

**EIGHTH 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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May 30, 2006

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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 Eighth Status Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from December 2, 2005, through May 12, 2006.

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; attended Executive Force Review Boards; observed OPD's conduct during a large political demonstration; attended Internal Affairs weekly meetings; observed OPD's on-scene criminal and administrative investigations of officer-involved shootings; reviewed and analyzed OPD documents and files, including draft policies, investigations, performance appraisals, and use of force reports; observed several sessions of the Department's Academy; attended numerous training sessions of OPD investigators, supervisors, commanders and managers, including training on supervisory liability, retaliation, officer-involved shooting investigations, and use of force policies and investigations; attended meetings of the Performance Assessment System (PAS) steering committee and working groups; attended a community town hall regarding OPD's Sideshow enforcement and other issues; 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, Personnel Division, Bureau of Administration, Bureau of Field Operations, Bureau of Investigations, and Internal Affairs Division; current and former OPD officers; the Oakland Police Officers' Association (OPOA); 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; the Mayor; 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; Pitchess files; MLL reports; stop data forms; arrest reports; officer-involved shooting reports and investigative files; Internal Affairs investigation files; OPD Management Assessment Program documentation; and information provided by citizens and current and former OPD officers. In addition to reviewing these documents off-site, the IMT also participated in regular meetings and 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 six tasks: Documentation of Pitchess Responses (Task 13); Performance Reviews (Task 21); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigations, and Detentions (Task 34); Citizens Signing Police Forms (Task 38); and Performance Appraisals (Task 44). With the exception of Tasks 21 and 22, OPD has made notable progress in all of these areas. As discussed below, OPD is in actual practice compliance with Tasks 13 and 38 and with significant portions of Tasks 34 and 44. In addition to these task audits, the IMT completed a review of OPD's officer involved shooting investigations from July 2003 through November 2005. This review is discussed more fully below in the Task 31 (Officer-Involved Shooting Investigation) update.

III. OPD ACCOMPLISHMENTS & AREA OF CONCERN

A. OPD Accomplishments

Taking Ownership of Reform Process

In our last report we commended OPD for better incorporating compliance mechanisms into its daily operations and for increasing its interactions with outside agencies and professional organizations. OPD continues to build upon these efforts and it appears that they are contributing to a positive shift in OPD's approach to Settlement Agreement compliance. Indeed, during the last status conference, multiple stakeholders, including the Department, the OPOA, the City Attorney's Office, and the Plaintiffs' attorneys, remarked on the shifting culture at OPD.

During this reporting period we noted that, increasingly, many within OPD and the City recognize that the changes OPD is implementing pursuant to the Settlement Agreement help further its independent goal of creating and maintaining a highly professional and proactive police department that can serve as a model to other agencies. This recognition is reflected in several steps in which OPD has taken aggressive ownership of Settlement Agreement reforms to ensure they are implemented in

accordance with OPD's broader mission and become simply part of OPD's approach to policing.

This reporting period, for example, OPD has provided a variety of valuable training sessions in areas that, while not required by the NSA, are certainly consistent with its purpose and supportive of OPD's broader interests. In conjunction with training to its first-line supervisors on how to recognize retaliation, OPD's attorneys also provided excellent training on supervisors' responsibilities to ensure that officers under their command act lawfully. OPD also recently provided training to its investigators and commanders regarding officer involved shootings and conducting internal affairs investigations. Additionally, OPD sent several staff members to training sessions on lethal and less lethal use of force and on non-disciplinary employment law.

OPD's bi-weekly (now monthly) reports, in which commanders and supervisors report progress for particular Settlement Agreement tasks for which they are responsible, reflect a greater sense of responsibility among commanders and supervisors beyond the level of upper-management. Many of these monthly progress reports reflect thoughtful analysis of the obstacles to compliance; suggestions for going beyond compliance in the interest of better policing; and audits, reviews, and evaluations undertaken by commanders and supervisors to ensure the progress they are reporting out is real. This level of personal attention to each Settlement Agreement task is invaluable because it improves everyday policing, and provides the opportunity for commanders and supervisors to learn of and explain to upper management and the IMT any impracticalities or unintended consequences of Settlement Agreement implementation.

OPD is increasingly likely to self-identify problems and immediately move to correct them where it is important to the well-functioning of the Department, even where there is only a tangential nexus with the Settlement Agreement. Many of OPD's recent internal audits, and subsequent recommendations for improvement, reflect this proactive approach to resolving problems before individuals outside the agency identify them. Similarly, discussions among OPD commanders at Executive Force Review Boards and meetings regarding internal investigations reflect a more substantive understanding of the importance to the Department—regardless of the Settlement Agreement—of creating and maintaining a system of accountability that is first-rate, fair, and beyond reproach.

OPD's recognition that the Settlement Agreement can be used as an opportunity rather than viewed simply as a burden is an encouraging sign that OPD will be able to achieve Settlement Agreement compliance and, more importantly, sustain many positive changes long after compliance is attained.

Use of Force Policies

During the last reporting period, we expressed significant concern regarding the Department's lengthy delay in developing and implementing the use of force policies required by the Settlement Agreement. During this reporting period, the Department not

only published the long overdue policies, but met an aggressive training schedule. On February 17, 2006, OPD published General Order K-3, *Use of Force*; General Order K-4, *Reporting and Investigating the Use of Force*; and General Order K-4.1, *Force Review Boards*.

OPD's new use of force policies comply with the Settlement Agreement and incorporate contemporary and constitutional law enforcement practices. The new policies mark significant progress in how OPD directs its personnel to use, report, and review force. Consistent with professional law enforcement agencies across the state and country, OPD's new policies require that *all* uses of force be reported and subjected to appropriate and escalating levels of supervisory response and review, depending on the level of force used. By policy, OPD officers are no longer allowed to use the carotid restraint absent a threat justifying such force. Among other issues, supervisors will now review uses of force to determine whether the original detention or arrest was consistent with policy, whether the use of force was de-escalated if appropriate, and whether it was consistent with OPD policies, training, and tactics.

In developing the new use of force policies, OPD commanders exhibited an impressive thoughtfulness and seriousness of purpose. They did not hesitate to challenge the IMT on suggestions with which they disagreed and were ready to back their positions with reasoned arguments based upon their own experiences and research. These commanders' level of commitment to creating a system of using, reporting, and investigating force that will protect OPD officers from unnecessary injury and accusations, while protecting Oakland residents from unnecessary force, could not have been achieved if commanders were concerned merely about rote Settlement Agreement compliance.

Commanders worked equally hard to deliver lengthy, substantive training blocks to OPD personnel regarding the new policies. The IMT had an opportunity to attend a number of these training sessions and provided OPD with feedback and recommendations for improvement. During the training sessions and in other interactions with OPD personnel, we have observed a fairly high level of apprehension, particularly from line sergeants, about possible negative consequences of the new policies. This reaction is not surprising and is a common reaction to change of this nature. Without doubt, if adhered to, the new policies will represent a change in the way OPD does business. In order for the new policies to be successful, it will be critical for OPD to reinforce them constantly through consistent, hands-on training, coaching, and supervision.

B. Areas of Concern

Timeliness of the Internal Investigation Process

Despite significant improvements in OPD's Internal Affairs Division (IAD) and concerted efforts focused on improving the timeliness of internal investigations, this continues to be an area of concern for the IMT, as well as for OPD. In addition to falling far short of the investigative timeframes set out in General Order M-3, OPD continues to miss California's statutory one-year deadline for completing internal investigations and notifying officers of its intent to impose discipline, known as the "3304" deadline. We are concerned that, despite OPD's efforts in this area, OPD has been unable to impose discipline in several recently sustained cases because this deadline was missed. We are further concerned because IAD's large backlog of overdue cases makes it difficult for OPD to make significant progress towards attaining compliance with the deadlines established by General Order M-3. These deadlines, which are consistent with professional policing practices, are the criteria by which OPD will be assessed to determine its compliance with the Settlement Agreement's requirement that OPD's internal investigations be completed in a timely fashion.

As we have previously discussed, immediately beginning complaint investigations and completing investigations promptly improves the quality of investigations, increases the confidence of the community in the police department, and allows officers to be relieved as soon as practicable of the stress of being under investigation. OPD has been making improvements in this area generally. OPD appears to be doing a better job of immediately beginning investigations by more quickly interviewing complainants and witnesses and gathering physical evidence. This is a critical improvement that can have a significant impact on the reliability of investigative conclusions. OPD appears also to be doing a better job holding its investigators and commanders accountable for not completing investigations within the 3304 deadline. However, OPD is not holding investigators and commanders accountable for all 3304 lapses or for not completing investigations within the deadlines established in the Department's own policies.

The overwhelming majority of OPD's internal investigations are not being completed within the 120-day (150-day for Division Level Investigations) deadline for completion of the investigative process established by General Order M-3. According to our analysis of recent data provided by OPD, approximately 7% of open investigations have already exceeded the 3304 deadline, even before they have reached the administrative review and approval stage. In other words, OPD was not able to complete these investigations within one year of the date it learned of the complaint.

The potential for timely completion of current and future complaint investigations is further challenged by the existence of a backlog of old cases, cases waiting to be assigned, and cases under administrative review or where the officer is awaiting notification. The Department, however, has made recent strides in some of these areas,

including assigning cases more rapidly and arranging for retired officers to assist with investigations. In addition to completing open investigations and clearing out the current backlog, there are hundreds of additional complaints that IAD must resolve through administrative closure and informal complaint resolutions. Some of these complaints require a substantial commitment of resources, despite the fact that they do not require a full investigation.

OPD understands the significance of this problem and shares our concern. As it set out in its recent filing with the Court, OPD is proactively identifying and correcting the remaining impediments to meeting the 3304 deadline. OPD must continue and build on these efforts to ensure that no case misses the 3304 deadline. In addition, in order to attain Settlement Agreement compliance, OPD will have to continue if not increase its efforts to clear the backlog of older investigations and implement an investigative process that will permit it to comply with the investigative timeframes set out in General Order M-3.

Span of Control for Supervisors

Close supervision of officers by well-trained and active sergeants who know their officers' strengths and weaknesses and have the capacity to supervise accordingly is critical to a well-functioning police department. Many provisions of the Settlement Agreement reflect this, requiring, for example, that officers and their supervisors work the same days (Task 19), and that officers be supervised by a "primary sergeant" with a relatively narrow span of control (Task 20). In September, 2004, the IMT reviewed OPD's compliance with the Settlement Agreement's Task 20 requirement that OPD officers be supervised by a "primary sergeant" with a span of control not to exceed eight officers. In determining compliance, the IMT used OPD's definition of "primary sergeant," set out in BFO 03-02, *Supervisory Span of Control*, which had previously been approved by the IMT. The IMT's review found that OPD was not in compliance with this requirement. See, *Combined Fourth and Fifth Quarterly Report*, at p. 37-39.

After being found out of compliance with this Settlement Agreement requirement, OPD stated that its definition of "primary sergeant" was in error and that it should not be held to that definition for compliance purposes. The IMT then invited OPD to offer proposed modifications to the previously approved policy and to its definition of "primary sergeant." The IMT provided detailed guidance, both in writing and in numerous discussions with OPD commanders, regarding professional policing practices related to the proper supervision and the assignment of permanent, long-term, short-term, and acting sergeants.

A year and a half has passed since OPD stated that it would redefine "primary sergeant" and implement a new policy that would ensure that officers receive consistent supervision by appropriately trained sergeants. The IMT has provided comments on numerous draft policies that would replace or modify BFO 03-02 and the accompanying BOI 04-02. In particular, the IMT has provided comments on several versions of OPD's

draft replacement policies, DGO A-19, and an accompanying Special Order, including in October and December of last year and again in late-January of this year. Since our last comments were provided three months ago, OPD had provided no response. The IMT has also refrained from re-auditing this critical task until OPD could implement a supervisory system that it believes comports with the Settlement Agreement. After being provided a draft copy of the IMT's Eighth Status Report, OPD produced new draft policies that offer a promising and practical approach to ensuring appropriate supervision. The IMT has provided OPD feedback on these drafts and encourages the Department to implement the new policies as soon as possible.

The IMT is concerned about OPD's long delay in implementing these policies meant to ensure its officers receive close and consistent supervision. We are particularly concerned because it appears that, during this period of delay, OPD has not corrected the problems the IMT previously noted to ensure that long-term supervisory assignments are filled by qualified supervisors, whether permanently assigned sergeants or properly certified acting sergeants, who are adequately trained to perform critical supervisory functions. While compliant policies are technically in place now, OPD has made clear that it has not been and does not intend to comply with those policies. As previously reported, the IMT supports OPD's decision to revise its policies in light of operational impact. Currently however, OPD's supervision of its officers remains apparently inconsistent with its own policies as well as with the Settlement Agreement.

Handling of Management-Level Liaison Cases

Task 22 is one of the most unique provisions of the Settlement Agreement. It requires OPD to appoint a member of its management staff to act as a liaison (MLL) to the courts, the District Attorney's Office, and the Public Defender's Office. The purpose of this provision is to ensure that cases that are lost or dismissed due to performance problems or potential misconduct by OPD officers are brought to the Department's attention for appropriate assessment.

Task 22 was one of the first substantive Settlement Agreement tasks with which OPD attained actual practice compliance. OPD has maintained a functioning management-level liaison who interacts regularly with the courts, the District Attorney's Office, and the Public Defender's Office to identify cases that may indicate performance problems or potential misconduct. Based upon his own identification of potentially problematic conduct and upon information provided to him from cooperating agencies, the MLL has referred a number of cases for internal investigation. OPD, however, has not adequately tracked these cases. Accordingly, OPD has fallen out of actual practice compliance with the Settlement Agreement.

During the period reviewed (March 2004, through December 2005), OPD was not separately tracking MLL cases in any systematic fashion. It was unable to report accurately on the status of many of the referred cases and a large percentage of cases was completed after the one-year deadline established by Government Code 3304. Of the

seventeen cases with investigative conclusions, five (29%) of them were completed after the one-year deadline. Three of the five cases exceeding the statutory deadline included sustained findings of misconduct. Since these cases were completed after the 3304 deadline, the Department may not impose any disciplinary action.

The investigative files do not provide any explanation for such delays. Despite the source and seriousness of the allegations, witnesses and subjects frequently were not interviewed until months and sometimes nearly a year after OPD learned of the alleged misconduct. As discussed above, investigative delays of this magnitude compromise the Department's ability to conduct adequate investigations because evidence becomes stale or disappears, memories fade, and witnesses become increasingly difficult to locate. Moreover, officers are left in an uncertain state of limbo as long as the case is pending. Depending on the nature of the alleged misconduct and the investigative findings, there may be significant policy, training, or risk management issues that are left unresolved for longer than is prudent or necessary.

During the course of this audit, the IMT discussed with the MLL the necessity of tracking MLL cases. As a result, the MLL recently began including in his monthly memoranda summary information regarding the status of MLL cases, including the case number, subject officers, and any disposition. However, the MLL's initial efforts to include case tracking information in his monthly reports were hindered by outdated and/or inaccurate information in IAD's database. The tracking information contained in the MLL's most recent monthly reports has improved significantly. These lists, however, do not include the dates of the referrals making it more difficult for the MLL or others to evaluate whether the cases are being completed in a timely fashion.

Our audit included several recommendations aimed at helping the Department to ensure that it is tracking these critical cases adequately. In response, the Internal Affairs Division recently improved its management oversight of MLL cases to help ensure closer tracking. We have also noted an improvement in the investigative quality of more recent MLL cases.

As we reported in our Seventh Status Report, the Department's handling of MLL complaints threatens to undermine the collaborative efforts of the MLL and cooperating agencies. Whenever other judicial agencies, be they courts, prosecutors, or defense attorneys, provide the Department with information regarding potential performance problems or misconduct, such information should be handled with the highest levels of diligence. By virtue of their source, these referrals may offer the Department unique insights into OPD officers, policies, and procedures. By responding appropriately to such information, the Department has an opportunity to ensure and increase its credibility with the court and other agencies with whom it must work on a continuing basis.

Data Collection and Management

As evident in this Report, OPD is making encouraging progress on a number of

fronts. However, as the Department's Office of Inspector General concluded in a recent report, "the Department continues to be challenged by tracking and retrieving data, and maintaining documentation in an efficient manner. These weaknesses increase the risk of error... and make it difficult for the Department to conduct audits efficiently." OPD's antiquated data management systems are a frequent source of frustration for OPD officers, commanders, and the general public as well.

Due to resource constraints, critical data is often handled in an ad hoc fashion or simply not processed at all. For example, our audit this period of Vehicle Stops, Field Investigation and Detentions (Task 34), was made considerably more difficult by the fact that many OPD record keeping systems are haphazardly maintained. This required OIG to conduct manual counts and individually scan thousands of documents that should have been capable of quick and easy retrieval. We have observed similar data collection and management problems throughout the Department. For example, OIG recently spent several weeks attempting to locate documentation related to the informal performance reviews required by Task 21, only to find that the Department was unable to produce sufficient data.

The Department's data collection and management challenges involve not only paper records, but also its computerized records and data. For example, while Internal Affairs is working extremely hard to update its database, as discussed elsewhere in this Report, it continues to struggle with incorrect information in its system. Likewise, as noted below in both our Performance Appraisal (Task 44) and Vehicle Stops (Task 34) audits, there are substantial questions regarding the completeness and reliability of the relevant databases.

To date, for nearly every audit we have conducted, the Department has struggled to locate all of the requested documents. This appears to be due, in part, to the continuing lack of centralized recordkeeping systems, administrative staff, and modern technology to assist OPD in collecting and managing data. We recognize that there are genuine resource constraints. However, this is an overarching problem that severely impacts the Department's ability to demonstrate compliance with any number of Settlement Agreement provisions in a timely or adequate fashion. It may also impact the Department's ability to provide the level and type of crime fighting and customer service to which it aspires.

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

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

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 Assessment System (PAS); 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.

As of the last reporting period, all fifty-one Settlement Agreement tasks became due. As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to achieve 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	√	√	
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	√	√*	<i>N/A</i>

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.

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	√	√*	√* (04/06)
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)	No longer in Compliance (05/06)
23	Command Staff Rotation	1/20/2004	√	N/A	√ (11/05)
24	Use of Force Reporting Policy	7/20/2004	√*(c)	√(c)	
25	Use of Force Investigations and Report Responsibility	7/20/2004	√*(c)	√(c)	
26	Use of Force Review Board (UFRB)	7/20/2004	√*	√(c)	
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	√*	√(c)	

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	√	√	√* (04/06)
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	8/25/2003	√	√	
40	Personnel Assessment System (PAS) – Purpose	6/28/2005			
41	Use of Personnel Assessment System (PAS)	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 policy or training compliance. Conditional policy compliance indicates that primary policies incorporating the requirements of the task have been completed, but subsidiary policies are pending completion. Conditional training compliance indicates that OPD has reported that it has trained at least 95% of required personnel in the policy but that either: 1) the IMT has not yet completed verification of the training or, 2) verification did not disclose sufficient documentation of the training and/or understanding by personnel 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 forty-three of the fifty-one tasks that had become due. During this reporting period, OPD attained policy compliance with five additional tasks—Use of Force Reporting Policy (Task 24); Use of Force Investigations and Report Responsibility (Task 25); Use of Force Review Board (UFRB) (Task 26); Use of Force-Investigation of Criminal Misconduct (Task 28); and Firearms Discharge Board of Review (Task 30). Accordingly, OPD has achieved policy compliance with a total of forty-eight of the fifty-one tasks that have become due. OPD's policy compliance with two of the use of force related tasks (Tasks 24 and 25) is conditional, pending completion and review by the IMT of several subsidiary use of force related policies. The Court has issued an Order requiring OPD to complete the majority of these policies on or before August 1, 2006.

OPD has yet to achieve policy compliance for Task 31 (Officer- Involved Shooting Investigation); Task 40 (Personnel Assessment System-Purpose)³; and Task 41 (Use of Personnel Assessment System). The Court has issued specific deadlines for OPD to complete these policies during the next reporting period. The IMT is monitoring these areas closely and will report on OPD's progress in our next status report.

B. Training Compliance⁴

As discussed above, OPD has achieved policy compliance with forty-eight Settlement Agreement tasks. Forty-one of these tasks require training prior to

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 Task 40 was formerly called Personnel Information Management System (PIMS). OPD has renamed the system, the Personnel Assessment System (PAS). Accordingly, all future references to the system required by Tasks 40 and 41 will now refer to the PAS system.

⁴ 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.

implementation. As illustrated in the above chart, OPD has achieved training compliance on thirty-eight of these forty-one tasks.

During the last reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Settlement Agreement requirements. We were impressed with the level of understanding possessed by officers regarding many Settlement Agreement requirements. However, based on our interviews, officers did not 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). To its credit, OPD created “refresher” lesson plans to bolster officers’ understanding in these areas. According to OPD, it has provided the refresher training to 91.2% of relevant personnel.

C. Actual Practice Compliance

During this reporting period, the IMT conducted reviews of OPD’s actual practices in the following six areas: Documentation of Pitchess Responses (Task 13); Performance Reviews (Task 21); OPD/DA Liaison Commander (Task 22); Vehicle Stops, Field Investigations, and Detentions (Task 34); Citizens Signing Police Forms (Task 38); and Performance Appraisals (Task 44). With the exception of Tasks 21 and 22, OPD has made notable progress in all of these areas. As discussed below, OPD is in actual practice compliance with Tasks 13 and 38 and with significant portions of Tasks 34 and 44.

Overall, the IMT has found OPD in compliance with nine Settlement Agreement requirements in actual practice: Documentation of Pitchess Responses (Task 13); 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); Citizens Signing Police Forms (Task 38); Monitor Selection (Task 49); Compliance Unit Liaison Policy (Task 50); and Compliance Audits and Integrity Tests (Task 51). However, as discussed below, OPD has fallen out of compliance with Task 22. Thus, OPD is currently in actual practice compliance with eight Settlement Agreement requirements. This is one more task than during the last reporting period.

In addition to assessing OPD’s actual practices regarding these specific tasks, the IMT also completed a review of OPD’s officer involved shooting (OIS) investigations from July 2003 through November 2005. We conducted this review pursuant to Section XIII.H of the Settlement Agreement which requires us to assess the quality and timeliness of the investigation of use of force incidents and to review and evaluate the actions of the force review boards. We reviewed every OIS (directed at a person) occurring from July 2003 through November 15, 2005, a total of sixteen shootings. A summary of our findings is discussed below under Officer-Involved Shooting Investigation (Task 31).

V. DETAILED COMPLIANCE REPORT⁵

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.

During the last reporting period, OPD completed several 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). During this reporting period, OPD set and met an aggressive training schedule for its members and employees to ensure that they were trained on the requirements and expectations set forth in the new policies. As reported below, OPD has attained training compliance with the tasks in this section.

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.)

⁵ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

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

b. Status of Compliance and Assessment

The revised compliance deadline for this task was in August 2004. During the last reporting period, OPD completed the policies incorporating 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). During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, the Internal Affairs Policy and Procedure Manual and the Departmental Discipline

Policy. 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.

IAD commanders continue to meet with Chief Tucker and the City Administrator on a weekly basis regarding the status of investigations. However, as discussed above as an area of concern, internal investigations continue to exceed reasonable timeframes and, in some instances, the statutory deadline for imposing discipline.

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the Internal Affairs Policy and Procedure Manual, which incorporates Task 3. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task. OPD has continued to plan and conduct integrity tests and is considering establishing an Integrity Testing Unit.

During the upcoming reporting periods, the IMT will determine 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 eligible complaints. 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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: 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*. 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. This task was modified by stipulation in December, 2005, to address the informal resolution of service complaints and Class II violations that do not indicate a pattern of misconduct.

During the upcoming reporting periods, the IMT will determine 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 six case dispositions (unfounded; sustained; exonerated; not sustained; filed and administrative closure).
- 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 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 policy.

The remainder of this task is incorporated into 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*. During the last reporting period, the IMT determined these policies comply with the Settlement Agreement. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task. This task was modified in December, 2005, to add the disposition of “administrative closure” and modify the definition of “filed.”

As reported previously, although OPD has closed its City jail, it has published Special Order 8270 to ensure that OPD complaints made at the Alameda County Jail are handled properly.

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

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the policies that comply with this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. 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. This task was modified by stipulation in December, 2005, to permit supervisors discovering Class II violations during the normal course of supervision (i.e. not as the result of a citizen complaint) to address the misconduct through non-disciplinary corrective action, provided there is no pattern of misconduct.

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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

With the publication last reporting period of OPD's IAD procedural manual for conducting complaint investigations, including the provisions articulated in Tasks 1–9 and 11–16, and the IMT's confirmation this reporting period that OPD has trained 95% or more of relevant personnel on this task, this task has been completed.

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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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. In December, 2005, OPD published General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and IAD P&P 05-03, which incorporate the requirements of Task 13. The IMT has verified that OPD has trained at least 95% of required staff on General Order M-

3. We have also confirmed that OPD's Pitchess Officer is trained on and understands the requirements of General Order M-3 and IAD P&P 05-03.

During this reporting period, the IMT conducted an actual practice audit of this task. The IMT found that OPD has implemented additional checks to facilitate complete and accurate responses to Pitchess discovery motions and is thus in actual practice compliance with this task.

The Oakland Police Department/City of Oakland (collectively, "City") receive, on average, twelve motions per month from criminal defense attorneys seeking pretrial discovery related to complaints against officers involved in their clients' arrests. The overwhelming majority of these "Pitchess Motions" are filed by attorneys with the Alameda County Public Defender's Office. Other motions are filed by private defense attorneys. The process requires that the City identify investigations of complaints related to the officers listed in the Pitchess Motion and file a response to the Pitchess Motion. This response lists the files that were reviewed and specifies those that will be produced to the court so that the court can review and determine whether they contain information that should be provided to the requesting attorney.

One OPD officer ("Pitchess Officer"), in conjunction with one part-time attorney ("Pitchess Attorney") from Oakland's Office of the City Attorney, are responsible for ensuring the City's compliance with the Pitchess Motion process. Currently, the process begins with the OPD Pitchess Officer and Pitchess Attorney reaching agreement via stipulation with the defense attorney regarding the categories/types of complaints responsive/relevant to the motion (e.g. allegations of false arrest; untruthfulness). OPD's Pitchess Officer then identifies all internal investigations regarding the officer. The Pitchess Officer reviews each of these cases to determine which ones should be produced to the court for review. The Pitchess Officer's determination of what investigations should be produced depends upon his determination that the investigation includes allegations relevant/responsive to the Pitchess Motion, as well as whether the complaint falls within the criteria the City has set for producing investigations to the court, based on its understanding of legal requirements of what is discoverable under state law.⁶

The Pitchess Officer reports that he personally reviews each case involving each officer listed in a Pitchess Motion to determine whether the allegations fall under the Pitchess Motion categories. According to the Pitchess Officer and Pitchess Attorney, individualized review is necessary because the allegations as listed in the IAD database may not always fully or accurately capture the actual allegations made by the complainant.

Once the Pitchess Officer's review is complete, he and the Pitchess Attorney prepare and file the City's Pitchess response. On specified days each week, the Pitchess

⁶ Our review did not specifically review OPD's compliance with similar motions filed in federal criminal cases, which are not technically Pitchess Motions. However, while the legal requirements regarding what must be produced are different, Oakland's compliance process appears otherwise the same.

Officer and Attorney appear in chambers with the original internal investigation case files of all cases they have determined are responsive/relevant to the Pitchess Motion. After reviewing the files, the judge determines what information will be provided to defense attorneys. A court reporter is usually present to memorialize the judge's decisions. Pursuant to this process, defense attorneys are not apprised of what internal investigations are identified for each officer; which are deemed relevant by the City; which are identified in the City's response but not produced to the court; which are identified but neither listed nor produced; or which are reviewed by the judge but not ordered to be produced.

As noted above, our review indicated that the City has implemented additional checks on the Pitchess process that have made it better able than in the past to identify and produce in court files responsive to Pitchess Motions. The City's improved responsiveness appears due in part to the greater consistency provided by a dedicated Pitchess Officer and Pitchess Attorney. This improves communication and relationships with defense attorneys and judges. It appears also that better tracking of IAD cases generally has resulted in more complete and accurate responses. The Pitchess Officer reports that his ability to locate internal affairs files has improved and that IAD now has more reliable processes in place for tracking the current location of original IAD case files. In addition, the Pitchess Officer has instituted a system of logging, tracking, and calendaring Pitchess Motions and responses. The Pitchess Attorney reports that the court has noted an improvement in the City's response to Pitchess Motions.

Our review of Pitchess Motions and responses from August 2005 through January 2006, indicates that OPD appears to be locating the vast majority of cases responsive to Pitchess Motions. In the 57 Pitchess responses from the period reviewed, OPD identified to the court 867 internal investigations of 84 officers.⁷ Of these 867 identified internal investigations, 609 were produced to the court for review to determine whether they contained information that should be produced to defense attorneys. An additional 258 cases were identified, but not produced in court, as cases involving the named officers, but not containing allegations relevant to the Pitchess Motion.

Using IAD's database, the IMT identified an additional 155 cases during this time period that appeared to be neither produced nor otherwise identified in the City's Pitchess responses. It appears that at least 68 of these cases were not identified pursuant to the City's protocol of not identifying to the court internal investigations that are generally not discoverable under current law (as interpreted by the City). These cases include those with an incident date more than five years before the date of the Pitchess Motion defendant's arrest (20 cases) and internal investigations with an incident date occurring

⁷ These 867 cases do not reflect 867 discreet internal investigations but rather include cases that were produced more than once during this time period. For example, if case 07-123 was produced in response to a Pitchess Motion filed regarding Officer A in February, produced again in response to a Pitchess Motion filed regarding Officer B in March, and produced yet again in response to a Pitchess Motion filed regarding Officer A in June, it is counted three times.

after the date of the Pitchess Motion defendant's arrest (48 cases).⁸ In addition to these 68 cases, we identified 86 cases that were not identified in the City's Pitchess responses, even though they appear to fit the City's criteria for identification.⁹

To its credit, OPD is currently reviewing each of these 86 cases to determine whether any of them should have been identified and/or produced but were not and, if so, why they were not. As a result of the IMT's audit, OPD is also revising the language used in its Pitchess responses to ensure that the responses accurately describe the responses' contents as well as all cases that OPD determines need not be produced to the court for review (e.g., incidents occurring more than five years previously and incidents occurring after the date of the Pitchess incident). OPD anticipates completing its review by mid- June. We will update the Court and the parties on the Department's findings and any remedial action that may be necessary at the next status conference and in our next status report.

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. During the last reporting period, OPD completed General Order M-3, *Complaints Against Departmental Personnel or Procedures*, which incorporates the requirements of this task. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the seventh reporting period, the IMT conducted an audit of OPD's

⁸ The actual number of internal investigations not identified because their incident dates preceded the Pitchess Motion incident date by more than five years is certainly higher than the twenty we identified using the IAD database. This is because the IAD database only captures cases going back to 2000.

⁹ In one additional case, due to missing dates in the database, we were unable to determine whether the case should have been identified in the Pitchess response.

compliance with Task 14 in actual practice and found that OPD is in actual practice compliance with this task. A discussion of our audit findings is included in our Seventh Status Report.

During the upcoming reporting periods, the IMT 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, 2005, OPD shall develop a policy to ensure that, except upon written authorization from the Chief of Police, the operational chain of command, from lieutenant up, shall be responsible for reviewing recommended findings and the Discipline Officer shall be responsible for making disciplinary recommendations in sustained internal investigations.

b. Status of Compliance and Assessment

This task was modified by stipulation in June, 2005, to read as noted above. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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);¹⁰ 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

¹⁰ 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.

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) 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 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 policy.

During the last reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 18's requirements. The IMT determined that most officers did not appear to understand OPD's requirement to document witnesses to the arrest. The IMT urged OPD to provide refresher training in these areas to better enable the Department to achieve compliance in actual practice with this Settlement Agreement task. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reports that it has provided the refresher training to 91.2% of relevant personnel.

During the sixth 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.

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. OPD reports that commanders are now reviewing and auditing the arrest reports submitted by subordinates to ensure that required content is included.

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 Reports 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 8287 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*.

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 General Order A-3 and BFO Policy 03-02. OPD has not yet attained training compliance with BOI Policy 04-02.

As discussed above as an area of concern, the IMT is concerned that OPD has not yet completed draft General Order A-19, *Supervisory Span of Control*, meant to replace compliant policies BFO 03-02 and BOI 04-02. We are further concerned that OPD may not be providing supervision in accordance 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*. 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 General Order A-3 and BFO Policy 03-02. OPD has not yet attained training compliance with BOI Policy 04-02.

The IMT conducted an actual practices review of Task 20 in September 2004. As of that review, OPD had not yet reached actual practice compliance for Task 20.

In addition, as discussed above as an area of concern, the IMT is concerned that OPD has not yet completed draft General Order A-19, *Supervisory Span of Control*, meant to replace compliant policies BFO 03-02 and BOI 04-02. We are further concerned that OPD may not be providing supervision in accordance 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.

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. In a September 30, 2005, audit, OIG found that 41% of supervisory and management staff still were unable to produce documentation that semimonthly and biannual performance review meetings were occurring between management/supervisors and their subordinates as required.

According to OIG's audit report, the required performance review meetings between managers/supervisors and subordinates were not occurring and/or were not properly documented. 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. As a result of OIG's audit, OPD developed a simple, but paper-driven method for supervisory and management staff to use to document required performance review meetings with subordinates. On November 18, 2005, OPD issued Special Order 8329, *Supervisory Semi-Monthly and Management Semi-Annual Meetings*. The Special Order revised General Order B-6 to provide additional guidance to supervisors and managers regarding the conduct and documentation of informal performance reviews. In addition to directing personnel to conduct required meetings and document them on a new form, the Special Order instructed personnel to forward the forms to the administrative units of their bureaus unless otherwise directed by their bureau commander. OPD recently re-drafted General Order B-6 to provide additional guidance to supervisors and managers. The IMT reviewed the draft and determines that it complies with the Settlement Agreement. OPD anticipates publishing the policy on May 26, 2006.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. The IMT selected a random sample of 128 members/employees (70 civilian employees and 81 sworn members) to determine whether supervisors were meeting with subordinates for informal performance reviews as required.¹¹ We requested documentation of the required meetings for a three month period following implementation of the new reporting forms.¹² Despite several weeks of diligent efforts by OIG staff to locate the documentation necessary to demonstrate compliance with this task, OPD was unable to locate sufficient documentation of required meetings. Based on the information produced, OPD was only able to document that between 58% to 65% of meetings occurred.¹³ While more meetings may have occurred, OPD was unable to provide sufficient documentation. Accordingly, OPD remains out of compliance with

¹¹ The original sample contained 151 members/employees. However, we excluded from the sample employees who were ineligible for the meetings due to their assignments or due to a long-term leave status during the review period. As a result, for two months, 23 individuals were excluded and, for one month, 24 individuals were excluded.

¹² We requested meeting documentation for December 2005, January 2006, and February 2006.

¹³ For thirteen individuals in the sample, OPD was unable to produce documentation for *any* of the six meetings that should have occurred with each employee during the review period.

Task 21.¹⁴

As we have discussed with OPD staff, we recommend that OPD centralize and computerize the tracking of the required meetings. Centralized, computerized meeting tracking will help to alleviate the substantial difficulty OPD has had in tracking thousands of small, individual paper forms. For those supervisors who already have frequent interaction with their subordinates, this task merely requires that twice per month, one of these interactions be documented. For those supervisors who do not interact with their subordinates on a regular basis, this task mandates that at least twice per month, they meet with their employees, something that should already be occurring. Most of the meeting documentation produced consisted of the Performance Review form listing only the identification of the meeting participants and the date of the meeting. However, a few supervisors included on the form a brief discussion of the meeting content and some produced copies of logs used to track the meetings. Some of the logs included the employee's name, the date of the meeting, and the topics discussed. Topics ranged from the mundane (completion of time slips) to very substantive (reviewing specific reports). In lieu of or as part of a centralized tracking system, we recommend that OPD consider having all of its supervisors use similar logs. If properly implemented and used, such logs can provide an efficient way of tracking the meetings while also helping to document that the meetings are substantive and not merely a pro forma exercise. As a result of the audit and OIG's attempts to collect the necessary documentation, OPD has begun beta-testing a centralized log to use for tracking the required meetings.

OPD's poor documentation in this area will impede its ability to attain compliance with other provisions of Task 21. In addition to informal performance review meetings, Task 21 requires OPD commanders and managers to meet promptly with affected subordinates regarding complaints or commendations received. It also requires them to meet with subordinates and their supervisors if a member or employee exhibits a performance problem. Currently, the Department does not have any systematic way of documenting that these meetings are occurring as required. OPD has acknowledged that it currently lacks adequate internal controls for documenting compliance with Task 21.

The task's remaining provisions require supervisors and commanders/managers to identify patterns of improper behavior by subordinates and for OPD to hold them accountable if they fail to do so. As discussed below, in our audit of Task 44, we found that OPD's supervisory personnel are doing a much improved job of reviewing their subordinates' conduct for patterns of potential misconduct. Based on our review of 144 appraisals completed since September 30, 2005, OPD is in compliance with this requirement. Over 95% of the performance appraisals reviewed included documentation by the reviewer that they had reviewed their subordinates' uses of force, drug arrests, and arrests for Penal Code Section 69, 148, and/or 243 (b)(c). However, as discussed below

¹⁴ We did not request documentation of required semi-annual meetings because the documentation forms have not been in place for a year and they are the method that OPD is currently using to document compliance with this requirement.

in Task 44, OPD is not yet in compliance with the requirement that it hold supervisory personnel accountable if they do not identify patterns of improper behavior by their subordinates.

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.

During this reporting period, the IMT conducted an audit of OPD's actual practice compliance with this task. As previously reported, Task 22 was one of the first substantive Settlement Agreement tasks with which OPD attained actual practice compliance. This determination was based on OPD's establishment of the MLL position and the MLL's initial efforts to identify relevant cases and, when appropriate, refer cases for internal investigation. OPD has maintained a functioning management-level liaison who interacts regularly with the courts, the District Attorney's Office, and the Public Defender's Office to identify cases that may indicate performance problems or potential misconduct, including cases that are lost or dropped due to bad reports, defective search warrants, granted motions to suppress, or contradictory evidence or testimony. Based upon his own identification of potentially problematic conduct and upon information provided to him from cooperating agencies, the MLL has referred a number of cases for internal investigation. OPD, however, has not adequately tracked these cases. Accordingly, as discussed above as an area of concern, OPD's actual practices are no

longer in compliance with the Settlement Agreement.

In April 2003, OPD appointed a commander to act as the Management-Level Liaison. The MLL periodically attends inter-agency judicial council meetings and regularly communicates with the offices of the District Attorney and Public Defender in an effort to identify relevant cases. Additionally, in early 2004, the MLL began obtaining and reviewing daily lists from the District Attorney of in-custody cases that the District Attorney has decided not to prosecute. The MLL pays particular attention to cases that are not charged due to questions regarding one or more of the following areas: stop/detection; probable cause for the arrest; search or seizure of contraband or corpus; knock and notice procedures; search warrant execution; and consent. Whenever the MLL identifies one of these cases, he contacts the District Attorney to learn more about the case.¹⁵

General Order A-18 requires the MLL to prepare monthly memoranda detailing his activities and whether any relevant cases have been identified. After some transitional delays apparently due to the assignment of a new MLL following the retirement of the previous one, the MLL has continued to prepare these memoranda, communicate with the courts, and obtain information from both the District Attorney and the Public Defender.

Three different commanders have served as the MLL. Each one has brought a unique perspective and varying levels of energy and expertise to the position. The Department's first MLL carried out the Department's initial outreach efforts for this task; initiated the review of the District Attorney case information; and also included in his memoranda insightful policy and training recommendations based on information gleaned from his own research and the referrals made to him. Building on these efforts, the second MLL initiated quarterly reporting of the types of cases that come under review; the source of referrals; the number of cases referred for internal investigation; developing trends; and MLL recommendations. These reports were a promising means of identifying trends and starting to track the Department's handling of MLL referrals. The current MLL has continued the monthly reporting required by General Order A-18; has maintained open lines of communication with cooperating agencies and has continued the practice of reviewing charging decisions and referring cases for internal investigation as appropriate. While the quarterly reporting has not been continued, as discussed below, the most recent MLL reports include summary information regarding the status of most of the internal investigations of MLL-referred cases.

As discussed above, the MLL is continuing to identify cases that may indicate performance problems or other indicia of misconduct. However, OPD has done an

¹⁵ In our Third Quarterly Report, we applauded the MLL's initiative in obtaining and reviewing the in-custody charging decisions as one way of identifying cases that may involve performance problems or misconduct. We also recommended that OPD consider the feasibility of conducting a similar analysis of the District Attorney's charging decisions for out-of-custody cases. To our knowledge, this assessment was never conducted.

inadequate job of tracking these cases to ensure that they are resolved in a timely and appropriate fashion. For purposes of this review, we analyzed the Department's tracking of cases referred by the MLL for internal investigation from March 2004, through December 2005. During this time period, the MLL referred a total of nineteen cases for internal investigation. To date, eighteen of the cases have been completed and one is still pending. Seventeen of the eighteen cases were completed with an investigative conclusion. One of the cases was filed due to the inability to locate a critical witness.

During the period reviewed (March 2004, through December 2005), OPD was not separately tracking MLL cases in any systematic fashion. It was unable to report accurately on the status of many of the referred cases and a large percentage of cases were completed after the one-year deadline established by Government Code 3304. Of the seventeen cases with investigative conclusions, five (29%) of them were completed after the one-year deadline. Three of the five cases exceeding the statutory deadline included sustained findings of misconduct. Since these cases were completed after the 3304 deadline, the Department may not impose any disciplinary action.

The investigative files do not provide any explanation for such delays. Despite the source and seriousness of the allegations, witnesses and subjects frequently were not interviewed until months and sometimes nearly a year after OPD learned of the alleged misconduct. Investigative delays of this magnitude compromise the Department's ability to conduct adequate investigations because evidence becomes stale or disappears, memories fade, and witnesses become increasingly difficult to locate. Moreover, officers are left in an uncertain state of limbo as long as the case is pending. Depending on the nature of the alleged misconduct and the investigative findings, there may be significant policy, training, or risk management issues that are left unresolved for longer than is prudent or necessary.

During the course of this audit, the IMT discussed with the MLL the necessity of tracking MLL cases. As a result, the MLL recently began including in his monthly memoranda summary information regarding the status of MLL cases, including the case number, subject officers, and any disposition. However, the MLL's initial efforts to include case tracking information in his monthly reports were hindered by outdated and/or inaccurate information in IAD's database. The tracking information contained in the MLL's most recent monthly reports has improved significantly. These lists, however, do not include the dates of the referrals making it more difficult for the MLL or others to evaluate whether the cases are being completed in a timely fashion.

As we reported in our Seventh Status Report, the Department's handling of MLL complaints threatens to undermine the collaborative efforts of the MLL and cooperating agencies. Whenever other judicial agencies, be they courts, prosecutors, or defense attorneys, provide the Department with information regarding potential performance problems or misconduct, such information should be handled with the highest levels of diligence. By virtue of their source, these referrals may offer the Department unique insights into OPD officers, policies, and procedures. At the same time, by responding

appropriately to such information, the Department has an opportunity to ensure and increase its credibility with the court and other agencies with whom it must work on a continuing basis.

Our audit included several recommendations aimed at helping the Department to ensure that it is tracking these critical cases adequately. In response, the Internal Affairs Division recently improved its management oversight of MLL cases to help ensure closer tracking. We have also noted an improvement in the investigative quality of more recent MLL cases.

During the upcoming reporting periods, the IMT will monitor whether OPD's actual practices 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, well in advance of this deadline, OPD published a Chief of Police Memorandum on command staff rotation policy that incorporated this Settlement Agreement requirement. On November 15, 2005, Chief Tucker reissued the Memorandum under his signature.

The IMT conducted an audit of Task 23 during our last 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.

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 had already achieved compliance with Task 32, which requires OPD to explore the use of camcorders in patrol vehicles, by that date. OPD had also achieved policy and training compliance with Task 27, which requires changes in OPD's OC spray control mechanisms. With the completion last reporting period 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.

During this reporting period, the Court ordered that OPD complete its primary use of force policies: General Order K-3, *Use of Force*; General Order K-4, *Reporting and Investigating the Use of Force*; and General Order K-4.1, *Force Review Boards*; by February 17, 2006, and complete training on those policies by May 18, 2006. OPD committed substantial time and energy to this project. It completed both the policies and training on time. As of the writing of this report, OPD reports that it has trained over 96% of relevant personnel on these primary policies. The IMT is in the course of verifying training compliance. The use of force policies developed by OPD embody contemporary, professional law enforcement standards designed to promote effective law enforcement while protecting civilians and police officers alike.

With the completion of these policies, OPD has achieved policy compliance on all but one of the use of force tasks. Additionally, OPD's policy compliance with two of the use of force tasks is conditional pending completion of critical subsidiary use of force policies associated with the primary policies discussed above. The Court has ordered completion of the majority of these subsidiary policies by August 1, 2006. Updating and/or drafting these policies is part of a significant professional undertaking by OPD. In addition to updating or drafting the policies required by the Settlement Agreement, OPD is also reviewing and updating all of its other use of force policies to ensure that they are consistent with and reinforce one another, and that they represent contemporary policing practices. The IMT commends the Department for undertaking this important endeavor.

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 deadline for this task occurred in July 2004. During this reporting period, OPD completed its primary use of force policies, and reports that it has trained over 96% of relevant personnel on these policies. The IMT is in the course of verifying training compliance. OPD committed substantial time and energy to this project and was able to complete both the policies and training by the court-ordered deadlines. General Order K-3, *Use of Force*, and General Order K-4, *Reporting and Investigating the Use of Force*, incorporate the Settlement Agreement's requirements for this task. OPD's policy compliance for Task 24 is conditional pending completion of critical subsidiary use of force policies associated with the primary use of force policies. The Court has ordered completion of the majority of the subsidiary policies by August 1, 2006.

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

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. During this reporting period, OPD completed its primary use of force policies, and reports that it has trained over 96% of relevant personnel on these policies. The IMT is in the course of verifying training compliance. OPD committed substantial time and energy to this project and was able to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force* and General Order K-4.1, *Force Review Boards* incorporate the Settlement Agreement's requirements for this task. OPD had previously published a compliant policy, Special Order 8066, *Use of Force Reports-Witness Identification*, relating to one discrete component of this task. OPD has incorporated the provisions of this Special Order into the new use of force policies.

OPD's policy compliance for Task 25 is conditional pending completion of critical subsidiary use of force policies associated with the primary use of force policies. The Court has ordered completion of the majority of the subsidiary policies by August 1, 2006.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During this reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. OPD reports that it has trained over 96% of relevant personnel on this policy. The IMT is in the

course of verifying training compliance. OPD committed substantial time and energy to this project and was able to complete both the policy and training by the court-ordered deadlines.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadlines for this task occurred 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 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 the last reporting period 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 changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During the last reporting period, the IMT conducted an audit of OPD's compliance with Task 27 in actual practice. The IMT found that OPD was in compliance with the requirement that it maintain a log of all OC canisters checked out by OPD personnel. The IMT also found OPD in compliance with the requirement that it maintain the log in an electronic format. The IMT found that OPD is not in compliance with the requirement to regularly prepare and distribute accurate reports regarding OC control and tracking. A full description of this audit and our findings is contained in our Seventh

Status Report. During this reporting period, OIG conducted an audit of Task 27 and reported that OPD has implemented several improvements to help ensure that the OC reports the Department prepares are accurate.

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 Active Law Enforcement, or a Member or Employee of the Department*, focusing on the handling of criminal misconduct investigations.

The IMT has determined that General Order M-4.1 adequately incorporates this Settlement Agreement Requirement. OPD published this policy on April 21, 2006. Training has not yet been completed.

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in July 2004. During the last reporting period, OPD completed the policies incorporating this Settlement Agreement task: General Order M-3, *Complaints Against Departmental Personnel or Procedures*; and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. During this reporting period OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task.

During the upcoming reporting periods, the IMT will determine 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. During this reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. OPD reports

that it has trained over 96% of relevant personnel on this policy. The IMT is in the course of verifying training compliance. OPD committed substantial time and energy to this project and was able to complete both the policy and training by the court-ordered deadlines.

During this reporting period, the IMT continued to attend OPD's Firearms Discharge Boards of Review. OPD now refers to these Boards as Executive Force Review Boards. Executive Force Review Boards are convened to evaluate officer-involved shootings, in-custody deaths, and other serious incidents.

Even before the policy was published, the Boards began using the standards and guidelines set forth in General Order K-4.1, *Force Review Boards*, to shape their deliberations. This approach has resulted in more focused and complete incident assessments. Review Board members continued to be engaged and Board deliberations were enhanced by the participation of the Department's General Counsel and by Departmental subject matter experts, including individuals responsible for developing OPD's new use of force policies.

The Boards are beginning to convene in a much more timely fashion than in the past, helping to ensure that significant events receive earlier assessment. We also have observed notable improvement in the Board's chronicling of its findings. This includes setting up a framework to track follow-through on training and other recommendations that emerge from Board review. The Board, however, continues to struggle to provide the Chief with a report of its findings within a reasonable time period.

Increasingly, Board members are able to base their deliberations on significantly better investigative packets and presentations than in the past. This is due to the substantial efforts being made by both OPD's Homicide and Internal Affairs investigators to conduct more thorough investigations of officer-involved shootings and other serious incidents. In contrast to OPD's past practice, Internal Affairs now conducts a parallel administrative investigation of officer-involved shootings and other critical incidents.

During the upcoming reporting periods, the IMT will continue to attend Executive Force Review Boards and will determine whether OPD's actual practices comply with this Settlement Agreement provision.

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. During this reporting period, OPD completed its primary use of force policies, and reports that it has trained over 96% of relevant personnel on these policies. The IMT is in the course of verifying training compliance. OPD committed substantial time and energy to this project and was able to complete both the policies and training by the court-ordered deadlines. General Order K-4, *Reporting and Investigating the Use of Force*, incorporates some of the Settlement Agreement's requirements for this task. OPD intends to address the remaining provisions in Internal Affairs Policy & Procedure 05-04, *Procedures for Force and Death Investigations*; Homicide Policy & Procedure 01, *Lethal Force/In-Custody Death Investigations*; and Training Bulletin V-O, *Officer Involved Shootings*; and *Lethal Force Investigations Training Bulletin*. The Court has ordered completion of these policies by August 1, 2006. OPD has produced drafts of the Internal Affairs and Homicide Policies, and the IMT has provided OPD with feedback regarding the drafts. OPD has also produced a draft of the *Lethal Force* training bulletin which is currently under review by the IMT.

During this review period, the IMT completed a review of OPD's officer involved shooting (OIS) investigations. We conducted this review pursuant to Section XIII.H of the Settlement Agreement which requires us to assess the quality and timeliness of the investigation of use of force incidents and to review and evaluate the actions of the force review boards. We reviewed every OIS (directed at a person) occurring from July 2003 through November 15, 2005, a total of sixteen shootings. We provided OPD with an 85-page report detailing our findings, including an analysis of each shooting, along with global observations and recommendations

The sixteen shootings involved twenty-four different officers. One officer was involved in two of the sixteen shootings and another was involved in three of the shootings. Eleven of the sixteen shootings resulted in an individual being struck; five of the shootings resulted in fatalities.

OISs are among the most significant events that occur in any law enforcement agency. In most jurisdictions, including Oakland, the police department is afforded the unique privilege of investigating its own members' actions. To maintain the public trust and this special privilege, departments must conduct complete, timely, and unbiased investigations into the criminal and administrative aspects of each incident. While criminal investigations focus on the narrow question of whether the officer's conduct violated any criminal laws, administrative investigations are much broader. They are intended to assess compliance with departmental policies, procedures, training and tactics, and to identify any other risk management issues that may be present.

Historically, OPD's Homicide Division conducted a criminal investigation of each OIS, but the Department did not conduct any administrative investigation of its officer-involved shootings. OPD had a Force Review Board that reviewed shootings. However, as discussed in previous Reports, the Board met infrequently and reviews were not timely or sufficiently probing. In part, the Board's deliberations were constrained by the narrow nature of the investigations that were conducted. Board members were expected to assess policy, training, and tactics, yet the investigations were not conducted in a way to compile the facts necessary to make a well-informed assessment.

For example, the interview checklist used by investigators included the following areas: the officer's tactics and whether they were consistent with Department and community standards; prior contacts with the subject or witnesses; whether the stop or contact was legal; whether the shooting was proportional with the threat; whether the drawing of the weapon was necessary; what the backdrop to the shooting was; and whether the officer had considered other less injurious options. All of these are important areas that should be addressed in every officer-involved shooting. However, these issues routinely went ignored during the interviews we reviewed. Additionally, in all sixteen incidents, the involved officers were only interviewed one time by investigators. In spite of new developments and additional information, few witnesses were ever re-interviewed for any reason. A prudent investigator, especially in situations where a death or serious injury has occurred, should re-interview subjects, witnesses, and suspects as often as necessary to confirm salient points and firm up small, but important details.

The investigators in all of the cases we reviewed generally demonstrated consistency in asking the officers about job histories; current physical condition (including questions about the amount of time between their last shift and the shooting event, the last time and the amount of sleep the officer had, and any alcohol consumed in the previous 24 hours or medications taken); and their training (including the last time the officer qualified with the weapon used). However, it did not appear that the investigators

attempted to verify the veracity of these or other critical statements made by officers during interviews.

Many officers interviewed stated and/or their training records indicated that their last firearms qualification was expired based on OPD policy. In one case, an officer admitted using an unauthorized weapon. In another, an off-duty weapon was used with no verification that it was authorized or whether the officer was qualified to carry it. These serious liability and safety issues, however, were not addressed as part of the investigation or any subsequent Board review.

OPD policy requires that officers who are involved in an OIS be placed on administrative leave for up to three days and attend counseling by a designated provider. In the majority of the files reviewed, however, there was no documentation that the officers attended the required counseling. Nor was there any mention of the officer being cleared for duty prior to (or after) returning to work.

Two of the shootings reviewed involved individuals with mental illnesses. Based on our review, we have recommended to OPD that it significantly improve its training for officers regarding how to handle, approach, and/or seek alternative assistance when dealing with individuals with mental illnesses.

Officer-involved shootings that result in a death or serious injury have the potential for substantial liability and often garner media attention. Nonetheless, many of the OIS files reviewed were generally disorganized and routinely lacked critical information. Documents were haphazardly spread throughout the investigative files, and there was no consistent order to them. More recent OIS files were much improved in both organization and content. However, these files often were incomplete as well.

The investigative files reviewed showed significant delays by the District Attorney's Office in providing the Department with a formal decision regarding prosecution. A number of files had no such documentation. Such delays, much less the complete lack of documentation regarding any decision, subject officers to unnecessary stress and uncertainty and raise a host of other avoidable problems. The IMT offered to assist the Department in working with the District Attorney to resolve this issue. However, the Department cancelled the meeting set up by the IMT several months ago and has yet to reschedule it.

In December 2005, during the course of our review, we shared with OPD a number of our observations and recommendations regarding the Department's handling of officer-involved shootings. Our recommendations were based on our review of the files provided and on the IMT's on-scene observation of several investigative scenes, subject and witness interviews, and Executive Force Review Board deliberations. The Department was extremely receptive to our recommendations and has implemented or is in the process of implementing a number of these recommendations; most notably, that the Internal Affairs Division is now rolling out on all shootings and starting to conduct

administrative investigations. Their initial involvement already has helped to identify and address a number of important issues. Additionally, OPD is now conducting video-taped walk-throughs of shootings and is providing the Review Board with a much more comprehensive set of materials upon which to base its decisions. Likewise, as discussed above, we have observed a number of improvements in the Executive Force Review Board, including in the timeliness of Board Review and in the content of Board deliberations. The Department is also in the process of updating its policy for responding to calls involving individuals with mental illnesses. The Court has ordered that this policy be completed by October 2006.

During the upcoming reporting periods, the IMT will determine whether the required policies have been completed; training of relevant personnel provided; and whether OPD's actual practices comply with this Settlement Agreement provision. We will also continue to assess the timeliness and quality of the Department's officer-involved shooting investigations.

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 is pursuing efforts to equip 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 (RFP) for an In-Car Video (ICV) Management System. The RFP process concluded in February 2006, and the Department identified a vendor to install cameras into approximately 80 police vehicles. OPD reports that it will soon seek authorization from the Oakland Public Safety Committee to enter into contract negotiations with the selected vendor.

We continue to commend OPD and the City for their 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 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 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 the last 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 did not 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 did not appear to understand the difference between confidential and anonymous reporting. Accordingly, OPD's training compliance for this task remained in a conditional status. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. It also drafted a training bulletin designed to give officers concrete examples of their reporting responsibilities. OPD has not yet issued the training bulletin, but reports that it has provided the refresher training to 91.2% of relevant personnel.

During the last 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 were not reporting misconduct and that OPD only rarely assessed whether misconduct was properly reported. In addition, we found that, with rare exceptions, OPD did not hold members/employees accountable for failing to report misconduct even where the internal investigation clearly established that the member/employee encountered apparent misconduct and failed to report it.

Our audit made 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. OPD has begun moving forward on many of these recommendations and others they have developed, including retraining officers about their reporting obligations and the consequences for failing to meet them.

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. OPD reported during the sixth reporting period that it had achieved actual practice compliance with this task, but subsequently reported that it could not verify officers' compliance with Task 34.

During the seventh reporting period, the IMT interviewed officers on all three patrol shifts to assess their understanding of Task 34's requirements. The IMT found that officers did not 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 remained conditional. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reports that it has provided the refresher training to 91.2% of relevant personnel.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. The IMT found that, although OPD has made tremendous progress in this area, it is not in actual practice compliance with the requirement that officers complete a stop data form for at least 95% of field stops, field investigations, and detentions, as required by the Settlement Agreement (Task 34.1).

To the credit of OPD leadership and the efforts of its line officers, and in stark contrast to our previous review, we found that there were substantially more stop data forms (SDFs) than Field Contact Cards and citations, indicating a relatively high rate of compliance. For the month of November 2005 there were 1091 Field Contact Cards and 2253 citations, for a combined total of 3344, while there were 4134 stop data forms.¹⁶ In contrast, during our last review of this task, we found that OPD wrote 3497 citations during the review period, but completed stop data forms for only approximately 1305 of these citations. The higher rate of SDF completion for citations observed during this review reflects significant progress towards compliance with Task 34.1.

After determining that OPD met the threshold compliance level, making actual practice compliance a possibility, we attempted to determine the percentage of stops for which the required stop data form was completed during the selected review period of November 2005. We also attempted to assess whether there were otherwise undocumented stops that should have been documented with a SDF. The purpose of this aspect of our review was to determine whether officers filled out stop data forms even where the officer may not have completed any other documentation of the stop, whether

¹⁶ In addition, there were 897 CARs for November 2005. When added to the 3344 total of Field Contact Cards and citations, the total is 4241, slightly higher than the number of SDFs completed during the same time period. However, not all CARs require a SDF and some stops recorded on CARs may also have been recorded in citations or Field Contact Cards. Accordingly, while this total underscores the necessity of closer review before compliance can be conclusively determined, it does not necessarily mean that OPD did not complete SDFs for all required stops.

properly or improperly.

Despite the diligent efforts of OIG staff¹⁷ to provide us the information necessary, we were unable to determine reliably the percentage of stops for which required stop data forms were completed. This was primarily due to the fact that, as OIG discovered during our review, not all stop data forms completed during the November 2005 review period had been scanned into the database. Although the database contained approximately 3200 SDFs from November 2005, OIG found 4134 hard copies of SDFs for the same time period. In other words, for every three SDFs entered into the database, approximately one was not. A compounding difficulty was that, although SDFs capture information such as location, this information was not scanned into the database. The impact of these deficiencies was twofold. First, because not all the information from SDFs was entered into the database, it was exceedingly difficult, and sometimes impossible, to discern which, if any, possible SDFs corresponded to a stop recorded on a stop document or internal investigation. Second, and of greater impact, while we quickly determined that there were numerous stops for which there appeared to be no corresponding SDF, because the database was incomplete, we could not reliably determine whether this was because no SDF was completed for the stop or because the SDF had not been input into the database.¹⁸

OPD, aware of problems with its SDF data entry and analysis, has recently contracted with a third-party vendor to input SDF information into an appropriate database. As discussed below, we encourage OPD to ensure that this information is accurately and completely entered for all SDFs in a manner that permits the IMT and OPD to assess compliance with the Settlement Agreement and OPD policies.

The IMT found OPD in conditional compliance with the requirement that stop data forms be completed fully and accurately (Task 34.2). To audit Task 34.2, we reviewed a sample of 352 stop data forms. Of these stop data forms, 245 (69.6 %) fully captured the criteria required by the Settlement Agreement. However, we determined that two aspects of the SDFs were likely the cause of substantial confusion among OPD officers about how to accurately complete the SDFs. When this information was excluded, 333 (94.6%) of the 352 SDFs were in compliance.¹⁹ The first ambiguity impacting compliance is that the wording on the SDF strongly implies that information regarding the race, ethnicity and gender of all individuals stopped, as well as information

¹⁷ OIG's work on this project was made considerably more difficult by problems with OPD's data collection and tracking, discussed in this report as an area of concern.

¹⁸ Nor could we reliably determine compliance by reviewing the actual copies of all 4131 SDFs provided by OPD. Given the confusion about the number and location of November SDFs, we were not entirely confident that 4131 was the actual number of SDFs during this time period, despite OIG's best efforts to gather and provide all SDFs from November 2005.

¹⁹ Categorized by type: 100 % of bicycle stops; 92.7% of pedestrian stops; and 95.2% of vehicle stops were in conditional compliance.

about who was searched, need be provided only in the context of a vehicle stop (as opposed to *all* stops, including bicycle and pedestrian stops). The second ambiguity impacting compliance is that the questions regarding passengers' race, ethnicity and gender are placed in a section of the SDF which focuses on searches. Thus, the form implies that, even in the context of a vehicle stop, this information need be provided only when a search is conducted. The Settlement Agreement, however, requires that passengers' race, ethnicity and gender must be provided for all stops, regardless of whether a search is conducted.²⁰

We have informed OPD that we believe that the current SDF form is deficient, negatively impacting the usefulness of its data collection as well as OPD's compliance with the Settlement Agreement. We have also informed OPD that we will not employ these conditional criteria during our next review and instead expect that by that time OPD will have corrected the SDF and trained its officers on its proper completion.

OPD created a database capable of performing the functions required by the Settlement Agreement (Task 34.3). However, recognizing the unreliability and lack of usability of the data entered into this database, as discussed above, OPD has recently abandoned use of this database and contracted with a third-party vendor to input SDF information into an appropriate database. Our review confirmed OPD's assessment of the inadequate reliability and functionality of the in-house database in use during our November 2005 review period. Accordingly, OPD is in compliance with the requirement that it have a database capable of being summarized, searched, queried etc., by OPD personnel, but out of compliance with the requirement that the data in the database be sufficiently complete and accurate to permit its effective use.

The out-of-compliance findings for Tasks 34.1 and 34.3 are disappointing given that OPD officers appear to have completed SDFs at a high rate and we were able to confirm, at least conditionally, that they were able to complete them fully at a very high rate (95%). It is unfortunate that, despite officers' efforts, because OPD did not collect and enter this data adequately, OPD is not only out of compliance with this task, but, more importantly, cannot effectively use the gathered information to analyze, and perhaps improve, the efficiency and effectiveness of detentions and searches by OPD officers. Once OPD begins to adequately analyze stop data and act upon information regarding "hit rates," etc., more officers will likely see the value in collecting stop data, and the effectiveness of OPD policing may well increase, benefiting officers and the community alike.

²⁰ This ambiguity is likely responsible for the fact that compliance with this particular aspect of the SDF for vehicle stops, was significantly higher where a search was completed. Of the 230 SDFs we reviewed documenting vehicle stops, when a search was conducted 100% were in compliance with the requirement to provide passenger information. When no search was conducted, only 86.2% of vehicle stop SDFs provided the required passenger information.

3. **Use of Force Reports-Witness Identification** (Task 35; S.A. V.I.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 seventh 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 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 changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During this reporting period, OPD incorporated the provisions of the witness identification special order into General Order K-4. During the upcoming reporting periods, the IMT will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

4. **Procedures for Transporting Detainees and Citizens** (Task 36; S.A. V.I.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 97.7% of required personnel on Special Order 8262.

During the last 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 changed 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. In addition, OPD has been conducting internal audits and training to ensure compliance with Special Order 8262 and this Settlement Agreement provision.

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

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

a. Settlement Agreement Requirements

- By August 25, 2003, OPD must establish a policy prohibiting retaliation against any member or employee of the Department who reports misconduct by any other member or employee, or serves as a witness in any proceeding against a member or employee. The Settlement Agreement requires that the policy acknowledge that retaliation may be informal and subtle. The Settlement Agreement further requires that dismissal be the presumptive disciplinary penalty for retaliation.

- By August 25, 2003, OPD must hold supervisors, commanders and managers accountable for retaliation committed by their subordinates. If supervisors, commanders, or managers of persons engaging in retaliation knew or reasonably should have known that the behavior was occurring, OPD must subject them to the investigative and disciplinary process.

b. Status of Compliance and Assessment

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 the seventh 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 did 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. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reports that it has provided the refresher training to 91.2% of relevant personnel. During this reporting period, OPD also provided in-depth training to many of its supervisors, commanders, and managers regarding retaliation.

During the previous 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. A discussion of this audit is provided in our last report.

In response to our audit, OPD has made a number of significant changes in its approach to complaints of retaliation. OPD has a better understanding of what constitutes retaliation; is more thoroughly tracking and investigating such complaints; and is reporting the results of these investigations to the Court.

During future reporting periods, the IMT will monitor actual compliance with this Settlement Agreement task.

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 the seventh reporting period, the IMT interviewed officers on all three patrol shifts regarding their understanding of Task 38's requirements. Based on our interviews, we found that OPD officers have a solid grasp of the most important elements of this task. As a result, the IMT changed 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 the seventh reporting period, 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 this reporting period, the IMT conducted a second actual practice audit of this task and found OPD in compliance with this task in actual practice. The IMT reviewed all citizen statement forms completed during seven days in December 2005.

Dates were selected to ensure that all citizen statements from each day of the week were reviewed. This sampling technique produced a total of 337 citizen statements. Of these 337 statements, 22 were excluded from our compliance review because they indicated the citizen refused to make a statement; one because it was a vehicle report; and another because it did not include the last, signed page. Accordingly, the total number of citizen statements reviewed for compliance by the IMT was 313.

The IMT reviewed the statements taken on citizen statement forms to determine whether they contained a diagonal stripe from the end of the written narrative to the bottom of the page and a signature along the stripe. In determining whether a citizen statement form was completed in the manner required by the Settlement Agreement, the IMT counted as compliant those citizen statement forms that contained non-diagonal lines as long as the lines started at the end of the narrative and were drawn to the bottom of the page. Likewise, the IMT counted as compliant those citizen statement forms lacking a diagonal line where the narrative itself ended at or very close to the signature box. The IMT counted these forms as compliant because they are consistent with the intent of this Settlement Agreement provision—to prevent the alteration of citizens' statements by third parties once the citizen has completed and reviewed his or her statement.

Of these 313 citizen statements, 303 (97%) were in compliance with the requirements of the Settlement Agreement, pursuant to the criteria articulated above. Accordingly, OPD is in compliance in actual practice with the requirements of Task 38.

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 the previous 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 changed 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 sixth reporting period, the IMT conducted a review of OPD's actual practice of Task 39 and found OPD 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.

During this reporting period, OIG conducted an audit of Task 39. According to OIG, OPD is not yet in compliance with this task, but has made progress. OPD reports that it has begun to implement some of the proactive measures that we recommended. OPD notes further, however, that there are several steps it could be, but is not yet, taking to detect and track arrests and lawsuits of its officers. OPD reportedly is working to implement these measures and to determine the feasibility of others.

The IMT is pleased to see that OPD is paying closer attention to this issue. We have given OPD comments on the questionnaire now 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 Assessment System (PAS) (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, which OPD is now referring to as the Personnel Assessment System (PAS), was due for completion in June 2005. OPD is not in compliance with either task in this section.

1. Personnel Assessment System (PAS)-Purpose (Task 40; S.A. VII.A.)

a. Settlement Agreement Requirements

- By June 28, 2005, OPD must develop and implement a Personnel Assessment System. 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 the system.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in June, 2005. OPD, however, has not yet completed a policy for the use of PAS (formerly, PIMS). In January 2006, the IMT provided OPD with detailed feedback on a draft of the policy. OPD has not yet produced a revised draft, but has undertaken substantial efforts to learn from the experiences of other law enforcement agencies and to involve stakeholders from throughout the Department in the implementation of the new system. The Department sent staff members to the Phoenix and Cincinnati police departments to review similar early identification and intervention programs in operation. OPD recently began convening focus groups of officers throughout the Department regarding PAS. The

benefits of such groups are many, including educating officers about the system, dispelling myths and rumors, and eliciting their feedback.

The Court has ordered OPD to provide the IMT with another draft of the policy on or before June 26, 2006, and to publish a final policy on or before September 29, 2006. The Court also has ordered OPD to train all personnel on the new system by December 31, 2006, and to have the entire system operational no later than January 1, 2007. The Court issued its Order based on dates provided by the Department.

During this reporting period, OPD's vendor began installing the hardware and software components of the computerized relational database required by this task. It also formed working committees and hired an administrator to help ensure that the Department continues to make forward progress on this task.

In addition, OPD has begun creating reports of personnel data and, with the assistance of a police psychologist, has started to analyze personnel data relevant to identifying and addressing at-risk behavior. OPD reports that the production of these PAS threshold reports is currently labor and time intensive, as is the collection of data required to complete the Management Assessment Memoranda for officers meeting or exceeding a PAS threshold. Nevertheless, until PAS is fully implemented, OPD will continue to generate PAS threshold reports, and supervisors and commanders will be required to review closely officers who meet certain criteria to determine whether patterns of conduct require further attention or action.

During upcoming reporting periods, the IMT will determine whether OPD develops the required policies; conducts required training; and whether its actual practices comply with this Settlement Agreement provision.

2. **Use of Personnel Assessment System (PAS)** (Task 41; S.A. VII.B.)

a. **Settlement Agreement Requirements**

- By June 28, 2005, OPD must develop a policy for the use of PAS, 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 PAS must be used.

b. Status of Compliance and Assessment

This Task is being completed in conjunction with the PAS database. See “Status of Compliance and Assessment” under Task 40, Personnel Assessment System (PAS)-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 sixth 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 the previous reporting period. The IMT reviewed the policy and found that it complies with the Settlement Agreement. During the last 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 the previous 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. Moreover, 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. A fuller description of this audit is included in our seventh status report.

Due to staffing issues, OPD recently transferred the program's Senior FTO to another unit. It is unclear what impact, if any, this transfer will have on the success of the program. It may, however, make it more challenging for the Department to achieve full compliance with the requirements of this task. This is because of the increasing number of trainees in the program and the substantial duties the transferred officer was performing, including reviewing daily details, preparing and facilitating staff meetings, reviewing daily and weekly evaluation reports to identify trainee needs and FTO teaching concerns, conducting personal interviews and preparing FTO/Trainee assignments. The Senior FTO also served as a back up, ensuring that the program's many requirements continued in the event of the absence of the Field Training Program Coordinator. According to OPD, the BFO administrative sergeant will assume or assist with a number of these duties.

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 sixth 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 the last reporting period, OPD also graduated seven officers from its Sixth Lateral Academy. During this reporting period, OPD's 155th Basic Academy class graduated. The 156th and 157th Basic Academies are currently underway. The 156th Basic Academy is scheduled to graduate at the beginning of June 2006.

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 the previous 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 and three instructors who did not meet the requirements of the General Order were removed from their teaching assignments. The Department reports that it has continued to review “selection matrices” on all new Academy instructors and to hold oral interview boards to ensure that all new instructors also meet the enhanced selection criteria.

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.

During the last reporting period, the IMT confirmed OPD's report that all but one of the then current supervisors had attended the mandatory training prior to promotion and that all the then current commanders had attended the mandatory leadership training, although only one had done so within six months of promotion as required by the Settlement Agreement. 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 was 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. Since it was unclear whether the training provided included the content required by the Settlement Agreement, we recommended that the Training Division require and retain detailed lesson plans of all in-service training. According to OPD, it is now maintaining better documentation of course content to enable the necessary verification.

During this reporting period, the IMT attended several Academy sessions, including several use of force classes and classes on search and seizure law.

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 to determine whether OPD's actual practices comply with the Settlement Agreement.

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 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. As discussed below, OPD is making progress in this area, but its actual practices do not yet comply fully 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 publication during the seventh reporting period of the Departmental Discipline Policy (Training Bulletin V-T), OPD 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 publication of General Order M-3, *Complaints Against Departmental Personnel or Procedures*, during the seventh reporting period, OPD 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 individual annual performance appraisals 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. OPD has recently re-drafted B-6. The IMT reviewed the draft and determined that it complies with the Settlement Agreement. OPD anticipates publishing the policy on May 26, 2006.

We reported in our Combined Fourth and Fifth quarterly report that OPD was not complying with the requirements of this task. We found that too few personnel files contained current performance appraisals and that the quality of the performance appraisals was deficient as well. In October, 2005, OIG initiated an audit of the Department's performance appraisals and also found that OPD's actual practices did not comply with Task 44. OIG's audit found that current performance appraisals did not contain sufficient documentation of the criteria required by the Settlement Agreement. OIG further reported that OPD could not demonstrate that managers and supervisors were held accountable for writing poor quality performance appraisals. Consistent with the IMT's recommendations made as a result of its 2004 audit, OIG made several recommendations for improving the Department's compliance with this task.

During this reporting period, the IMT conducted a second audit of OPD's actual practice compliance with this task. We found that OPD has made some progress with regard to timeliness of appraisals, but is not yet in compliance with the Settlement Agreement. In our last audit, we found that 64% of the files reviewed contained current performance appraisals. During this review, we found that 73% of the files reviewed contained a current performance appraisal.

OPD has made impressive improvements in the content of performance appraisals completed. Task 44 requires OPD's performance appraisals to include sufficient documentation and consideration of the following six elements: 1) nature and progress of complaints and investigations; 2) uses of force; 3) sick and injured leave; 4) arrests for certain narcotics offenses; 5) Penal Code Section 69, 148, and/or 243 (b)(c) arrests; and 6) vehicle accidents. Based on our review of 144 appraisals completed since September 30, 2005, OPD is in compliance with this requirement. The Department's average compliance rate across all six categories is 96.6%. This is in stark contrast to our last audit where inclusion of the required content was sporadic and more often than not missing than present. For example, in our last audit, we found that *none* of the officer appraisals reviewed included any evidence of documentation or consideration of arrests for certain narcotics offenses and only *one* of the officer appraisals included any indication of consideration of Penal Code Section 69, 148, and/or 243 (b)(c) arrests.²¹

We also found that ninety-six percent of the appraisals reviewed included required signatures from supervisors, managers, and commanders. This is a marked departure from our last review where signatures were largely illegible and/or simply absent from the appraisals.

²¹ Based on the dramatic improvement in the content of the appraisals, it is apparent that most reviewers are making a genuine effort to include appropriate information in the appraisals. However, due to the lack of clarity regarding what reviewers are expected or permitted to discuss about the first category (complaints and investigations), the information provided by reviewers on this topic varied dramatically. We have informed OPD that it must ensure that the guidance it provides to reviewers regarding this area is consistent with the Settlement Agreement.

Task 44 also requires that performance appraisals of members/employees with substantial collateral duties include consultation and a separate narrative from the member/employee's other supervisor or manager. We identified eight members/employees in the sample reviewed with clear substantial collateral duties. Of these eight individuals, only five of the appraisals included both consultation and the separate narrative as required. Based on the documentation reviewed, we identified two members/employees in the sample who were promoted during the review period. The appraisals for both of them were completed as required.

Pursuant to Task 44, when appropriate, supervisors and commanders must be held accountable for identifying and acting upon patterns by their subordinates involving uses of force, sick leave, line-of-duty injuries, narcotics offenses, and on-duty vehicle accidents. Accordingly, the performance appraisals of supervisors and commanders must include an assessment of how/whether they identify and act upon any such patterns. OPD is not yet in compliance with this requirement because four out of twenty-four supervisory and commander appraisals reviewed did not include the required assessment.

The Department has made a concerted and successful effort to improve its performance on appraisals. Much of the Department's progress may be attributable to its attention to performance appraisals at MAP meetings and to its advisement to personnel that it will hold them accountable for not completing appraisals as required. In addition, OPD provided reviewers with a guide sheet instructing them how to complete appraisals, including a description of the information that should be discussed in each appraisal.

While OPD has not yet achieved compliance with the requirement that every member/employee receive an annual performance appraisal, it has made continued progress. Key to sustaining this progress and reaching full compliance will be to continue to modernize and improve Department-wide systems for managing personnel and to hold all supervisors and managers accountable when they do not complete appraisals for their subordinates as required. The content of the appraisals we reviewed for this audit showed notable improvement over the last review. We saw far fewer perfunctory appraisals or ones that had simply been "cut and paste" from previous years and/or other appraisals, although we did note some. We observed significantly more appraisals that included substantive and constructive analysis and feedback regarding member/employee performance. As a result of our audit, we recommend continuing use of the appraisal guide sheet but that it be modified to provide correct and clear direction regarding required information about complaints and investigations. We also recommend that the form be modified to elicit specific information from reviewers about collateral duties and transfers. This will help the Department to ensure that reviewers seek input and or separate narratives when required.

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

The requirements of this task were modified by stipulation in June, 2005. The task now requires that a Disciplinary Officer recommend discipline for sustained findings after consultation with the Deputy Chief (or designee) in the affected chain-of-command. The requirements of this provision are 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 completed General Order B-5 ahead of schedule and during the last reporting period, completed the remaining policies incorporating this Settlement Agreement task. During this reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD has trained 95% or more of relevant personnel on this task. As discussed above, OPD recently re-drafted B-6. The revised draft complies with the Settlement Agreement and OPD anticipates publishing the policy on May 26, 2006.

During the upcoming reporting periods, the IMT will determine 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 completed this policy during the last reporting period.

During the sixth 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.

During the last reporting period, OPD reported that the Department has put into place a number of measures designed to strengthen the promotions process including structured recorded oral interviews that include questions relating to Settlement Agreement topics. We support such measures and believe that they will likely assist the Department to achieve compliance on this task.

During this reporting period, OIG conducted a follow-up audit of this task. OIG reviewed the promotions made by OPD from February 1, 2005—January 30, 2006, and reports that the Department’s actual practices now comply with the Settlement Agreement.

During the upcoming reporting periods, the IMT will verify OIG's audit results to determine 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 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 the previous 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 changed its conditional training compliance determination for this task to an unconditional in-compliance finding.

During the seventh reporting period, the IMT audited OPD's compliance in actual practice with Task 47 and found that OPD has made impressive progress on this task with respect to its attendance at community meetings. The IMT's audit found OPD in compliance with this element of Task 47, but not with many other requirements. A fuller discussion of our audit is included in our seventh status report.

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 continuing 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 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 the sixth 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. Additionally, in contrast to past years, the Chief not only is meeting with Division Commanders, but the meetings are proving to be lengthy, substantive exchanges between the Chief and the commanders. 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 meets 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. The 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: continuing to improve the coordination of overall compliance efforts by assigning task managers to each Settlement Agreement task and monitoring monthly task updates; conducting high quality audits required by the Settlement Agreement and other Departmental objectives; assigning members to IAD to assist in auditing investigations and intake; and continuing to spearhead the compliance portions of the weekly MAP meetings. Additionally, during this reporting period, OIG staff have provided invaluable assistance to the IMT in collecting data and evaluating Department policies, procedures, and systems. Several of the audits we conducted this reporting period involved data sets that were time-consuming and difficult to gather. With limited resources, however, OIG staff worked tirelessly to ensure that the requested data was provided in as timely a manner as possible.

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 has audited OPD's compliance with several Settlement Agreement provisions, including arrest and offense reports; personnel evaluations; Oleoresin Capsicum Log and Checkout Procedures; Field Training Program; Personnel Arrested, Sued and/or Served; Promotional Consideration; and Internal Affairs procedures. OIG recently completed its annual audit of OPD's mobile data terminal usage. 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 complete three of the six audits required by this task. It is on track, however, to conduct them within one year from completion of training on the policies.

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 and the City are at a critical juncture with respect to implementation of the Settlement Agreement. With the exception of the Personnel Assessment System and one outstanding use of force task, the Department has developed all of the basic policies required under the Agreement and has completed most of the required training. Much

hard work and effort has gone into achieving these milestones. Yet this part of the reform efforts was the simplest part. As observed by one of the Plaintiffs' attorneys during the last status conference, this is merely the end of the beginning of the reform process.

Now, the challenge will be to chart an unwavering course towards fully integrating all of the new policies and procedures into the fabric of OPD despite competing demands or outside pressures and distractions. The Court has made clear the standards by which the City and OPD will be judged and that it will not countenance shortcuts in the name of public safety or political expediency. This is because constitutional policing and effective policing go hand in hand. The Department's commitment, compliance plan, and the ever-increasing expertise of OPD personnel provide a solid foundation upon which to build. All the stakeholders have an important part to play in these efforts and the Department's success in implementing the reforms will depend upon them.