufficiently reliable data to confirm that OPD has trained at least 95% of required personnel in the policy but the IMT has not yet conducted follow-up interviews to assess officers' knowledge of the policy or follow-up interviews did not disclose a sufficient understanding of the requirements of the task.

A. Policy Compliance²

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of twenty-two of the forty-five tasks that had become due. As discussed above, six additional tasks became due this reporting period, bringing the total number of tasks that have become due to fifty-one. As previously reported, OPD attained policy compliance with two tasks that became due during this reporting period, well in advance of their due date: Refusal to Accept or Refer Citizen Complaints (Task 6) and Compliance Audits and Integrity Tests (Task 51). Additionally, at the end of this reporting period, OPD attained policy compliance with nineteen additional tasks— IAD Staffing and Resources (Task 1); Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Complaint Procedures for IAD (Task 5); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Contact of Citizen Complainants (Task 9); Procedure Manual for Investigations of Citizen Complaints (Task 10); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Disclosure of Possible Investigator Bias (Task 12); Documentation of Pitchess Responses (Task 13); Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Reviewing Findings and Disciplinary Recommendations (Task 15); Supporting IAD Process-Supervisor/Managerial Accountability (Task 16); IAD Investigation Priority (Task 29); Field Training Program (Task 42); Consistency of Discipline Policy (Task 45); and Promotional Consideration (Task 46). Accordingly, OPD has achieved policy compliance with a total of forty-three of the fifty-one tasks that have become due.

The delinquent tasks will be addressed by OPD's implementation of critical policies involving the manner in which the Department reviews uses of force, handles criminal misconduct, and administers its Personnel Information Management System (PIMS). The IMT continues to await drafts of these policies, having provided OPD detailed comments regarding the use of force policies in May and June, 2005. As discussed above, the IMT is extremely concerned about the egregious delays in completing and publishing these policies and urges OPD to complete and implement them as quickly as possible.

B. Training Compliance³

As discussed above, OPD has achieved policy compliance with forty-three Settlement Agreement tasks. Thirty-six of these tasks require training prior to implementation. As illustrated in the above chart, OPD has achieved training compliance

² 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.

³ 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.

on seventeen of these tasks. OPD's training compliance remains conditional for all but six of the seventeen tasks for which it has achieved training compliance. These six tasks are discussed below.

During this reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Settlement Agreement requirements in light of the training that has been provided to them. In particular, we interviewed officers regarding their understanding of the following Settlement Agreement tasks: Approval of Field-Arrest by Supervisor (Task 18); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigations and Detentions (Task 34); Use of Force Reports—Witness Identification (Task 35); Procedures for Transporting Detainees and Citizens (Task 36); Retaliation Against Witnesses (Task 37); Citizens Signing Police Reports (Task 38); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing (Task 47).

The IMT was impressed with the level of understanding possessed by officers regarding many Settlement Agreement requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of the following tasks: Oleoresin Capsicum Log and Checkout Procedures (Task 27); Use of Force Reports—Witness Identification (Task 35); Procedures for Transporting Detainees and Citizens (Task 36); Citizens Signing Police Reports (Task 38); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing (Task 47). As a result, the IMT is changing its conditional training compliance determination for these tasks to an unconditional in-compliance finding.

Based on our interviews, officers do not yet possess a sufficient understanding of Settlement Agreement requirements for the following tasks: Approval of Field-Arrest by Supervisor (Task 18); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigations and Detentions (Task 34); and Retaliation Against Witnesses (Task 37).

With respect to Task 18, every officer interviewed knew that they are required to contact their sergeants when making a felony arrest. Far fewer officers, however, knew that they should contact their sergeants for all drug arrests or for arrests for Penal Code §§ 69, 148, and 243 (b)(c). In terms of the required arrest documentation, officers were aware that they should document probable cause, but most did not appear to understand OPD's requirement to document witnesses to the arrest. While officers appear to understand Task 33's requirement to report misconduct and the consequences for failing to report it, they do not appear to understand the difference between confidential and anonymous reporting. When asked about Task 34, contrary to OPD policy and the Settlement Agreement, a number of officers reported that they did not have to complete stop data forms unless they were making a self-initiated stop. Finally, while officers appear to understand what constitutes retaliation under Task 37, many officers were unaware that the presumptive penalty for engaging in retaliation is termination.

Accordingly, for these four tasks, OPD's training compliance will remain in a conditional status.

The IMT urges OPD to provide refresher training in these areas. Not doing so may jeopardize the Department's ability to achieve compliance in actual practice, as officers may violate Settlement Agreement requirements due to a lack of understanding.

C. Actual Practice Compliance

During this reporting period, the IMT conducted reviews of OPD's actual practice in the following seven areas: Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Command Staff Rotation (Task 23); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Retaliation Against Witnesses (Task 37); Field Training Program (Task 42); and Community Policing Plan (Task 47). With the exception of Tasks 33 and 37, OPD has made notable progress in all of these areas. As discussed below, OPD is in actual practice compliance with Tasks 14 and 23 and with significant portions of Task 42 and 47.

Overall, the IMT has found OPD in compliance with seven Settlement Agreement requirements in actual practice: Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); OPD/DA Liaison Commander (Task 22); Command Staff Rotation (Task 23); Use of Camcorders (Task 32); Monitor Selection (Task 49); Compliance Unit Liaison Policy (Task 50); and Compliance Audits and Integrity Tests (Task 51). This is three more tasks than during the last reporting period.

V. DETAILED COMPLIANCE REPORT⁴

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.

⁴ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

During this reporting period, the final three tasks for this section, IAD Integrity Tests (Task 3), Refusal to Accept or Refer Citizen Complaints (Task 6), and Documentation of Pitchess Responses (Task 13), became due. OPD attained policy and training compliance with Task 6 substantially ahead of schedule. As discussed below, with the recent completion of several critical policies dealing with OPD's internal investigations and disciplinary processes, it also attained policy compliance with the remaining tasks in this section.

OPD's recent completion of a number of critical internal investigations related directives, most notably General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T), marks a significant accomplishment. These policies incorporate many of the Settlement Agreement's most fundamental requirements, but have been outstanding for nearly a year and a half. While OPD's internal investigations process appears to be slowly improving, the delay in implementing these policies has compromised the Department's ability to substantially improve its internal investigations process. OPD has set an aggressive training schedule of its members and employees to ensure that they are trained on the requirements and expectations set forth in the new policies.

During this reporting period, OPD began working with a skilled outside consultant to help improve its processes for investigating misconduct. Among other areas, the outside consultant is evaluating and providing recommendations to OPD regarding Internal Affairs complaint intake procedures. In addition, he is providing training to investigators regarding complaint investigation. We commend the Department for recognizing the value of such outside expertise and encourage it to take full advantage of this relationship. This is particularly critical as new commanders enter the unit with limited expertise and experience in managing the Internal Affairs function.

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.)

- 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 was in August 2004. OPD recently completed the policies that comply with this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T). OPD is scheduled to begin training on these policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has 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 implementation deadline for this task occurred in July 2004. General Order M-3, *Complaints Against Departmental Personnel or Procedures*, incorporates the majority of Task 2. The Internal Affairs Policy and Procedure Manual and the Departmental Discipline Policy incorporate the remainder of Task 2. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

IAD commanders continue to report to Chief Tucker on a weekly basis regarding the status of investigations. However, as discussed in previous reports, internal investigations continue to exceed reasonable timeframes and, in some instances, the statutory deadline for imposing discipline. IAD reports that it has added tracking and tolling features to its complaint database. Additionally, the timeliness of investigations is being discussed at both OPD's Management Assessment Program meetings and Crime-Stop meetings. If managed appropriately, these efforts should assist OPD to improve the timeliness of its internal investigations.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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 Task 3 occurred in June 2005. OPD recently completed the Internal Affairs Policy and Procedure Manual which incorporates Task 3. It is scheduled to begin training on the manual on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

While OPD was still in the process of developing policies that comply with the Settlement Agreement, it began to conduct integrity audits and has consulted with other law enforcement agencies to enhance OPD's expertise in this area.

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

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 implementation deadline for this task occurred in October 2004. Task 4 requirements are addressed in OPD's General Order M-3.1, *Informal Complaint Resolution Process*; General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; and Policy C-2, *Communications Division Policy and Procedure Manual*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

OPD should implement these important directives as quickly as possible, particularly in light of the admitted deficiencies in its current system highlighted during the review of uninvestigated misconduct complaints. While OPD has taken numerous significant steps to improve its complaint intake and informal resolution processes, these

steps must be incorporated into OPD practice through formal policy and training, supervision, and accountability that reinforces these policies.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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 implementation deadline for this task occurred in October 2004. OPD had previously drafted and published *Manual of Rules* insert 398.76, incorporating one part of

this task (complainant access to a supervisor). The IMT determined this policy complies with the Settlement Agreement and, during the last 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. The remainder of this task is incorporated into General Order M-3, the Internal Affairs Policy and Procedure Manual and Policy C-2. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

OPD previously developed and published Jail Policy & Procedure 05-01. Among other issues, this policy set forth procedures for providing inmates of the Oakland City Jail the ability to file complaints against OPD officers and employees. The IMT determined that this policy complied with the Settlement Agreement and that OPD had trained 95% or more of relevant personnel on this policy. The Oakland City Jail, however, closed in June 2005. To ensure that OPD complaints made at the Alameda County Jail are handled properly, OPD published Special Order 8270. According to the Special Order, the Alameda County Sheriff's Office should forward to the on-duty OPD Watch Commander immediately any complaints from individuals arrested by OPD regarding OPD personnel. The OPD Watch Commander is then required to dispatch an on-duty supervisor to handle the complaint as set forth in OPD policies and procedures.

During the upcoming reporting periods, the IMT will determine 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 occurred in June 2005. OPD has developed and published *Manual of Rules* insert 398.76, incorporating the requirements of this task, and the IMT has determined that this policy complies with the Settlement Agreement. Additionally, OPD has 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 determine whether OPD's actual practices comply with this Settlement Agreement provision.

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 implementation deadline for this task occurred in October 2004. As previously noted, OPD is in compliance with the requirement that IAD offices be located off-site. OPD recently completed the policies that comply with this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); and the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04). OPD is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on these policies, 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 implementation deadline for this task occurred in October 2004. Task 8 requirements are addressed in both General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has 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 implementation deadline for this task occurred in October 2004. Task 9 requirements are addressed in both General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. OPD recently completed these policies and is

scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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

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 recently completed General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Investigation Procedure Manual (Training Bulletin Index Numbers V-T.1 and V-T.2); the Internal Affairs Policy and Procedure Manual (including Policies 05-01 through 05-04); and the Departmental Discipline Policy (Training Bulletin Index Number V-T), and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has 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 implementation deadline for this task occurred in October 2004. Task 11 requirements are addressed in both General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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 implementation deadline for this task occurred in October 2004. Task 12 requirements are addressed in both General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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 Task 13 occurred in June 2005. Task 13 is addressed in the Internal Affairs Policy and Procedure Manual. OPD recently completed the Manual and is scheduled to begin training on it on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

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

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 implementation deadline for this task occurred in October 2004. General Order M-3, *Complaints Against Departmental Personnel or Procedures*, incorporates the requirements of Task 14. OPD recently completed this policy and is scheduled to begin training on the policy on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

OPD is not in training compliance with this task. While OPD has not yet begun training on General Order M-3, our review indicated that IAD investigators have been informed of and understand the requirements of Task 14. However, division level investigators have not received any guidance regarding handling investigations that are the subject of lawsuits/claims.

During this reporting period, the IMT conducted an audit of OPD's compliance with Task 14 in actual practice and found that OPD is in actual practice compliance with this task.

In stark contrast to pre-Settlement Agreement practice, OPD now routinely investigates allegations of MOR violations resulting from lawsuits and legal claims involving misconduct, which is required by Task 14.1. As recently as February of this year, OPD was not automatically provided, and did not seek, information regarding each lawsuit or claim filed with the City. Consequently, many lawsuits/claims filed with the City were not reviewed by OPD to determine whether they contained allegations of misconduct that must be investigated. In March, 2005, Chief Tucker asked the OCA to forward to OPD's Internal Affairs Division copies of lawsuits/claims filed with the City as soon as they are received. The OCA now provides copies of each lawsuit/claim filed

with and served on the City. In addition, the OCA now provides OPD (and other City agencies, including the City Council and Risk Management) a weekly report of all new claims and lawsuits. It appears that this improved coordination has been successful. We were able to confirm that OPD reviewed 48 of 50 legal claims/cases occurring during the period of our review and investigated them in the same manner as other citizen complaints, for a compliance rate of 96%. It should be noted that we did not assess whether the quality or timeliness of each of these investigations was adequate. We continue to have concerns about the quality and timeliness of OPD's internal investigations. However, we can confirm that these cases were treated comparably to OPD investigations of other complaints.

OPD is also in compliance with Task 14.2, which requires that the litigation and administrative processes be handled separately and not delayed, halted, or modified because the underlying incident resulted in civil litigation. Although we found OPD in compliance with this task since cases in litigation were not delayed because they were in litigation *per se*, we found that investigations stemming from lawsuits did suffer disproportionately from OPD's recent past practice of delaying the assignment and/or investigation of cases whose 3304 deadlines were tolled. This recent past practice of delaying the assignment of investigations whose 3304 deadlines were tolled acted as a means to regulate investigators' caseloads. This practice routinely delayed the investigation of allegations of misconduct made in lawsuits because pending civil litigation is justification to toll the 3304 deadline for completing investigations. In our view, this practice was misguided, particularly since the misconduct alleged in civil litigation tends to be among the most serious. IAD has reported that it has ceased holding investigations for assignment. We understand and are sympathetic to IAD's decision to respond to its rising caseload by investigating first those cases with the earliest 3304 deadlines. However, instituting a system in which investigations stemming from civil litigation are routinely delayed, albeit unintentionally, runs directly counter to the language and intent of the Settlement Agreement. Thus, while we found OPD in compliance with this provision of Task 14 for this review, OPD will fall out of compliance if IAD or its investigators revert to a practice of delaying, at any stage of the investigation, investigations of allegations stemming from civil litigation because the 3304 deadline is tolled.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policy, and will assess whether OPD's actual practices continue to 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 implementation deadline for this task occurred in October 2004. Task 15 requirements are included in both General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T, *Departmental Discipline Policy*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, 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 implementation deadline for this task occurred in October 2004. Task 16 is incorporated into General Order M-3, *Complaints Against Departmental Personnel or*

Procedures. OPD recently completed this policy and is scheduled to begin training on the policy on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

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

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);⁵ Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). During the fourth and fifth reporting period, the final task in this section, Members', Employees' and Supervisors' Performance Reviews (Task 21), became due.

OPD has achieved policy compliance for all seven of the tasks in this area. Additionally, during the sixth 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 in this section requiring training.

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)

⁵ 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.

related to Supervisory Span of Control and Unity of Command.

b. Status of Compliance and Assessment

This task has no separate requirements. OPD previously developed and published compliant policies for Tasks 18, 19, 21 and 23, achieving policy compliance with this task. OPD has published a revised policy incorporating Task 18 that the IMT found to be in compliance. OPD has also redrafted the policies incorporating Tasks 19 and 20. The IMT has provided OPD with comments on these policies. OPD will remain in compliance with the policy provisions of Tasks 19 and 20 unless and until it implements new drafts that do not comport with Settlement Agreement requirements.

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 in January 2004. OPD drafted a policy, General Order M-18, *Arrest Approval and Report Review in the Field*. The IMT determined that the policy complied with the Settlement Agreement. During the last 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 IMT interviewed officers on all three patrol shifts regarding their understanding of Task 18's requirements. Based on our interviews, officers do not yet possess a sufficient understanding of Task 18. While every officer interviewed knew that they are required to contact their sergeants when making a felony arrest, far fewer officers knew that they should contact their sergeants for all drug arrests or for arrests for Penal Code Sections 69, 148, and 243 (b)(c). In terms of the required

arrest documentation, officers were aware that they should document probable cause, but most did not appear to understand OPD's requirement to document witnesses to the arrest. The IMT urges OPD to provide refresher training in these areas. Not doing so may jeopardize the Department's ability to achieve compliance in actual practice as officers may violate Settlement Agreement requirements due to a lack of understanding.

OPD recently revised General Order M-18 with the intent of providing clearer guidance to its officers and facilitating Settlement Agreement compliance. We commend OPD for reviewing General Order M-18 after having the opportunity to observe its operational impact. We approved OPD's revised version of General Order M-18 on July 22, 2005, and OPD published the revised policy, effective October 1, 2005.

During the last reporting period, the IMT audited OPD's compliance in actual practice with Task 18. Based on the documentation we were provided, OPD was not 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.

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.

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.

In our Sixth Report, we made several recommendations to help improve OPD's compliance with Task 18, including ensuring that officers use updated consolidated arrest

reports (CARS), updating the forms that it uses when arresting juveniles, and instructing officers and supervisors to always document the presence or absence of witnesses.

On September 30, 2005, OPD's Office of Inspector General (OIG) conducted an internal audit of Task 18 that resulted in findings similar to those of the IMT. However, according to OIG's review, though the Department is still not in compliance with Task 18, it has made significant improvements in the review and approval of field-arrests since our audit.

According to OIG, the majority of arrests are reviewed and approved by supervisors at some point; however, often no documentation exists to show whether supervisors are conducting this review and approval on the scene as required by Task 18. OIG's review findings indicate that part of the problem is poor documentation. Accordingly, OIG reiterated several of the IMT's recommendations to improve Task 18 compliance. These recommendations include modifying CARS and Juvenile Records to allow supervisors space to document the location where they approved or disapproved an arrest and issuing an Informational Bulletin or formal policy that provides guidelines for documenting the absence or presence of witnesses. OPD also recommended providing a check list outlining general requirements of Task 18 to patrol officers. On August 12, 2005, OPD published Special Order 8257 to assist it in tracking those instances in which sergeants disapprove arrests at the scene. The policy establishes a unique code to be provided to Communications by sergeants upon any arrest disapproval.

During the upcoming reporting periods, the IMT will determine 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 in January 2004. 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*. Furthermore, during the last 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 attained training compliance with BOI Policy 04-02.

During this reporting period, OPD drafted General Order A-19, *Supervisory Span of Control*, meant to replace compliant policies BFO 03-02 and BOI 04-02. The IMT is in the process of reviewing the latest draft of this policy. In addition to drafting General Order A-19, OPD currently is updating General Order A-3, Section III (OPD Organizational Chart). We commend OPD for reviewing and updating these policies after having the opportunity to observe their operational impact. OPD will remain in compliance with the policy provisions of this Task unless and until it implements new drafts that do not comport with Settlement Agreement requirements.

During the upcoming reporting periods, the IMT will determine whether OPD has published and implemented General Orders A-19 and A-3, conducted appropriate training on the revised policies, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August 2003. 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*. Furthermore, during the last 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 attained training compliance with BOI Policy 04-02.

During this reporting period, OPD drafted General Order A-19, *Supervisory Span of Control*, meant to replace compliant policies BFO 03-02 and BOI 04-02. The IMT is in the process of reviewing the latest draft of this policy. In addition to drafting General Order A-19, OPD currently is updating General Order A-3, Section III (OPD Organizational Chart). We commend OPD for reviewing and updating these policies after having the opportunity to observe their operational impact. OPD will remain in compliance with the policy provisions of this Task unless and until it implements new drafts that do not comport with Settlement Agreement requirements.

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 OPD's ongoing progress. OPD reports that, though it currently lacks appropriate documentation to provide evidence of compliance, it is in the process of preparing a standardized daily roster for all units that will allow bi-weekly, internal audits to ensure compliance in sergeant assignments. This ongoing, internal monitoring is an encouraging sign of systemic change within OPD and will not only help OPD attain compliance with the Settlement Agreement, but will also help OPD ensure that it provides its officers close and consistent supervision.

During the upcoming reporting periods, the IMT will determine whether OPD has published and implemented General Orders A-19 and A-3, conducted appropriate training on the revised policies, 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 in July 2004. 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 the sixth 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. Accordingly, OPD has achieved conditional training compliance with this task.

The IMT audited OPD's performance appraisals in October 2004 and found that it was not in actual practice compliance with Task 21. According to more recent analyses, within the past year, OPD appears to have cut in half the number of performance appraisals that are delinquent. However, during this reporting period, OPD's Office of Inspector General (OIG) initiated an audit of the Department's Personnel Reviews and found that 41% of supervisory and management staff still were unable to produce documentation that semimonthly and biannual performance review meetings are occurring between management/supervisors and their subordinates.

According to OIG's October 2005 audit report, the Department continues to struggle to complete timely performance appraisals for its personnel and the required performance review meetings between managers/supervisors and subordinates are not occurring and/or are not properly documented. Consequently, OIG recommended that the Department develop a standardized system for managers and supervisors to document performance reviews and that specific maintenance instructions for performance review documents be added to General Order B-6.

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 the last 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. Accordingly, OPD has attained conditional training compliance with this task.

After some transitional delays apparently due to the assignment of a new MLL following the retirement of the previous one, the MLL again is obtaining information from both the District Attorney and the Public Defender regarding cases that may indicate performance problems, misconduct, or indicia thereof. The MLL is producing 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 has begun to include in the memoranda brief status reports of the cases referred to IAD.

During the last reporting period, the MLL also initiated quarterly reporting of the types of cases that come 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. These reports were a useful means of identifying trends and tracking the Department's handling of MLL referrals. To our knowledge, the MLL, however, has not produced a quarterly report since the first quarter of 2005.

While the MLL appears to continue to appropriately identify and make referrals to IAD, the IMT has concerns regarding OPD's follow-up on the MLL referrals. As with citizen misconduct complaints, several MLL referrals have not been timely or adequately investigated. Recently OPD failed to complete the investigation of an MLL referral within the 3304 deadline, precluding the possibility of discipline on the investigation's sustained allegation. Poor handling of MLL complaints threatens to undermine the collaborative efforts of the MLL and cooperating agencies.

During the upcoming reporting periods, the IMT will monitor whether OPD's actual practices continue to comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must, based on contemporary police standards and best practices,

develop and implement a regular rotation of Departmental command staff, consistent with the Department's immediate needs and best interests.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in January 2004. As previously reported, OPD published a command staff rotation policy that complies with the Settlement Agreement well in advance of the deadline: OPD's April, 2003, Chief of Police Memorandum incorporated Task 23 into policy. On November 15, 2005, Chief Tucker reissued the Memorandum. According to OPD, the Memorandum retains the force of policy under Chief Tucker.

The IMT conducted an audit of Task 23 this reporting period and found OPD in compliance with Task 23 in actual practice. Our review revealed no policy obstacles to the implementation of Task 23 and an interview with the Chief confirms that he is not constrained by OPD policy from fully complying with this requirement.

Our review of OPD's documentation of command rotations since Chief Tucker began indicates that command staff is being regularly rotated consistent with Task 23. There were 30 command rotations during the first eight months of Chief Tucker's tenure. The average length of time of a commander in his position prior to the most recent rotations was 543 days. The longest time a commander had been in his previous positions was 1,712 days. The shortest time was 20 days. Six command rotations consisted of promotions. Command rotations occurred at all levels, from Lieutenant to Deputy Chief, and in all Bureaus. Seventeen command rotations were inter-bureau; thirteen command rotations were intra-bureau.

Our interviews with Chief Tucker regarding Task 23 indicate that he is sufficiently considering the Department's immediate needs and best interests in rotating command staff including: special skills needed for an assignment; career development; and increasing Departmental efficiency and effectiveness. Chief Tucker recognizes that, for a variety of reasons, movement of command staff throughout the Department is not ideal. Some of these reasons appear related to the unique challenges OPD presently faces, such as rapid turnover due to retirements and other movement in upper-level positions, and the necessity of developing new skills and abilities to attain Settlement Agreement compliance. Other challenges are those routinely faced by police departments including the inherent limitations in balancing the need for stability and consistency with the need for breadth of experience and new perspectives.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices continue to 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 in July 2004. As previously reported, OPD achieved compliance with Task 32, which requires OPD to explore the use of camcorders in patrol vehicles. OPD achieved policy and training compliance with Task 27, which requires changes in OPD’s OC spray control mechanisms. With the recent completion of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and its Internal Investigation Procedure Manual, OPD has also achieved policy compliance with Task 29, which requires that OPD coordinate with the District Attorney when conducting administrative investigations of personnel if a criminal proceeding is potentially viable.

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 in July 2004. OPD, however, has not yet developed or implemented a policy that complies with the Settlement Agreement. The consequences of the unacceptable and continuing delay in policy implementation are significant and present significant risk management concerns for the City.

As a result of OPD's delay in implementing the new use of force policies required by the Settlement Agreement, officers are not yet required to report every time they use force. Likewise, OPD still does not subject every use of force to a thorough or contemporaneous supervisory investigation or review. Instead, OPD continues to operate under use of force protocols which provide confusing, contradictory instructions to officers who in turn continue to use force in a manner that is inconsistent with professional policing standards. Despite the Department's historical difficulties in tracking uses of force, it still does not have an official policy memorializing its current use of force tracking system. The IMT previously recommended to OPD that this occur in order to help ensure that this system does not break down again. The IMT provided OPD with detailed comments on draft use of force policies in May and June of this year, but OPD has yet to complete or implement the policies. It is imperative that OPD complete and implement the use of force policies without further delay.

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 in July 2004. 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 the last 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, the IMT is concerned that OPD still has not completed its use of force related policies, much less ensured they have been implemented in actual practice, over one year after they became due. The IMT will closely monitor OPD's progress in this area and report to the Court as appropriate.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. OPD, however, still has not yet developed or implemented a policy incorporating this provision of the Settlement Agreement.

During this reporting period, the IMT attended OPD's Use of Force Review Board. While Review Board members are engaged and appear to make a genuine effort to evaluate the use of force incidents presented, the Board has continued to meet too infrequently to provide a timely review of use of force incidents. The Board would benefit from implementation of the outstanding use of force policies since the policies will provide clear and improved investigative standards and guidelines for the manner and timing of use of force review.

As discussed above, the IMT is concerned that OPD still has not completed its use of force related policies, much less ensured they have been implemented in actual practice, over one year after they became due. The IMT will closely monitor OPD's progress in this area and report to the Court as appropriate.

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

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement a policy for logging the checking out and use of Oleoresin Capsicum (OC) spray canisters by any member or authorized employee.
- By 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 in July 2004. 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.

The IMT interviewed officers on all three patrol shifts regarding their understanding of Task 27's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in compliance finding.

During this reporting period, the IMT conducted an audit of OPD's compliance with Task 27 in actual practice. The IMT found that OPD is in compliance with the requirement that it maintain a log of all OC canisters checked out by OPD personnel. The PEU maintains a log that lists all OC canisters distributed to OPD personnel. The log includes the identification of the individual to whom the canister(s) is distributed; the date of distribution; the type of canister(s) distributed (small or large); the serial number of the old and new canister(s); the reason for replacement; and the name of the individual's supervisor. The log also notes whether personnel turned in an old canister when requesting a new canister as required by OPD policy or provided a memorandum from their commander explaining why no such canister could be turned in.

OPD is also in compliance with the requirement that it maintain the log in an electronic format. While the OC sign out log completed by officers is hand-written, PEU personnel enter all of the data into an electronic format (Excel spreadsheets). OPD,

however, is not in compliance with the requirement to regularly prepare and distribute accurate reports regarding OC control and tracking. The PEU supervisor prepares and widely distributes monthly, semi-annual, and annual reports containing the information captured on the OC log. However, we were unable to confirm the accuracy of the reports with respect to a core issue: the reasons listed by personnel for requesting replacement canisters.

The accuracy of the reports is impacted by OPD's use of ambiguous and, in some respects, duplicative replacement codes.⁶ More significant is the fact that it is impossible to discern which, if any, of the canisters are being replaced as a result of a use of force. These deficiencies make it impossible for OPD to achieve the intent of this Settlement Agreement requirement: to ensure that all OC use is accurately reported so that this important enforcement weapon is not abused or used in a manner that is inconsistent with OPD policy.

Our review confirmed that OPD's OC reporting system was not accurately assessing OC use. During the first six months of 2005, OPD distributed 95 small canisters of OC Spray, 88 of which were replacement canisters. During this same time period, however, only 27 officers reported using OC Spray. The discrepancy is made even more stark by the fact that only 10 of the 27 officers who reported using OC Spray are among the 88 officers who received small replacement OC canisters. OPD was unable to answer why such a large discrepancy exists between the number of replacement canisters distributed and the number of OC use of force reports. In particular, it was unable to answer why so many officers sought replacement canisters compared to the number of officers who reported using their OC Spray. OPD does not know how or why so many officers exhausted their OC Spray, whether OC Spray reported as old or expired had exceeded the appropriate shelf-life, whether any of these individuals may have been negligent in the care of their property, or whether they used OC Spray and failed to report it. This problem is exacerbated by the apparent lack of clear guidance in OPD policy or training regarding when officers should replace their canisters (e.g., following a specified number of bursts of a specified duration) and in what, if any, "test firing" officers should engage.

To its credit, OPD has already begun to correct this problem. During our discussions with OPD during this audit, OPD acknowledged that its current practices did not enable it to accurately assess why most canisters were being distributed or to identify uses of OC Spray and/or patterns that are inconsistent with OPD policies and procedures, including the requirement that OC usage be reported. To start to address this issue, OPD has changed the replacement codes that personnel are directed to use when acquiring replacement canisters. The new codes have eliminated the duplicative categories and now explicitly include test fires, dogs, and uses of force (including the requirement that

⁶ OPD provided personnel with seven replacement codes from which to select: 1) Exhausted/Empty; 2) Old/Expired; 3) Broken; 4) Lost; 5) New Personnel/First Issue; 6) Stolen; and 7) Defective/ Doesn't Operate. While most personnel list one of these reasons when requesting a replacement canister, a few individuals list other reasons, including: "K-4," "Dog," "Malfunction," and "Extra Issue."

the records division number from the offense report be included on the OC log). The IMT believes that this is an important improvement in the current system.

While the PEU has been preparing and distributing regular reports listing all personnel who have requested replacement canisters, there is no indication that these reports are being properly reviewed. Pursuant to Special Orders 8061 and 8221, the Bureau of Investigations (BOI) Deputy Chief is required to audit the use of OC spray by Departmental personnel for compliance with OPD policy, inconsistencies, and overuse. There is no indication, however, that the BOI Deputy Chief or other commanders are completing the required review.

We recommended that OPD immediately start following the requirements set forth in its Special Orders requiring the BOI Deputy Chief to audit OC Spray use for compliance, inconsistencies, and overuse; that it require and train officers to provide specific information in OC use of force reports regarding the number of bursts, duration of bursts, distance from the subject and, location of spray contact; that it require all officers who turn in a canister that does not have a serial number to provide a memorandum like the one that it requires officers whose canisters have been lost or stolen to provide; and that it require that after *any* discharge of an issued canister of OC spray, officers follow established procedures for submitting the canister as evidence.

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 in July 2004. 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 completed a draft of General Order M-4.1 that the IMT determined on May 10, 2005 complies with the requirements of the Settlement Agreement. Six months later, OPD still has not published this policy. It recently made revisions to the draft policy and provided it to the IMT for review on November 15, 2005. As discussed above, the IMT is concerned that OPD still has not completed its use of force related policies, much less ensured they have been implemented in actual practice, over one year after they became due. The IMT will closely monitor OPD's progress in this area and report to the Court as appropriate.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. Task 29 requirements are included in General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. OPD, however, still has not yet developed or implemented a policy incorporating this provision of the Settlement Agreement.

The IMT continued to attend Firearms Discharge Boards of Review during this reporting period. We have observed progress in the manner in which the Board reviews shootings although it continues to struggle to conduct its reviews in a timely fashion. The IMT is completing a comprehensive review of OPD's shootings that have taken place since the entry of the Settlement Agreement, the results of which will be reported to the parties and the Court.

We are pleased to report that the Boards have begun a more exacting review of officer-involved shootings and that OPD is now tracking all officer-involved shootings. In contrast to past practice, complete investigative files, including transcripts of interviews among other information, are provided to each Board reviewer in advance of the Board's meeting. In addition to the three Deputy Chiefs, representatives from both Training and Internal Affairs have been participating in the reviews.

With respect to OPD's investigations of shootings, the Criminal Investigation Division (CID) continues to play the leading role and has made several positive advances since our last Report. It is now conducting video walk-throughs of all shooting scenes and has ceased its practice of automatically Mirandizing officers before taking their statements. The Internal Affairs Division continues to respond to the scene of all shootings and has started to conduct parallel administrative investigations focused on policy, training, and tactical issues involved in shootings. IAD has already identified a number of important issues through its newly expanded role. OPD has recently improved its technology enabling IAD to monitor statements as they are taken by criminal investigators. A number of OPD commanders and investigators are visiting another law enforcement agency to learn how its shooting boards are conducted.

During this reporting period, the Board found shootings in two separate incidents to be out of policy. According to OPD commanders, the Board's out of policy findings mark the first time in recent memory that the Board has found an officer-involved

shooting to be out of policy. Chief Tucker overturned the Board's out of policy determination on one of these shootings. The Board referred another shooting to Internal Affairs to investigate the conduct of the involved supervisors. We will continue to monitor IAD's review of the incident and report on it in future updates.

As discussed above, the IMT is concerned that OPD still has not completed its use of force related policies, much less ensured they have been implemented in actual practice, over a year after they became due. The IMT will closely monitor OPD's progress in this area and report to the Court as appropriate.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. OPD, however, still has not yet developed or implemented policies incorporating this provision of the Settlement Agreement. As previously reported, OPD published two training bulletins related to this task before the IMT began its work. The IMT provided comments on one of these training bulletins (Training Bulletin V-O), informing OPD that it did not sufficiently incorporate the requirements of the Settlement Agreement. OPD has indicated that this task will be covered by General Order K-4, *Reporting and*

Investigating the Use of Force and Training Bulletin V-O, Officer Involved Shooting. As discussed above, the IMT is concerned that OPD still has not completed its internal investigation related policies, much less ensured they have been implemented in actual practice, more than one year after they became due. The IMT will closely monitor OPD's progress in this area and report to the Court as appropriate.

Although OPD has not implemented a compliant OIS investigation policy, it has made numerous changes to its investigations of officer-involved shootings. IAD continues to respond to every officer involved shooting and in-custody death. As discussed above, the IMT is completing a comprehensive review of OPD's shootings that have taken place since the entry of the Settlement Agreement, the results of which will be reported to the parties and the Court.

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 in July 2004. OPD achieved compliance with this task ahead of schedule by producing research reports regarding the use and cost-effectiveness of camcorders in patrol vehicles.

Following a successful demonstration project that placed in-car cameras in several OPD patrol vehicles for 90 days, the City of Oakland has begun to pursue efforts to equip all OPD patrol vehicles with cameras to allow officers to capture video of traffic stops and criminal activity in progress. On July 25, 2005, it issued a Request For Proposal for an In-Car Video (ICV) Management System. According to OPD, it has received bids from three responsible contractors and is in the process of evaluating the responses. The Department anticipates having the cameras installed and operating in the first cars within seven months.

We commend OPD for achieving compliance on this task well 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, Reporting Misconduct; Task 35, Use of Force Reports-Witness Identification; Task 37, Retaliation Against Witnesses; and Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process.

During the last 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 each of the tasks in this section.

1. Reporting 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

As previously reported, 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.

During the sixth reporting period, the IMT confirmed that OPD had trained 95% or more of relevant personnel on this task. During this reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 33's requirements. Based on our interviews, officers do not yet possess a sufficient understanding of this task. While officers appear to understand Task 33's requirement to report misconduct and the consequences for failing to report it, they do not appear to understand the difference between confidential and anonymous reporting. Accordingly, OPD's training compliance for this task will remain in a conditional status. The IMT urges OPD to provide more detailed training in this area. Not doing so may not only jeopardize the Department's ability to achieve compliance in actual practice with Task 33, but also may result in officers not reporting misconduct or reporting it anonymously (and thus making it more difficult to investigate) because they do not understand how to report it confidentially.

During this reporting period, the IMT conducted an audit of OPD's compliance with Task 33 in actual practice. The IMT determined that OPD is informing members/employees of its confidential reporting procedures. OPD training logs confirmed that OPD informed at least 95% of current employees and 100% of new recruits and lateral hires about OPD's confidential reporting procedures during the period covered by this review.

The IMT was also able to confirm that OPD is committed to a confidential reporting system that includes the components required by the Settlement Agreement. The IMT was unable to determine whether this confidential reporting system functions properly or whether cases reported confidentially are maintained confidentially because no cases were reported confidentially during the period covered by this review.

Our review indicated that OPD personnel frequently do not report misconduct and OPD only rarely assesses whether misconduct was properly reported. In the twenty-six Class I cases that were sustained during the period we reviewed, we found only one investigation that directly addressed and resolved whether a member/employee properly reported the misconduct of another. The investigative files generally did not reflect probing questions by OPD investigators regarding what other members/employees observed or understood about an incident resulting in a sustained allegation of misconduct. Often, investigative files reflected ambiguous, vague, and, at times, implausible answers, to questions by OPD investigators about what the member/employee observed or knew of the incident, with no apparent follow-up by OPD.

In addition, we found that, with rare exceptions, OPD fails to hold members/employees accountable for failing to report misconduct even where the internal

investigation clearly establishes that the member/employee encountered apparent misconduct and failed to report it. Of the eighteen sustained cases in which we were able to determine that members/employees encountered misconduct, we were able to determine that they failed to report it in five cases (28%). OPD held the member/employee accountable for failing to report misconduct in only one (20%) of these cases.

OPD's failure to hold members/employees accountable for not reporting misconduct appears due to a number of factors. First, OPD investigators often do not ask the probing questions necessary to establish exactly what witness members/employees on the scene saw. This investigative deficiency impacts the integrity of OPD's internal investigations generally and OPD's compliance with Task 33 specifically.

For example, in one case OPD sustained an allegation of excessive force against an officer for hitting a cuffed and unresisting complainant in the eye with the butt of a gun. As explained more fully in our audit report, there was evidence that the scene of this incident was volatile; that Emergency Medical Technicians responded to the scene; that at least one officer and one complainant were treated for visible injuries; individuals complained of the force used against them at the time of the incident; and police statements taken at the time of the incident reflected complainants' assertions that an officer hit one of them in the face with a gun. Despite this, IAD did not assess the credibility of the statement by a sergeant that he did not know of any injuries to the complainant even though he allegedly spoke with them, and that another officer did not observe the misconduct even though he was standing only a few feet away at the time it occurred. Nor did IAD determine whether the officer who took a statement from the complainant alleging being hit in the face with a gun should have reported it.

In another case, OPD sustained an officer for improperly searching a man he stopped for riding his bicycle on the sidewalk. The officer's partner was on the scene the entire time, but purports to have not seen the search because he was in the car doing paperwork. OPD should have assessed whether the partner had enough knowledge of the circumstances to recognize that the subject officer did not have probable cause to be conducting the search, including more doggedly inquiring whether the partner was in fact doing paperwork while the subject officer searched a suspect alone, a statement that is suspect because it reflects an unsafe police practice.

OPD also fails to hold members/employees accountable for failing to report misconduct even where the internal investigation clearly establishes that the member/employee encountered apparent misconduct and failed to report it. In one case, OPD sustained an officer for an improper use of force. At least three other officers, including a sergeant, observed the incident and their statements to IAD about the incident are generally consistent with each other and with the subject officer's account. Taking the subject officer's own account of the incident as true, OPD found the force he used to be unnecessary. Nonetheless, OPD did not sustain the other officers on the scene—who admittedly observed the same force—for failing to report apparent misconduct. In

addition to IAD's failure to consider the reporting issue, another notable aspect of this investigation is that it indicates that OPD members/employees may not report misconduct in some instances because they fail to recognize that the level and type of force used was improper. As explained more fully in our audit report, the sustained use of force in this case was not a "close call," yet there was no apparent recognition by the officer that his actions were neither reasonable nor necessary, although many in the chain of command recognized this. Nonetheless, no officer on the scene, including the sergeant, appeared to consider the use of force problematic. In fact, the sergeant continued to dispute the sustained finding after it had been approved by the Chief of Police. Proposed changes to OPD's use of force policies must ensure that OPD officers do not continue to use levels or types of force that are unnecessary. Instances such as this case (and many others we have reviewed) underscore the need to implement OPD's new use of force policies as quickly as possible.

OPD's failure to hold members/employees accountable for not reporting misconduct cannot be excused on a lack of knowledge about OPD rules and policies. First, all OPD members/employees are charged with knowing how to properly exercise their duties, including the proper use of force and proper reporting of misconduct. Moreover, OPD members and employees know how to report misconduct when they see it, and OPD investigators know how to hold members and employees accountable when they do not report misconduct. For example, in one case an OPD officer observed a correctional officer mistreat a detainee the officer had just brought into the jail. The correctional officer used profanity; applied an unnecessary bent wrist lock; and pushed the detainee's head into a wall. The OPD officer immediately reported the misconduct to the sergeant on duty at the jail. The sergeant immediately took a taped statement from the reporting officer, spoke with the subject officer and the detainee and forwarded a Letter of Advisement to IAD. IAD sustained for both use of force and demeanor. In another case, OPD sustained a correctional officer for allowing an inmate to braid her hair in a jail cell. Another correctional officer admitted observing the conduct, recognizing the safety concerns, and regretting that she failed to report the incident. OPD sustained this second correctional officer for failing to report misconduct.

In both of these cases, the individuals held accountable were not sworn OPD officers, but OPD correctional officers. This raises the question of whether OPD officers and investigators turn a blind eye to officer misconduct that does not affect them when they investigate civilian employees. Similarly, our review indicates that officers are less likely to report misconduct when it involves uses of force, searches, and arrests, as opposed to misconduct such as driving under the influence. Although these dynamics would be consistent with the experiences of many police departments nationwide, the data in this review is too limited to make conclusive findings on these issues. It should also be noted that these properly handled cases were more recent than many of the problematic cases we reviewed, so we are hopeful that officers, and investigators, are improving their reporting and investigating in this area, although we note that every investigation we reviewed was completed within the past year. Again, the small number of properly handled cases makes it impossible to make this finding conclusively.

Our audit makes several recommendations for improving Task 33 compliance, including: clarifying OPD's misconduct reporting requirements; clarifying for officers how OPD's confidential reporting system works; requiring that all sustained cases be reviewed within IAD to ensure that all potential reporting violations were addressed and resolved; and including the consideration of misconduct reporting issues in the investigation checklist.

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 in August, 2003. OPD published a policy, Special Order 8012, *Racial Profiling Stop-Data Collection Form*, that complied with the Settlement Agreement. On November 15, 2004, OPD replaced this Special Order with General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. As previously reported, General Order M-19 is in many respects a model policy. It provides a clear definition of prohibited conduct; straightforwardly sets forth the responsibilities of various Departmental subunits; and provides guidance in the form of examples of prohibited conduct. If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

During the fourth and fifth 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, and will likely become a significant resource used by communities interested in ending biased-based policing. Together with M-19, the technical guide is an important contribution to nationwide efforts to reduce unjustified racial profiling.

We reported in the Combined Fourth and Fifth Quarterly Report that officers were failing to complete the stop data forms required by this task for more than 60% of applicable stops. In response, OPD initiated internal audits and closer oversight of officers' compliance with this task. Although OPD reported during the last reporting period that it had achieved actual practice compliance with this task, OPD now reports that it cannot verify officers' compliance with Task 34. Until OPD is able to accurately document that officers are completing the stop data forms required by Task 34, they will remain out of compliance with this task.

During this reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 34's requirements. Based on our interviews, officers do not yet possess a sufficient understanding of this task. Contrary to OPD policy and the Settlement Agreement, a number of officers reported that they did not have to complete stop data forms unless they were making a self-initiated stop. Accordingly, OPD's training compliance for this task will remain in a conditional status. The IMT urges OPD to provide refresher training in this area. Not doing so may jeopardize the Department's ability to achieve compliance in actual practice as officers may violate Settlement Agreement requirements due to a lack of understanding.

During the upcoming reporting periods, the IMT will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August, 2003. OPD achieved policy compliance by publishing Special Order 8066, *Use of Force-Witness Identification*, on April 12, 2004. During the last 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.

During this reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 35's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in-compliance finding.

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 in August, 2003. OPD achieved policy compliance by publishing Special Order 8055, *Transportation of Persons in Police Vehicles*, on November 25, 2003. As discussed below, this special order has been replaced by Special Order 8262. OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on Special Order 8055 and reports that they have trained 92% of required personnel on Special Order 8262.

During this reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 36's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in compliance finding.

During the last reporting period, the IMT determined that OPD is not complying with this task in actual practice, and made several recommendations for improvement including: establishing a communications protocol prompting dispatchers to elicit the

information required by this task; providing officers with refresher training regarding what information they are required to provide when performing transports; and holding officers accountable where they do not comply with this OPD policy. On September 12, 2005, OPD published Special Order 8262, *Transportation of Persons in Police Vehicles*, incorporating the IMT's recommendations.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate retraining on Special Order 8262, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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*. These MOR provisions incorporate the requirements of Task 37. OPD's recently completed Disciplinary Matrix underscores that termination is the presumptive penalty for retaliation. Accordingly, OPD is in policy compliance with Task 37.

During the sixth reporting period, the IMT confirmed that OPD trained 95% or more of relevant personnel on this task. During this reporting period, the IMT

interviewed officers on all three patrol shifts to assess their understanding of Task 37's requirements. Based on our interviews, officers do not yet possess a sufficient understanding of this task. While officers appear to understand what constitutes retaliation under Task 37, many officers were unaware that the presumptive penalty for engaging in retaliation is termination. Accordingly, OPD's training compliance for this task will remain in a conditional status. The IMT urges OPD to provide refresher training in these areas. Not doing so may jeopardize the Department's ability to achieve compliance in actual practice.

During this reporting period, the IMT audited OPD's compliance in actual practice with Task 37. The IMT determined that OPD is not in compliance with Task 37 because its investigations of retaliation are inadequate to provide sufficient confidence that officers who have engaged in retaliation, or supervisors who knew or should have known of such retaliation, are held accountable.

There were six complaints of retaliation for reporting misconduct between August 15, 2004, and August 15, 2005. These complaints were not handled in a manner that would ensure the accountability required by the Settlement Agreement.

Two of these complaints (33%) were "ghost cases" that, at the time of our request on August 16, 2005, had not been given IAD case numbers or assigned for investigation, according to IAD. The first of these "ghost cases" complaining of retaliation was made in December 7, 2004. OPD recently informed us that this case was "submitted for accountability" after the date of our document request and was subsequently issued a "summary finding" of unfounded and is currently in the review process. It does not appear that any further investigation or accountability regarding the underlying incident has been conducted.

The second "ghost case" has a complaint date of December 20, 2004. OPD has informed us that to date this allegation has not been given a case number and no further follow-up, including an assessment of whether anyone should be held accountable for how this allegation was initially handled, is being conducted. These complaints should have been investigated with the utmost diligence as soon as they were received. Instead they did not even receive case numbers and appear never to have been fully investigated.

The third allegation of retaliation was investigated, but, as explained in our audit report, the IAD investigation did not investigate all aspects of the alleged retaliatory conduct, making it impossible to rule out the possibility retaliation occurred.

The fourth complaint of retaliation was filed in March, 2005. There is no indication of any review of the filed status. As explained in our audit report, the investigation was not able to resolve the matter and hold the responsible parties accountable. As importantly for Task 37 compliance purposes, it did not indicate the level of diligence such an allegation of retaliation should warrant.

Investigative deficiencies in the fifth case, including failure to interview at least one critical witness, do not allow sufficient confidence in OPD's finding that no retaliation occurred. The sixth case is ongoing and not far enough along for us to determine whether it was being handled appropriately. We were thus unable to determine whether its handling is in compliance with Task 37.

Because at least five of the six cases alleging retaliation during the time period we reviewed were not investigated adequately, OPD is out of compliance in actual practice with Task 37.

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 in August, 2003. OPD achieved policy compliance by publishing an *Information Bulletin on Citizens Signing Police Forms* on October 22, 2003. During the sixth 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 interviewed officers on all three patrol shifts regarding their understanding of Task 38's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in compliance finding.

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.

During this reporting period, OPD's Office of Inspector General (OIG) conducted an internal audit of Task 38 and found OPD's current practices in compliance with the Settlement Agreement's requirement 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. OPD did not audit whether citizen statements on offense reports were signed by the citizen immediately following the statement because the Department no longer allows officers to take citizen statements directly on offense reports.

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 in August, 2003. 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 the last 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 interviewed officers on all three patrol shifts regarding their understanding of Task 39's requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As

a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in compliance finding.

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. According to OPD, a committee has recently been organized to address the revision of General Order B-4. However, until the revised General Order is published and implemented, OPD will continue to refer to Special Order 8064, the stop-gap measure drafted to cover this task.

During the last reporting period, the IMT conducted a review of OPD’s actual practice of Task 39 and found it to be out of compliance. As mentioned in our last report, our review indicated that OPD was taking few proactive steps to ensure that non-reporting members/employees are detected, and seemed to have given little thought to how it would ensure that its members/employees comply with this requirement. We made several compliance recommendations that we encouraged OPD to consider.

OPD now reports that they have begun to implement some of the proactive measures that we recommended. Specifically, according to OPD, though State law purportedly prevents the Department from accessing employee’s information to conduct random compliance audits, the Special Operations Group and IAD have designed a protocol for inquiring about arrests and suits/services and will begin conducting quarterly audits of their respective units. They will require staff to complete and sign a questionnaire that will ask specific questions regarding the provisions of this task. The questionnaire will be reviewed by the Division Commander for review and compliance.

The IMT is pleased to see improvement on the implementation of the provisions of Task 39. We have given OPD comments on the questionnaire being used by IAD and the Special Operations Group and encourage similar questionnaires to be drafted for use by all the units/assignments covered by this task.

During the upcoming reporting periods, the IMT will determine whether OPD’s actual practices comply with this Settlement Agreement provision.

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," was due for completion in June 2005. OPD is not in compliance with either task in this section.

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 occurred in June, 2005. However, OPD has not yet completed and published a policy for the use of PIMS. OPD estimates that it will have a draft of the PIMS policy ready by the end of 2005.

As of October, 2005, OPD reports that though the Department has not yet hired a PIMS administrator, and the contract to construct the database is not yet finalized, it has, with the assistance of a police psychologist, already begun analysis of personnel data relevant to identifying and addressing at-risk behavior. PIMS threshold reports are generated every quarter, and OPD is requesting supervisors and commanders to review closely officers who meet certain criteria to determine whether patterns of conduct require further attention or action

As discussed above as an Area of Concern, the IMT is extremely concerned about the delinquent status of PIMS. The development and implementation of this risk management and supervision tool is one of the cornerstones of the Settlement Agreement. During the upcoming reporting periods, the IMT 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 in April, 2004. OPD published General Order B-8, *Field Training Program*, at the beginning of this reporting period. The IMT reviewed the policy and found that it complies with the Settlement Agreement. During this reporting period, OPD also 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 IMT evaluated whether OPD's actual practices comply with Task 42. Members of OPD's Sixth Lateral Academy were the first officers to complete OPD's new Field Training Program. Accordingly, the IMT evaluated OPD's administration of the FTO program for these new officers.

Although OPD has not yet fully complied with the requirements of Task 42, it has made substantial and impressive progress. OPD assigned a full-time officer to work as its Field Training Program Coordinator (FTCP). It did not, however, assign a sergeant as required by the NSA. The officer who has been running the new FTO program is a talented and well-respected officer, but the lack of a supervisory official in the position may have contributed to the Department's inability to be fully successful in implementing the field training program.

Task 42.2.1 requires that OPD rotate trainee officers to a new FTO and to a new geographic area of the City at predetermined intervals. For the period reviewed, OPD met this requirement. Task 42.2.2 requires that prior to rotation, trainee officers are interviewed and given an opportunity to raise any questions or concerns they may have about the quality of the training they are receiving. For the period reviewed, OPD met this requirement as well. Moreover, based on our review of the FTO and trainee files, which document numerous interactions between the FTCP and program participants, and our own observations, the FTCP's open door policy and approachable demeanor have helped foster an environment in which trainees and FTOs alike routinely provide him information, ask questions, and seek his advice and input.

As required by the Settlement Agreement, OPD increased the incentives to become an FTO. These incentives include: increased pay; an FTO pin and chevrons; a paid administrative day every six months; the establishment of the "FTO of the Year" award; and priority consideration for teaching opportunities in the Academy. OPD has certified a total of twenty-nine FTOs—twelve were newly certified and seventeen were recertified, having served as FTOs in the past. These twenty-nine individuals were selected from a pool of over fifty candidates, including thirty-six individuals who qualified for new certification. While the increased incentives likely played a role in encouraging qualified candidates to apply for FTO positions, the recruitment efforts of

the FTFC probably played a role as well. He personally attended line-ups to encourage participation in the program and to recruit qualified candidates. He also recruited individuals who had previously served as FTOs based on his knowledge of their past successful performance in the program.

OPD complied with the requirement that FTO candidates be nominated by OPD field supervisors and commanders with the Chief of Police making final determinations regarding FTO assignment and retention. Although we found OPD in compliance with this requirement, we are concerned about the lack of specificity contained in many nomination memoranda. Few of the nominations included specific information about why or how the candidate's skills or experiences would make them a suitable FTO.

All twenty-nine of the FTOs that were certified had completed three or more years of service at OPD prior to their selection, as required by the Settlement Agreement. However, OPD did not comply with the Settlement Agreement requirement that FTO candidates demonstrate their commitment to community policing, and their problem solving and leadership abilities. While OPD did a good job testing and documenting these attributes for the twelve newly certified FTOs, it did not subject the seventeen recertified candidates to the same level of scrutiny. Instead, it appeared to take shortcuts in its selection of these candidates. While most or all of the recertified FTOs may meet or exceed the selection requirements set forth in the NSA, OPD has not established this. Upon being informed of the shortcomings in its FTO selection process, OPD created an FTO Nomination Questionnaire to be completed by the FTO's nominating sergeant. The questionnaire is aimed at eliciting a variety of useful information about the candidate including, for example, descriptions of how the candidate has demonstrated his/her leadership skills, problem solving abilities, and commitment to community policing.

The Settlement Agreement requires OPD to make ethics, professionalism, relationships with the community, quality of citizen contacts and commitment to OPD philosophy "primary criteria" in its selection of FTOs. OPD did not comply with this task. As discussed above, for the newly certified FTOs, OPD elicited and evaluated specific information about the candidates related directly or indirectly to each of the areas enumerated in this task. However, it was difficult to discern from the available documentation whether and to what degree OPD considered each of these areas "primary criteria" in its selection of FTOs. As discussed above, there was little or no current documentation regarding the selection of the recertified FTOs.

Task 42.4.5 bars candidates with an excessive numbers of citizen complaints, sustained investigations or excessive numbers of use of force incidents for a period of at least two years preceding nomination. The IMT evaluated the documentation in the FTO files regarding the use of force and complaint histories of all twenty-nine newly certified and recertified FTOs to determine whether these standards were met. None of the twenty-nine candidates that were certified as FTOs had received a sustained finding in the two year period preceding his/her nomination. Four of the individuals that were certified as FTOs had received three or more complaints during the two year period prior

to certification. There is no indication that OPD evaluated the actual complaints or investigative summaries or files for these or any of the other complaints. Absent such an examination, it is impossible to discern whether a problematic pattern may exist meriting disqualification of a particular candidate for having an “excessive number” of complaints. Accordingly, OPD did not comply with the Settlement Agreement in this area.

Task 42.5.1 requires that removal from the program be the presumptive result of a sustained allegation of excessive force; unlawful arrest; false testimony; racial, ethnic, sexual-orientation or gender-based discrimination or slurs; or other serious examples of police misconduct. During this review period, no FTO had a Class I allegation sustained. There were, however, two FTOs who received sustained Class II findings. While neither of these cases qualified for presumptive removal, the FTO files contained no indication that OPD evaluated either of the cases to determine whether continuation in the FTO program by the involved individuals is appropriate.

Under the Settlement Agreement, assignment to a FTO position is contingent upon the successful completion of a training course designed for FTOs and approved by OPD and the State of California Commission on Peace Officer Standards and Training (POST). OPD is in compliance with this requirement. POST certified both OPD’s Field Training Course (for newly certified FTOs) and its Field Training Update Course (for recertified FTOs). All of the newly certified FTOs attended the course for new FTOs and all of the recertified FTOs attended the update course.

Task 42.7.1 requires that at the end of every complete FTO cycle, trainee officers anonymously evaluate each of their FTOs. OPD is in compliance with the evaluation component of this requirement, but not the portion requiring anonymity. While some of the evaluation forms did not contain the name of the trainee completing the evaluation, most did. Moreover, since most FTOs only worked with one or two trainees during the cycle, the identity of the individuals completing the evaluations was readily discernible to the FTCP given that he made the work assignments and supervised the cycle.

Task 42.7.2 requires that the FTPC and each FTO's supervisor and commander review the FTO evaluation forms. OPD did not comply with this requirement. While there was documentation that the FTPC reviewed every evaluation and that he forwarded the evaluations to the individual FTO’s commander and/or supervisor, there was no documentation that these individuals reviewed the evaluations. Task 42.7.3 requires the FTPC to provide evaluations of program effectiveness to the FTOs as a group. OPD is in compliance with this requirement. OPD also complied with the requirement that it evaluate each FTO’s individual performance.

Task 42.8 requires the FTPC or his or her designee to conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained. OPD is in compliance with this requirement. The FTPC has established a well-documented auditing system that enables him to ensure that daily evaluations, and other required program forms, documents, and

meetings, are completed. Task 42.9 prohibits OPD from assigning trainee officers to field duties with “acting” FTOs when regularly assigned FTOs are absent. For the entire fifteen week cycle, we located only a single instance where a trainee’s assignment did not meet these requirements. Moreover, in that instance, OPD self-identified the improper assignment and immediately rectified it.

Task 42.10 requires OPD to provide field commanders and supervisors with training on the FTO program. OPD is in compliance with this requirement. The FTPC developed a lesson plan and, as of the time of this audit, had providing training to all but one of the field commanders and supervisors. In addition, OPD complied with the Settlement Agreement requirement to conduct and review focus groups with trainees. The focus groups provided valuable recommendations and input regarding OPD’s training and did not disclose any substantial discrepancies between what is taught in the Academy and what is taught in the FTO Program.

Throughout the course of our review of Task 42, as shortcomings were identified OPD took immediate steps to remediate deficiencies. The IMT supports these measures and we commend OPD for rapidly moving to implement them in an effort to ensure that the program becomes fully compliant. Based on our review, we made several additional recommendations to OPD focusing on improving the FTO selection process; ensuring anonymity for trainee evaluations; and supervisory review of FTO evaluations.

During the upcoming reporting periods, the IMT will determine whether OPD has taken the steps necessary to come fully into compliance with the 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 for this task occurred during the last reporting period. On September 2, 2005, OPD graduated its 154th Basic Academy class. The class was the Department’s first Academy class in several years. During this reporting period, OPD also graduated seven officers from its Sixth Lateral Academy and began its 155th Basic Academy.

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 in February, 2005. OPD published General Order B-20, *Departmental Training Program*, which the IMT reviewed and found compliant 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.

As required by the Settlement Agreement, General Order 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. According to OPD, all instructor files were reviewed for compliance during the 154th Academy. Three instructors who did not meet the requirements of the General Order were removed from their teaching assignments.

In addition to Task 43's requirements related to Academy training, Task 43 requires that OPD provide all supervisors and commanders/managers with mandatory 40-hour in-service supervisory and leadership training. The Settlement Agreement stipulates specific areas that must be covered in this training including instruction in supervisory and command accountability, ethics and professionalism, and supervisory and management functions and situations. Pursuant to this task, all supervisors must receive the mandatory leadership training prior to their promotion while all commanders must attend this training within six months of their promotion.

The IMT has confirmed OPD's report that all but one of the current supervisors have attended the mandatory training prior to promotion and that all current commanders have attended the mandatory leadership training, although only one has done so within six months of promotion. OPD was unable to provide the IMT with detailed

documentation of what material was taught in its 2004 in-service supervisory training, and the IMT is therefore unable to confirm that the leadership and supervisory course content included the areas required by the Settlement Agreement.

Though OPD offers the mandatory 40-hour supervisory and leadership training to supervisors and commanders, OPD should ensure that the officers and commanders attend the training within the required timeframe. As it is unclear whether the training provided includes the content required by the Settlement Agreement, we recommend that the Training Division require and retain detailed lesson plans of all in-service training.

During this reporting period, the IMT attended several Academy sessions, including classes on laws of arrest; sexual harassment; IAD and homicide procedures; alcohol violations enforcement; and arrest and control procedures. We have been pleased to observe several professional and engaging presentations.

During the upcoming reporting periods, the IMT 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 with this task ahead of schedule. During the last 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 combined fourth and fifth reporting period. With the recent publication of the Departmental

Discipline Policy (Training Bulletin V-T), OPD has attained policy compliance with this task.

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. With the recent publication of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, OPD has attained policy compliance with this task.

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 in July, 2004. OPD developed a compliant policy incorporating this provision, General Order B-6, *Performance Appraisal*, in advance of the due date. During the last 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.

In October, 2005, OIG initiated an audit of the Department's performance appraisals and found that OPD's actual practices were not in compliance with Task 44.

OIG's audit also found that current performance appraisals do not contain sufficient documentation of the criteria required by the Settlement Agreement. OIG further reported that OPD cannot demonstrate that managers and supervisors are held accountable for writing poor quality performance appraisals. Consistent with the IMT's recommendations made after its 2004 audit, OIG has made several recommendations for improving the Department's compliance with this task.

During the upcoming reporting periods, the IMT will continue to review OPD's performance appraisals to determine whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

Based on a series of extensions negotiated between the parties, OPD was required to develop a consistency of discipline policy and discipline matrix by June 15, 2004, and to complete training by July 1, 2004. OPD did not 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 combined fourth and fifth 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.

The requirements of Task 45 are now incorporated into General Order M-3, *Complaints Against Departmental Personnel or Procedures*; the Internal Affairs Policy and Procedure Manual; the Departmental Discipline Policy; and General Order B-6, *Performance Appraisals*. OPD recently completed these policies and is scheduled to begin training on the policies on December 10, 2005, with the aim of completing training of all OPD members and employees before the end of the year.

During the upcoming reporting periods, the IMT will determine whether OPD has conducted appropriate training on the policies, and 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 in July, 2003. 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*. OPD recently completed this policy.

During the last reporting period, the IMT reviewed all of the promotions made by OPD from January 1, 2004–January 15, 2005. Though the IMT determined that most of the Settlement Agreement’s required factors were considered when making the promotions, *none* of the promotions included consideration of the task’s first element: commitment to community policing. Thus, OPD was found to be out of compliance with this task in actual practice.

OPD reports that Chief Tucker 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. This new “promotional matrix” was not completed before the most recent round of promotions, but OPD reports the matrix will be used for all future promotions. We support such measures and believe that they will likely assist the Department to achieve compliance on this task.

During the upcoming reporting periods, the IMT will determine 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 hear directly 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 in August, 2003. 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 the last 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 interviewed officers on all three patrol shifts regarding their understanding of Task 47’s requirements. Based on our interviews, OPD officers appear to have a solid grasp of the most important elements of this task. As a result, the IMT is changing its conditional training compliance determination for this task to an unconditional in compliance finding.

During this reporting period, the IMT audited OPD’s compliance in actual practice with Task 47. As discussed below, OPD has made impressive progress on this task with respect to its attendance at community meetings. Task 47.1 requires OPD to host at least one community meeting per quarter in each Patrol Service Area (PSA). OPD went well beyond this requirement, holding meetings in each PSA during each of the three months of the quarter examined. Task 47.2 requires each patrol supervisor and officer assigned to a regular beat or geographic area of the City to attend a minimum of one community meeting per quarter in the Area s/he is regularly assigned. Based on the documentation we reviewed, 96.2% of those required to attend community meetings during the quarter did so. Accordingly, OPD is in compliance with Task 47.2.1. OPD also complied with the requirement that patrol supervisors and officers attend community meetings in the Area in which they were regularly assigned.

Task 47.3 requires OPD to implement mechanisms to measure its community policing and problem solving activities. OPD is in the process of evaluating a recently completed survey of community attitudes regarding the Department to determine whether it might provide an appropriate benchmark for measuring community policing and

problem solving activities. It is also considering other ways in which it might comply with this task and document its compliance activities. As of this review, however, OPD has not sufficiently implemented mechanisms to measure its community policing and problem solving activities. Accordingly, it is not in compliance with Task 47.3.

Task 47.4 requires OPD to incorporate positive statistics on community policing and problem solving activities and information on citizen complaints and use of force incidents into “Crime-Stop” meetings. With the exception of occasional ad hoc references to community policing or problem solving, OPD’s Crime-Stop meetings have not included the elements required by this task, much less incorporated these elements as a regular part of the meetings or documented their inclusion. Accordingly, OPD is not yet in compliance with Task 47.4. In an effort to achieve compliance with this task, the BFO Commander recently developed a reporting template to be used for Crime-Stop presentations. According to the template, the focus of BFO will be on crime, community issues, and accountability. The template provides for reporting by each PSA, the Special Operations Division, and the Neighborhood Services Division. In addition to discussing crime trends, the units are expected to report on projects being conducted, including information about the type of project, the tactics employed, community involvement, and whether the issue or condition being addressed has stayed the same, improved, or deteriorated. Among other information, the template also includes information on citizen complaints and use of force incidents. In late October, 2005, BFO started using this template for its Crime-Stop presentations and documentation. In addition, the Bureau has started to discuss community involvement and whether, and to what extent, community concerns play a role in prioritizing workloads and assignments in the various units. These are all significant steps that, if continued, will assist OPD in achieving and documenting compliance for this task.

Task 47.5 requires OPD to meet within sixty days with representatives of established organizations active within Oakland, community groups or church groups, if an organization communicates a concern regarding specific police personnel or practices. This requirement applies unless it is not feasible for OPD to meet with a given organization within the designated time period. OPD was not able to produce documentation of any requests covered by this task for the period reviewed. It is not clear whether the absence of documentation is because no such meetings were requested, or because the Department was not tracking requests that individual commanders may have received.

While OPD has made great strides in its effort to comply with Task 47, we encourage OPD to continue its efforts to incorporate assessments of its community policing and problem solving efforts into Crime-Stop meetings. These assessments should be an integral part of the meetings in order to ensure that community-policing efforts and concerns are fully integrated into OPD operations, and regularly discussed by high-level command staff as the Settlement Agreement requires.

According to the Settlement Agreement, the purpose of the specific requirements in Task 47 is to “develop and implement a plan to strengthen [OPD’s] commitment to relationships with local communities.” The Department’s recent efforts to inject greater levels of transparency into the Department and its outreach and regular meetings with community groups, including vocal critics of the police department, are encouraging signs of progress in this regard. The IMT commends OPD for these efforts and encourages the Department to continue to foster these ties and to build additional relationships throughout Oakland’s diverse communities.

During the upcoming reporting periods, the IMT will monitor and report on OPD’s community policing efforts.

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

Section XII of the Settlement Agreement, Task 48, requires OPD to develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve months. The compliance deadline for the Departmental Management and Annual Management Report section of the Settlement Agreement occurred during 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 in September, 2003. 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 the last 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 last reporting period, the IMT found that OPD was in compliance with Task 48's requirement that each functional unit submit an annual management report. However, we found that OPD was 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; nor was OPD in compliance with Task 48's requirement that each Division Commander meet with the Chief of Police to discuss the annual management report.

In light of the deficiencies we highlighted in the Sixth Report, OPD states that it is in the process of reviewing and revising all of the Annual Management Reports to ensure that they adhere to the requirements listed in GO A-7. We are encouraged that OPD is attempting to improve this valuable evaluation, planning and community relations tools.

During upcoming reporting periods, the IMT will monitor whether each annual management report includes relevant operating data and highlights ongoing or extraordinary problems and noteworthy accomplishments; whether each Division Commander meet with the Chief of Police to discuss the annual management report; and whether the review of the reports is "thorough" as required by the Settlement Agreement.

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in April, 2003. 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 continues to staff it with diligent individuals who work hard to facilitate implementation of the Settlement Agreement. The compliance deadline for conducting the annual audits occurred during this reporting period. However, prior to this deadline, OPD had already conducted several audits and 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 in March, 2003. 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 OIG. OIG’s diligent staff performed a number of important tasks this reporting period, including: improving the coordination of overall compliance efforts by assigning task managers to each Settlement Agreement task and monitoring bi-weekly task updates; conducting high quality audits required by the Settlement Agreement and other Departmental objectives; efficiently managing the IAD database investigation, and continuing to spearhead the compliance portions of the weekly MAP meetings. The IMT also commends the appointment of OIG’s new Captain. Since taking responsibility in

September he has proven himself extremely capable and committed to OPD's successful implementation of the Settlement Agreement.

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 occurred in September, 2005. 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. Several OIG staff members have attended additional professional audit training. Additionally, OIG has developed a series of audit plans, criteria, and evaluation tools along with a schedule for conducting audits.

As noted above and in our previous reports, OIG staff have audited OPD's compliance with several Settlement Agreement provisions, including arrest and offense reports; personnel evaluations; Oleoresin Capsicum Log and Checkout Procedures (Task 27); and Internal Affairs intake procedures. OIG is working to complete its annual audit of OPD's mobile data terminal usage and recently completed an audit of the Field Training Program (Task 42). Additionally, OIG regularly conducts "mini-audits" of various Settlement Agreement tasks to assess the level of compliance.

According to the Settlement Agreement, by September 1, 2005, the Department should have completed an annual audit in each of six required areas. However, this deadline was determined based on the assumption that the relevant policies would be completed on time and thus published more than one year previous to September 1, 2005. Due to excessive delays in publishing directives related to internal investigations, citizen complaints and use of force, OPD has been unable to conduct three of the six audits

required by this task. The IMT urges OPD to publish the delinquent policies as quickly as possible.

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's increased energy and improved attitude towards Settlement Agreement reform continued during this reporting period. More importantly, OPD's stated commitment to reform is beginning to have some impact on OPD police practices. While this impact is still modest, OPD continues to move forward, providing reason to believe that the Settlement Agreement might soon begin to have the broad positive impact on OPD's interactions with the Oakland community that it was intended to have.

The most pressing challenge for OPD is to fully implement the Settlement Agreement's requirements related to the use, reporting, and review of force, and its requirements regarding internal investigations. Both OPD's short term success in timely exit from the Settlement Agreement, and its long term success in instituting sustainable reforms will likely depend on its ability to effectively implement these areas of the Settlement Agreement within the next few months.