

NINTH 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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TABLE OF CONTENTS

	<u>Page</u>
<u>TABLE OF CONTENTS</u>	i
I. INTRODUCTION	1
II. IMT MONITORING ACTIVITIES	1
III. OPD ACCOMPLISHMENTS & AREAS OF CONCERN	3
A. <u>OPD Accomplishments</u>	3
B. <u>Areas of Concern</u>	6
IV. COMPLIANCE OVERVIEW	8
A. <u>Policy Compliance</u>	14
B. <u>Training Compliance</u>	14
C. <u>Actual Practice Compliance</u>	14
V. DETAILED COMPLIANCE REPORT	16
A. Internal Affairs Division (IAD) (Tasks 1–17; S.A. III.)	16
1. IAD Staffing and Resources (Task 1)	17
2. Timeliness Standards and Compliance with IAD Investigations (Task 2).....	19
3. IAD Integrity Tests (Task 3).....	22
4. Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4).....	24
5. Complaint Procedures for IAD (Task 5)	26
6. Refusal to Accept or Refer Citizen Complaints (Task 6).....	29
7. Methods for Receiving Citizen Complaints (Task 7).....	29
8. Classifications of Citizen Complaints (Task 8)	31
9. Contact of Citizen Complainants (Task 9)	32

10.	Procedure Manual for Investigations of Citizen Complaints (Task 10)	33
11.	Summary of Citizen Complaints Provided to OPD Personnel (Task 11)	33
12.	Disclosure of Possible Investigator Bias (Task 12).....	35
13.	Documentation of Pitchess Responses (Task 13)	36
14.	Investigation of Allegations of <i>Manual of Rules</i> Violations Resulting from Lawsuits and Legal Claims (Task 14).....	37
15.	Reviewing Findings and Disciplinary Recommendations (Task 15)	38
16.	Supporting IAD Process-Supervisor/Managerial Accountability (Task 16)	39
17.	Audits, Review and Evaluation of IAD Functions (Task 17).....	40
B.	Supervisory Span of Control and Unity of Command (Tasks 18–23; S.A. IV.).....	40
1.	Approval of Field-Arrest by Supervisor (Task 18)	41
2.	Unity of Command (Task 19)	43
3.	Span of Control for Supervisors (Task 20).....	44
4.	Members’, Employees’, and Supervisors’ Performance Reviews (Task 21)	45
5.	OPD/DA Liaison Commander (Task 22)	47
6.	Command Staff Rotation (Task 23)	48
C.	Use of Force Reporting (Tasks 24–32; S.A. V.).....	49
1.	Use of Force Reporting Policy (Task 24)	50
2.	Use of Force Investigations and Report Responsibility (Task 25)	51
3.	Use of Force Review Board (UFRB) (Task 26).....	52

4.	Oleoresin Capsicum Log and Checkout Procedures (Task 27)	53
5.	Use of Force-Investigation of Criminal Misconduct (Task 28)....	54
6.	IAD Investigation Priority (Task 29)	54
7.	Firearms Discharge Board of Review (Task 30).....	55
8.	Officer-Involved Shooting Investigation (Task 31)	56
9.	Use of Camcorders (Task 32)	58
D.	Reporting Procedures (Tasks 33–39; S.A. VI.)	58
1.	Misconduct (Task 33).....	59
2.	Vehicle Stops, Field Investigation and Detentions (Task 34).....	61
3.	Use of Force Reports-Witness Identification (Task 35).....	63
4.	Procedures for Transporting Detainees and Citizens (Task 36) ...	64
5.	Internal Investigations-Retaliatio n Against Witnesses (Task 37).....	65
6.	Citizens Signing Police Forms (Task 38).....	67
7.	Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39)	68
E.	Personnel Assessment System (PAS) (Tasks 40–41; S.A. VII.)	69
1.	Personnel Assessment System (PAS)- Purpose (Task 40).....	70
2.	Use of Personnel Assessment System (PAS) (Task 41)	71
F.	Field Training Program (Task 42; S.A. VIII.)	71
1.	Field Training Program (Task 42).....	72
G.	Academy and In-Service Training (Task 43; S.A. IX.).....	75

1.	Academy and In-Service Training (Task 43).....	75
H.	Personnel Practices (Tasks 44–46; S.A. X.).....	77
1.	Performance Appraisal Policy (Task 44).....	78
2.	Consistency of Discipline Policy (Task 45).....	80
3.	Promotional Consideration (Task 46)	82
I.	Community Policing (Task 47; S.A. XI.).....	85
1.	Community Policing Plan (Task 47)	86
J.	Departmental Management and Annual Management Report (Task 48; S.A. XII.)	87
1.	Departmental Management and Annual Management Report (Task 48).....	88
K.	Independent Monitor Selection and Compensation (Task 49; S.A. XIII.).....	89
1.	Independent Monitor Selection and Compensation (Task 49)	90
L.	Compliance Unit (Tasks 50–51; S.A. XIV.).....	90
1.	Compliance Unit Liaison Policy (Task 50)	90
2.	Compliance Audits and Integrity Tests (Task 51)	91
VI.	CONCLUSION	93

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 or NSA) 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 Ninth Status Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from May 13, 2006, through November 30, 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 have discussed extensively this report and the compliance findings it reflects with OPD. 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 OPD management retreat and OPD Management Assessment Program and Crime-Stop meetings; participated in ride-alongs with OPD officers; attended Executive Force Review Boards; observed OPD conduct Field Training program focus groups, oral boards, and staff meetings; interviewed individuals who had filed complaints of misconduct; attended Internal Affairs weekly meetings; inspected police vehicles, substations, and city locations for availability of informational brochures and complaint forms; observed OPD's criminal and administrative investigations of critical incidents; reviewed and analyzed OPD documents and files, including draft policies, investigations, police reports, disciplinary records, performance appraisals, and use of force reports; attended line-ups; observed training sessions of OPD officers; attended meetings of the Performance Assessment System (PAS) steering committee and working groups; met with community representatives; participated in a City Council sponsored community forum regarding OPD; and participated in the monthly meetings required by the Settlement Agreement.

During this reporting period, the IMT met with officials in OPD's Office of Inspector General, Personnel Division, Bureau of Administration, Bureau of Field Operations, Bureau of Investigations, Bureau of Services, and Internal Affairs Division; OPD officers, supervisors, and commanders, including Sergeants, Lieutenants, and Captains; the Discipline Officer; each of the three Deputy Chiefs and the Director of Administration; and 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; the Office of the City Attorney; and the Public Defender'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; Internal Affairs investigative files and disciplinary records; promotions materials; MLL reports; management reports; arrest reports; officer-involved shooting reports and investigative files; OPD Management Assessment Program documentation; and information provided by citizens and OPD officers. In addition to reviewing these documents off-site, the IMT also participated in regular meetings and teleconferences with Plaintiffs' attorneys and 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 51 Settlement Agreement Tasks. As part of our assessment this reporting period, we conducted actual practice compliance reviews of 16 tasks: IAD Staffing and Resources (Task 1); Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD (Task 4); Complaint Procedures for IAD (Task 5); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Contact of Citizen Complainant (Task 9); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Disclosure of Possible Investigator Bias (Task 12); Reviewing Findings and Disciplinary Recommendations (Task 15); Field Training Officer Program (Task 42); Consistency of Discipline Policy (Task 45); Promotional Consideration (Task 46); Departmental Management and Annual Management Report (Task 48); and Compliance Audits and Integrity Tests (Task 51).

These tasks were selected for audit based on several criteria, including OPD's having completed policies and staff training in place for a sufficient period of time to allow for adequate implementation of the new requirements. Additionally, as has been our practice during the last three reporting periods, we asked OPD to inform us of those tasks in which it believes it has attained compliance. To the extent possible, we adjusted our monitoring schedule to prioritize audits for such tasks. At the same time, to the extent possible, we delayed audits in those areas where the Department has acknowledged that it is not yet in compliance.

OPD has made notable progress in all of the areas audited. As discussed below, OPD attained actual practice compliance with Tasks 1 and 15 and remains in compliance with Task 51. It also attained actual practice compliance with significant portions of Tasks 2, 3, 4, 8, 42, 46, and 48.

In addition to these task audits, actual practice compliance reviews of the following four tasks are presently underway: Supporting IAD Process—Supervisor/Managerial Accountability (Task 16); Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Procedures for Transporting Detainees and Citizens (Task 36).

During the course of our review of Task 16, it became apparent that no mechanism exists to ensure all Task 16 cases are identified absent extraordinary effort by IAD staff. IAD has developed a method for identifying these cases in the future. As a result, the IMT elected to postpone a formal compliance assessment and to meet with IAD staff to share our observations of cases reviewed to ensure a common understanding. OPD believes this task is redundant and may seek to have the NSA modified to remove this requirement. The IMT has agreed not to audit this task until OPD has had the opportunity to address its concerns about this NSA requirement. In addition, the IMT has agreed to meet with OPD regarding what cases constitute Task 16 cases prior to beginning any audit of this task.

Audits of the remaining three tasks referenced above could not be completed during this reporting period due to lengthy delays in OPD's production of the data necessary to conduct these reviews. As discussed below, these delays resulted from OPD's continuing deficiencies in the manner in which OPD collects and manages data, including basic police operational data, such as arrest reports and officer schedules and assignments.

III. OPD ACCOMPLISHMENTS & AREAS OF CONCERN

A. OPD Accomplishments

As discussed throughout this report, OPD continued to make meaningful progress in implementing the reforms. This progress is attributable to the hard work and dedication of many OPD staff members.

Improvements in Internal Affairs System and Investigations

During this review period, the IMT conducted an extensive assessment of OPD's internal investigations process and the Internal Affairs Division (IAD). This review included the assessment of hundreds of internal investigation files; IMT conversations with complainants; listening to tapes of IAD investigator conversations with complainants; observing IAD operations; site visits to the parking lot of PAB headquarters to see whether officers had complaint forms in their cars or on their persons; visits to locations throughout the city to see whether complaint forms and brochures were available to the public; and countless interviews and conversations with IAD investigators, command staff, and other OPD personnel.

Our observations and analysis revealed that OPD's system for investigating complaints of misconduct has vastly improved and continues to improve on an almost daily basis. The considerable efforts of IAD investigators, support staff, supervisors, and commanders are evident in nearly every aspect of the work, from more professional and orderly offices and case files; more positive interactions with complainants and officers; more timely and thorough investigations; closer and more exacting supervision; better tracking of investigation status; and more careful analysis of evidence.

IAD offices appear professional, orderly, and secure. We no longer see case files piled up in corners or under desks. IAD files are similarly clearer and better document the considerable work put into each internal investigation. Investigators' taped conversations with complainants are courteous and professional, an impression bolstered by nearly every conversation we had with citizen complainants and the many references we saw in case files to citizens' expressing gratitude for IAD's assistance in resolving misunderstandings or explaining service concerns. It is evident that more than one complainant has had a negative impression of OPD turned around by his or her positive interactions with the investigators or intake officers within IAD.

Investigators generally contact complainants promptly and make repeated efforts to contact complainants to learn the details of their complaints or follow up on previous conversations. Supervisors and commanders follow up on informally resolved complaints and complaints that are withdrawn to ensure that the complainant was not unduly pressured into resolving the complaint. Witness canvasses have become routine, and statements from officers and other witnesses are generally taped, sometimes by Sergeants who take recorders into the field to tape statements while the parties to the complaint are still on scene.

IAD and OPD commanders regularly monitor internal investigation timeliness with weekly reports distributed Department-wide, email reminders of cases near critical deadlines, discussions of timeliness and overdue cases in Departmental command-level meetings, and accountability for commanders who fail to ensure compliance with § 3304. OPD has implemented systems that ensure that every complaint made to IAD, whether by OPD personnel, phone, letter or third party, is processed, ensuring that no repeat of the uninvestigated cases database will occur. These efforts are only some examples of IAD's extensive efforts to self-identify and correct problems.

There is, of course, work that remains to be done. It should not be surprising that OPD did not resolve all of the lingering problems within its internal investigations system in one reporting period. In some areas it appears that it is just a matter of a little more time; in other areas, IAD still needs to grapple with difficult issues to ensure that necessary changes are implemented and sustained. In addition, there is the risk that a lack of continued effort will cause OPD to backslide. Nevertheless, while OPD still has not attained the required levels of compliance with many of the NSA's requirements regarding investigative processes and timeliness, there is no question that the improvement within IAD is real and is having a significant positive impact on the quality of investigations and accountability within OPD. We commend OPD and IAD for its efforts and challenge OPD to recreate this success in other aspects of NSA reform.

Field Training Program

Upon graduation from the police academy, each new OPD officer is assigned to a Field Training Officer (FTO). These assignments are designed to assist new officers in becoming proficient in patrol duties and able to work successfully as independent police officers. While the oft-repeated statement that field training officers in departments

across the country tell new officers to “forget what they learned in the academy” is probably overstated, there is little doubt that some FTO programs do not adequately reinforce departmental values, often at the expense of professional policing and a culture of integrity. The requirements of the NSA in this area are aimed fundamentally at ensuring that, within OPD, officers’ training in the field is consistent with and reinforces the training received in the police academy, including teaching positive departmental and community values.

We have been consistently impressed with the diligence and energy the Department has exhibited in this area, and our audit of this task during this reporting period makes clear that these efforts are reaping results. The Department has made significant improvements in a number of areas, from the manner in which it selects, trains, and evaluates Field Training Officers, to its incorporation of FTO and trainee feedback to improve both the FTO and Academy programs. For example, our review showed that OPD is adhering in practice to its policy requirements that individuals interested in serving as an FTO demonstrate not only knowledge of Departmental policies and procedures but also leadership skills, professionalism, ethics, and commitment to community policing. These officers must also attend an FTO training program. The training program that OPD has implemented to prepare officers to assume the duties of an FTO has been certified by California’s Commission on Police Officer Standards and Training. As a result, other law enforcement agencies now send their officers to OPD to learn how to become successful FTOs.

Other reforms to the FTO program include measures to evaluate trainee officers and provide them feedback on their performance. OPD elicits regular feedback from trainee officers about their field training experiences, including whether the officers have noticed any discrepancies between what is taught in the academy and what they are learning in the field. The trainee officers provide this feedback through written questionnaires and by participating in periodic focus groups. The results of these focus groups are reviewed by police management with the explicit purpose of improving both academy and field training.

Much of the success of the program can be directly attributed to the officer who serves as the Field Training Program Coordinator (FTPC). The FTPC is a talented, well-respected officer who is conscientious, organized, and thoughtful. We have been extremely impressed by his strong leadership, organizational skills, and tireless dedication to modernizing and improving OPD’s Field Training Program. The FTPC’s open-door policy and approachable demeanor have helped to foster an environment in which trainees and FTOs alike routinely provide him information, ask questions, and seek his advice and input. He is a skilled supervisor and trainer who regularly takes advantage of “teachable moments” to discuss ethics and departmental policies as they relate to practical experiences facing both experienced and new officers. As required by new program policies, among his many duties, he hosts regular staff meetings with FTOs, evaluates their performance, and convenes focus groups of trainee officers to learn about their field training experiences.

As discussed in our Task 42 update below, there are two core areas in which the program has yet to achieve compliance. The FTPC is aware of these areas and is working to remedy them. Based on the strides OPD has made in this area, we believe that the Department is capable of achieving full compliance with Task 42 in the very near future.

B. Areas of Concern

Fairness and Consistency of the Disciplinary Process

Task 45 requires the Department to implement discipline that is both fair and consistent. In response to this Settlement Agreement requirement, OPD has created and implemented a progressive discipline system, including a new disciplinary policy and a Discipline Matrix. The Department developed this policy and Matrix after consultation with other agencies and months of internal deliberations regarding a variety of issues, including appropriate penalty ranges. Before the Matrix was finalized, Chief Tucker reviewed, adjusted, and approved it. The Chief has expressed his commitment to implementing a disciplinary system that is fair and consistent and that uses a variety of means to correct behavior.

The Matrix, properly implemented, helps ensure that the discipline system is transparent and objectively applied. The Matrix lists rule violations contained in the Department's Manual of Rules and sets out specific criteria for calculating discipline recommendations. For each rule violation, the Matrix provides a specific, progressively higher penalty range for first, second, and third offenses. Each of the ranges includes a lower limit, midpoint, and upper limit penalty. The Department's Discipline Officer is required by policy to determine the appropriate penalty by reviewing disciplinary histories and obtaining mitigating and aggravating information from supervisors, and make a disciplinary recommendation to the Chief. According to OPD's discipline policy, the Discipline Matrix is to be "administered in a systematic and equitable manner to all personnel," in order to "ensure fair and consistent implementation of discipline within the Oakland Police Department." The policy expressly preserves the Chief's discretion to impose any level of discipline he deems appropriate to achieve these goals.

During this reporting period, we evaluated OPD's implementation of the new disciplinary system by reviewing the discipline recommendations and decisions in every sustained case involving conduct occurring on or after December 6, 2005, the date the new policy was implemented. There were 29 relevant cases. In reviewing these cases we observed a number of practices that in our judgment undermine the Department's efforts to establish a disciplinary system that is fair and consistent. Many of these practices have occurred because the Department has decided that a number of the current penalties and formulas, if applied, would result in unduly harsh discipline.

In the majority of cases we reviewed, the Department selected and/or sustained violations that did not fit the facts of the alleged misconduct. Without exception, this practice resulted in lower discipline levels than if the Matrix had been applied as written.

We also found that, in some cases with multiple violations, OPD incorrectly calculated the correct presumptive penalty. The Matrix requires that in cases with more than one sustained violation, penalties be added together. However, in cases we reviewed, these calculations were often in error, again resulting in lower disciplinary recommendations than if the Matrix had been applied as written. We also observed instances of discipline recommendation memoranda with inaccurate accounts of an employee's disciplinary history. These memoranda stated that members or employees had no disciplinary records or less serious ones than they actually had. By understating the actual disciplinary history, these inaccurate memoranda served to justify a lower level of discipline than would otherwise have been appropriate.

OPD asserts that this practice of imposing penalties lower than the ranges contemplated by its disciplinary policy is not cause for concern but is, rather, the Chief's attempt to correct what he views to be overly punitive penalties. In OPD's view, imposing lower penalties makes OPD's disciplinary system more, not less, fair and brings it into line with the Chief's disciplinary philosophy. OPD also points out that it is substantially revising the Matrix to bring it more in line with the Chief's approach to discipline and OPD's actual practice. Nevertheless, we remain concerned that variances outside of the Matrix's penalty ranges in disciplinary recommendations and final discipline decisions have become the norm rather than the exception, and that no specific justification was given for these departures, as required by OPD's own policy. These facts risk undermining the perception within the Department and the community that OPD's disciplinary system is fair and consistent, and diminish the confidence-building transparency that the adoption of a Matrix was meant to provide. We have recommended that OPD complete its proposed revisions to its disciplinary system as soon as possible and that it implement safeguards against incorrect charging and sustaining decisions so that deviations from the Matrix are the exception and, where they do occur, their justification is documented.

Field Training Program Staffing

As discussed above, OPD has made considerable and impressive progress in its Field Training Program. However, the program's success stands in the balance. The Department's continued success and ability to attain full compliance with this task will depend on adequate staffing of the Field Training Unit. The Unit is facing increasing demands due to OPD's stepped-up recruiting and training efforts. OPD has been conducting more frequent academies, resulting in greater numbers of trainees and Field Training Officers in the program. This brings with it increased demands on supervision and program administration. While conducting our audit, we observed slippage in several critical areas due to staffing that has not always kept pace with increased program demands.

We recognize that OPD has a number of competing staffing demands. However, as the Department is aware, the training and mentoring that is provided to new officers is critical because it serves as the very backbone of their careers. Shortcuts in this area can harm officers, the community, and the Department. We are encouraged because the

Department has stated that it is committed to maintaining the advances it has made in its Field Training Program, and ensuring that its new officers receive appropriate field training.

IV. COMPLIANCE OVERVIEW

Our discussion of OPD’s compliance efforts and status is organized around the 12 Settlement Agreement sections from which OPD derived 51 “tasks.” At the start of the monitoring process, the IMT reviewed OPD’s task designations, found the task division to be workable, and in the interests of clarity and consistency, adopted the same designations.¹

The 12 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 51 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 51 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 Compliance**</u>	
					<u>Partial Compliance</u>	<u>Full Compliance</u>
1	IAD Staffing and Resources	8/13/2004	√	√		√(c) (11/06) *
2	Timeliness Standards and Compliance with IAD Investigations	6/15/2004	√	√	√	

¹ Section XV of the Settlement Agreement imposes additional obligations on the parties (e.g. semi-annual status reports to the Court and meet-and-confer obligations). Because the IMT agrees with OPD that there is no need to “task” these obligations, they are not included in the description of compliance efforts and status. Nevertheless, failure to abide by these provisions would of course constitute a violation of the Settlement Agreement.

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	√	√	<i>Not yet assessed</i>	
7	Methods for Receiving Citizen Complaints	6/15/2004	√	√	√	
8	Classifications of Citizen Complaints	6/15/2004	√	√	√	
9	Contact of Citizen Complainants	8/13/2004	√	√		
10	Procedure Manual for Investigations of Citizen Complaints	8/13/2004	√	√		√ (11/06)
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	√	√		√(c) (11/06) *
16	Supporting IAD Process- Supervisor/Managerial Accountability	6/15/2004	√	√	<i>Not ready for assessment</i>	
17	Audit, Review and Evaluation of IAD Functions	4/15/2003	√	N/A		√ (12/05)
18	Approval of Field-Arrest by Supervisor	1/20/2004	√	√	√	<i>Under assessment</i>
19	Unity of Command	1/20/2004	√	√(c)	<i>Under assessment</i>	
20	Span of Control	8/14/2003	√	√(c)		
21	Members', Employees' and Supervisors' Performance Reviews	5/5/2004	√	√(c)	√	
22	OPD/DA Liaison Commander	4/15/2003	√	√(c)	√	
23	Command Staff Rotation	1/20/2004	√	N/A		√ (11/05)

24	Use of Force Reporting Policy	7/20/2004	√	√(c)	<i>Not yet assessed</i>	
25	Use of Force Investigations and Report Responsibility	7/20/2004	√	√(c)	<i>Not yet assessed</i>	
26	Use of Force Review Board (UFRB)	7/20/2004	√	√	<i>Not yet assessed</i>	
27	Oleoresin Capsicum Log and Checkout Procedures	7/20/2004	√	√	√	
28	Use of Force- Investigation of Criminal Misconduct	7/20/2004	√	√*(c)	<i>Not yet assessed</i>	
29	IAD Investigation Priority	7/20/2004	√	√	<i>Not yet assessed</i>	
30	Firearms Discharge Board of Review	7/20/2004	√	√(c)	<i>Not yet assessed</i>	
31	Officer-Involved Shooting Investigation	7/20/2004	√*	√	<i>Not yet assessed</i>	
32	Use of Camcorders	7/20/2004	√	N/A		√ (10/03)
33	Reporting Misconduct	8/25/2003	√	√	√	
34	Vehicle Stops, Field Investigation and Detentions	8/25/2003	√	√	√	
35	Use of Force Reports- Witness Identification	8/25/2003	√	√	<i>Not yet assessed</i>	

36	Procedures for Transporting Detainees and Citizens	8/25/2003	√	√	√	<i>Under assessment</i>
37	Internal Investigations-Retaliation Against Witnesses	8/25/2003	√	√		
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	√*(c)		<i>Not ready for assessment</i>	
41	Use of Personnel Assessment System (PAS)	6/28/2005	√*(c)		<i>Not ready for assessment</i>	
42	Field Training Program	4/16/2004	√	√	√	
43	Academy & In-Service Training	2/15/2005	√	√(c)	<i>Not ready for assessment</i>	
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, 11/06)

* 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. Conditional actual practice compliance indicates that OPD has fulfilled the requirements of the task pending verification of outstanding documentation.

A. Policy Compliance²

At the end of the last reporting period, OPD had completed the first step (policy compliance) on a total of 47 of the Settlement Agreement's 51 tasks.³ During this reporting period, OPD attained policy compliance with three additional tasks—Personnel Assessment System (PAS) (Task 40); Use of Personnel Assessment System (Task 41); and Officer-Involved Shooting Investigation (Task 31). Accordingly, OPD has achieved full or conditional policy compliance with a total of 50 of the 51 tasks that have become due. OPD's policy compliance with Tasks 40 and 41 is conditional, pending completion and approval by the IMT of subsidiary policies necessary for successful implementation of these tasks. The Court has issued an Order requiring OPD to complete these policies on or before January 17, 2007.

Upon completion of a policy fully reflecting the requirements of Task 46 (Promotional Consideration), OPD will have achieved policy compliance with all tasks.

B. Training Compliance⁴

As discussed above, OPD has achieved policy compliance with 50 Settlement Agreement tasks. Forty-three of these tasks require training prior to implementation. As illustrated in the above chart, OPD has achieved training compliance on 41 of these 43 tasks. The two remaining tasks are Tasks 40 and 41, both related to the Personal Assessment System (PAS).

C. Actual Practice Compliance

During this reporting period, the IMT conducted reviews of OPD's actual practices in the following sixteen areas: IAD Staffing and Resources (Task 1); Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD (Task 4); Complaint Procedures for IAD (Task 5); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Contact of Citizen Complainant (Task 9); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Disclosure of Possible

² In order to attain policy compliance, OPD must publish a policy or other appropriate directive (e.g., General Order, Training Bulletin, Manual, etc.) that accurately reflects the requirements of the Settlement Agreement Task.

³ In our last status report, based on information provided by OPD, we reported that OPD had achieved policy compliance with 48 tasks, including Task 46 (Promotional Consideration). During this reporting period, while conducting an audit of this task, we learned that the policy for Task 46 was never actually published. The policy remains in draft form and, according to OPD, the Department is working on a new promotional policy that has not yet been completed. Accordingly, as of the last reporting period, OPD was in compliance with 47 tasks, not 48 tasks as previously reported.

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.

Investigator Bias (Task 12); Field Training Officer Program (Task 42); Consistency of Discipline Policy (Task 45); Promotional Consideration (Task 46); Departmental Management and Annual Management Report (Task 48); and Compliance Audits and Integrity Tests (Task 51).

OPD has made notable progress in all of these areas. As discussed below, OPD attained actual practice compliance with Tasks 1 and 15 and remains in compliance with Task 51. It also attained actual practice compliance with significant portions of Tasks 2, 3, 4, 8, 42, 46, and 48.

OPD currently is in full or partial actual practice compliance with 31 Settlement Agreement requirements. OPD is in full compliance with the following 12 tasks: IAD Staffing and Resources (Task 1); Procedure Manual for Investigations of Citizen Complaints (Task 10); Documentation of Pitchess Responses (Task 13); Investigations of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims (Task 14); Reviewing Findings and Disciplinary Recommendations (Task 15); Audit, Review and Evaluation of IAD Functions (Task 17); 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).

OPD is in partial compliance with the following 19 tasks: Timeliness Standards and Compliance with IAD Investigations (Task 2); IAD Integrity Tests (Task 3); Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4); Methods for Receiving Citizen Complaints (Task 7); Classifications of Citizen Complaints (Task 8); Summary of Citizen Complaints Provided to OPD Personnel (Task 11); Approval of Field-Arrest by Supervisor (Task 18); Members', Employees' and Supervisors' Performance Reviews (Task 21); OPD/DA Liaison Commander (Task 22); Oleoresin Capsicum Log and Checkout Procedures (Task 27); Reporting Misconduct (Task 33); Vehicle Stops, Field Investigation and Detentions (Task 34); Procedures for Transporting Detainees and Citizens (Task 36); Field Training Program (Task 42); Performance Appraisal Policy (Task 44); Consistency of Discipline Policy (Task 45); Promotional Consideration (Task 46); Community Policing Plan (Task 47); and Departmental Management and Annual Management Reports (Task 48).

In addition to these task audits, actual practice compliance reviews of the following four tasks are presently underway: Supporting IAD Process—Supervisor/Managerial Accountability (Task 16); Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Procedures for Transporting Detainees and Citizens (Task 36).

During the course of our review of Task 16, it became apparent that no mechanism exists to ensure all Task 16 cases are identified absent extraordinary effort by IAD staff. IAD has developed a method for identifying these cases in the future. As a result, the IMT elected to postpone a formal compliance assessment and to meet with IAD staff to share our observations of cases reviewed to ensure a common understanding.

Audits of the remaining three tasks could not be completed during this reporting period due to lengthy delays in OPD's production of the data necessary to conduct these reviews. As discussed below, these delays resulted from OPD's continuing deficiencies in the manner in which OPD collects and manages data, including basic police operational data, such as arrest reports and officer schedules and assignments.

OPD states that it continues to search for ways to increase overall document management; however, in some instances retrieval of data continues to be dependent on the resources of outside agencies. According to OPD, as soon as deficiencies are found, the OIG notifies the appropriate persons responsible to look for additional methods of document control. OPD believes that the implementation of Field Based Reporting in the upcoming year will allow documents to be obtained more quickly and completely.

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 two reporting periods, OPD completed and trained its personnel on 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, the IMT reviewed OPD's implementation of the new policies and procedures. As discussed above, OPD has made a number of significant improvements in the manner in which it receives and investigates allegations of officer misconduct.

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

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

a. Settlement Agreement Requirements

- By August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By August 13, 2004, OPD must train all personnel to ensure they have received, understand and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16 and is reiterated in Task 10.)
- By August 13, 2004, the IAD procedural manual must address: assignment and rotation of officers; training and qualifications of members and other personnel in IAD; appropriate background checks of IAD personnel; and confidentiality of IAD information.

b. Status of Compliance and Assessment

The revised compliance deadline for this task was in August 2004. During the last two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are 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, the IMT audited OPD's actual practice compliance with this task. OPD is in conditional compliance with Task 1, pending completion of scheduled training courses for several members.

Task 1.1 requires OPD to assign staff to IAD in accordance with the selection criteria set forth in the IAD Manual. These criteria include interviewing candidates; reviewing their backgrounds including their complaint histories and performance appraisals; reviewing their abilities to write reports and conduct investigations; and interviewing their current supervisors. IAD did a good job complying with these criteria except it did not review the report-writing and investigative ability or interview current supervisors for the majority of the candidates. IAD commanders acknowledged that they had not focused on assessing the report-writing or investigative ability of prospective intake officers. However, given the increasing amount of investigative work expected of intake officers, these are important areas to explore for all new sworn staff. According to

IAD commanders, they intend to use supervision and training to ensure that IAD members write well and conduct adequate investigations. While OPD did not interview the current supervisors and/or commanders of most prospective IAD members, it did review recent performance appraisals which helped to mitigate this deficiency. Because the reviews that OPD did not conduct are not directly required by the Settlement Agreement and because IAD has taken other measures to fulfill the underlying intent of the missing selection criteria, we did not find OPD out of compliance for this task based on these omissions.

In addition to subjecting all IAD candidates to this review, the IAD Manual requires the IAD Commander to prepare a list of candidates and consult with the Chief of Police. OPD is in compliance with this requirement.

Task 1.2 requires OPD to rotate IAD staff in accordance with the IAD Manual. OPD is in compliance with Task 1.2. Rotations into IAD are exempt from the transfer policy and rotation into IAD provides officers with career development opportunities as required by the Manual. Pursuant to the Manual, IAD is required to consider rotation of personnel on an annual basis when preparing performance appraisals. OPD's compliance with this requirement had been informal and not well-documented until more recently when it started specifically including such consideration in staff appraisals. Consistent with the IAD Manual, IAD staff may request voluntary transfers and the IAD Commander makes every effort to accommodate such requests as soon as possible in light of the operational needs of the Division and the Department. During the past year, OPD has transferred a number of employees from IAD consistent with the process set forth in the IAD Manual.

Task 1.3 requires OPD to ensure that the training and qualifications of IAD staff are provided for in accordance with the IAD Manual. OPD provided the orientation required by the Manual. On the intake side of IAD, the Administrative Sergeant or his designee is providing each intake officer with an orientation that includes an orientation of the facility and training in IAD policies and procedures. As part of this orientation, all of the current intake officers work with an experienced intake officer to complete an "Intake Investigator Training Checklist." On the investigations side of IAD, the Investigations Section Lieutenant is providing each new investigator with a facilities walk-through. The Lieutenant also goes through a blank performance appraisal with each investigator to discuss his expectations of IAD investigators. Each new investigator is assigned a trainer to complete the orientation process and "New IAD Investigator Training Checklist."

Task 1.3 also requires that intake officers, case management officers, Pitchess Motion officers, and IAD investigators attend a California's Commission on Police Officer Standards and Training (POST)-certified Internal Affairs course as soon as possible. For the period of our review, 28 members of IAD fell into these categories and thus were required to attend the POST course. Twenty-three of these 28 individuals have

attended the course.⁶ Of the five remaining individuals, four of them are scheduled to attend the class between now and March 2007, and the final individual is transferring to Patrol in January. This member will have worked in IAD for over a year without having attended the required training. One of the other individuals who has not yet attended the course has been assigned to IAD for more than a year. Two of the others will have worked for between six and ten months prior to attending the class. These delays are of concern and, if continued, will jeopardize OPD's compliance efforts. Since OPD has now trained or scheduled for training all but one of its members requiring training, we find OPD in conditional compliance with this portion of Task 1.3.

In addition to the above, Task 1.3 requires that new members work with an experienced and trained investigator until they have successfully completed a POST certified Internal Affairs Investigator's course and been approved by the IAD Commander or his/her designee. OPD is in compliance with this requirement.

The final requirement of Task 1.3 is that the Administrative Sergeant and Investigation Supervisor positions shall be made from experienced staff already trained with the IAD process. The current Administrative Sergeant was brought in from another Division and was not already trained in the IAD process. The Investigations Lieutenant was an experienced staff member already trained in the IAD process. Since it is not always possible to fill these positions from existing staff and OPD reported that it sought out the best qualified candidates, we find the Department in compliance with this provision.

Task 1.4 requires OPD to maintain IAD confidential information in accordance with the IAD Manual. The Manual establishes procedures for general office security measures including controlling access to IAD offices and files. Based on our inspection of IAD, OPD is in compliance with Task 1.4.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices continue to 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.

⁶Due to inconsistent practices regarding the Department's documentation of outside training attended by its members, OPD has had a difficult time producing attendance documentation for all of the individuals but is currently completing this process.

- 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are 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, the IMT audited OPD's actual practice compliance with this task.

Task 2.1 requires that OPD conduct timely internal investigations. General Order M-3 defines timeliness and requires that IAD investigations be completed, reviewed, and ready for discipline recommendation by the Discipline Officer (where appropriate) within 90 days of the Internal Affairs Division (IAD) intake date. It requires that Division-level investigations (DLIs) be completed, reviewed, and ready for recommendation by the Discipline Officer (where appropriate) within 120 days of the IAD intake date. For sustained cases, General Order M-3 requires that the discipline recommendation process, including Chief of Police approval, disapproval, or return for further investigation, be completed within 30 calendar days of receipt of the reviewed investigation.

These timeframes are consistent with those required in similar agreements and best practices, nationwide. At the time OPD adopted these timeframes it expressed doubt that it could attain them, noting the resource pressures facing OPD and that other agencies under court ordered agreements had been unable to meet similar timeliness requirements. OPD is not in compliance with these timeliness requirement, but the significant strides OPD has made in just one reporting period, along with our judgment that these timeframes are reasonable, indicate that OPD is capable of attaining these timeliness goals. OPD has indicated that it will seek to revise these timeliness requirements.

The IMT assessed all investigations with intake dates of March 1, 2006, through May 31, 2006, that were not administratively closed or informally resolved to determine the timeliness of OPD internal investigations. This time period was selected because it is well after the implementation of General Order M-3, and the due dates for completion have passed for all complaints received during this timeframe. We did not consider extensions granted to investigators by IAD management.

In OPD's view, the IMT should consider extensions in determining whether a case is timely. In other words, in OPD's view, if an investigation is completed by the assigned due date when an extension has been granted, it is "on time" and should be considered compliant with Task 2. In the IMT's judgment, this approach would not be consistent with the letter or intent of the Settlement Agreement. In our view, while considering extensions is important for internal management and accountability, the actual time it takes for a complaint to be resolved, regardless of whether the additional time was approved, is of paramount importance for both officers and complainants. If the IMT were to find cases timely on the basis that there was an extension authorizing going beyond the time limits set out in General Order M-3, our compliance assessment would include anomalous results such as finding cases timely that took two or three times as long to complete as contemplated by OPD's own policy. Thus, in order to be timely for purposes of Task 2 compliance, the IMT will continue to assess whether internal investigations are completed within the actual time frames set out in OPD's General Order M-3. We have included in our report the percentage of cases that were completed by their extended due date. Whether including extensions or not, OPD has not met the 95% compliance rate required.

OPD also believes that the IMT should include informally resolved matters and administratively closed matters in assessing OPD's compliance with Task 2's timeliness requirements, particularly given the extensive work that goes into many of these cases. However, Administrative Closures and informally resolved complaints are not investigations and, by OPD's own terms, are not covered by General Order M-3. In our judgment, this stands to reason, as Administrative Closures and ICRs are materially different from investigations. Administrative Closures are used in instances where, for example, the officer named is determined not to work for OPD or where the allegation does not allege misconduct but rather discontent with OPD service. Informally resolved matters are not investigations, but, as their name indicates, informal resolutions of relatively minor complaints of misconduct. OPD does not contend that if Administrative Closures and ICRs were included it would be in compliance with this Task.

There were a total of 161 cases that fit the IMT's selected parameters: 121 IAD investigations and 40 DLIs. Of the 121 IAD investigations in our dataset, 64 (53%) were completed, reviewed, and ready for discipline recommendation (or otherwise approved) within 90 days of the IAD intake date as required by M-3. Fourteen of the 121 IAD cases had yet to be completed as of our review.

Of the 40 DLIs in our dataset, five (13%) were completed, reviewed, and ready for discipline recommendation (or otherwise approved) within 120 days of the IAD intake date as required by M-3. Eighteen of the 40 DLI cases had yet to be completed as of our review.

If extensions are included, as OPD believes they should be, 60% of IAD investigations and 48% DLIs were timely completed.

Our assessment of the timeliness of OPD's disciplinary process was based on every sustained case with an incident date after the implementation of General Order M-3. Of these 29 sustained cases, the discipline process was completed within 30 days of the IAD commander's approval in 16 cases (55%).

OPD is in compliance with Task 2.1.1 which requires IAD and OPD commanders to regularly monitor compliance with timeliness standards. In stark improvement over past practice, IAD and OPD commanders regularly monitor internal investigation timeliness with weekly reports distributed Department-wide; email reminders of cases near critical deadlines; discuss timeliness and overdue cases in departmental command-level meetings; and hold commanders who fail to ensure compliance with Government Code § 3304 accountable. While not yet in compliance with M-3's timeliness standards, these measures have had an impact on the significantly shorter investigation times and fewer problems meeting the one-year § 3304 deadline.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices comply fully 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 two reporting periods, OPD completed and trained relevant personnel on the Internal Affairs Policy and Procedure Manual, which incorporates Task 3.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. Task 3.1 requires OPD to conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct. As of the time of this audit, OPD had not yet developed any standards or criteria for identifying such individuals or for conducting integrity tests in these circumstances. Accordingly, OPD is not in compliance with Task 3.1. In response to our audit, OPD has started drafting a policy for its Integrity Unit setting forth the criteria for conducting integrity tests in situations where members/employees have been the subject of repeated allegations of misconduct. OPD is contacting other agencies for information regarding their practices and reports that it will complete the draft before the end of January 2007. As part of this

process, the IAD Commander and Sergeant in charge of integrity testing report that they also intend to start analyzing a comprehensive list of all member/employee complaints to look for patterns.

Task 3.2 requires IAD to conduct its integrity tests in accordance with the frequency standards and other parameters IAD has established. OPD is in compliance with Task 3.2. Internal Affairs Policy & Procedure 05-01, published in December 2005, sets forth the general frequency standards and other parameters for integrity testing. The policy outlines two categories of integrity tests: planned integrity tests and selective integrity tests.

Planned integrity tests are random in nature, not targeting any particular individual but used to verify compliance with Departmental policies and procedures. Since the policy was implemented in December 2005, IAD has conducted two planned integrity tests, one focusing on the receipt and processing of complaints by IAD intake officers and one focusing on whether members or employees were engaging in prohibited retaliation. In addition, the Department continues to conduct monthly drivers' license and warrant checks of members and employees and has initiated administrative investigations as a result of such checks.

Selective integrity tests are targeted enforcement tools aimed at addressing specific issues regarding identified members, employees, or units. Since the policy was implemented in December 2005, IAD has conducted one such test. The tests required by Task 3.1, discussed above, are an example of selective integrity tests. However, as discussed above, OPD has not yet established the selection criteria for such tests.

The IMT reviewed the three integrity tests (two planned and one selective) that have been conducted since the implementation of the policy.⁷ We evaluated whether these tests were conducted in accordance with the standards set forth in the policy. In general, IAD did a good job complying with these standards, including creating operations plans when required and preparing after-action reports discussing training and policy issues and recommendations for addressing any identified failures in policies, procedures, and/or systems.

Although OPD is not yet in full compliance with Task 3, the IMT was impressed by the commitment of IAD staff and by its decision to conduct particular tests for the express purpose of detecting retaliatory conduct. IAD has identified a number of resource deficiencies that prevent it from developing successful integrity testing. Based on our review of the tests conducted, we agree with IAD's assessment. For example, IAD does not have access to its own surveillance equipment (e.g., video and audio recording equipment, GPS tracking devices, binoculars, etc.), covert currency, covert vehicles, or a secure communications channel. As a result, whenever IAD undertakes an integrity test requiring such resources, it must obtain them from other Departmental units.

⁷ In addition to these integrity tests, OPD conducted three integrity tests before completing its integrity testing policy. The IMT reviewed these tests as well but did not consider them for purposes of making compliance determinations.

This severely compromises the security of the integrity testing process and makes it virtually impossible for IAD to conduct any tests of those units in the Department who control these resources. Additionally, given the relatively small size of the Department, IAD may, from time to time, need the assistance of law enforcement officials from other agencies in order to conduct successful tests. They, however, have not been provided the funds to pay for such assistance.

We have been informed that IAD has raised these deficiencies to the Chief who in turn has brought them to the City's attention. In our audit, we encourage the City to provide the necessary support and include a series of recommendations aimed at improving OPD's integrity testing. These recommendations include: completing criteria for identifying members/employees who are the subject of repeated allegations of misconduct; improving the documentation and review process associated with the tests; and providing additional training to staff conducting integrity tests.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices comply fully 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. These policies are 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, the IMT audited OPD's actual practice compliance with this task. OPD has made important progress with this task and is in compliance with a number of its provisions, but is not yet in full compliance with Task 4.

While OPD and IAD have not fully resolved all problems tracking complaint investigations or internal requests for investigations, OPD is in compliance with the requirement that it maintain a central control system for complaints and Department requests to open investigations. It is also in compliance with the requirement that IAD and the Chief be informed as soon as practicable of complaints that are likely to generate unusual interest.

OPD is in compliance with the requirement that it assign each complaint an IAD case number and enter it into a complaint database with identifying information about the complaint. OPD has developed a number of mechanisms in response to previously identified problems with uninvestigated complaints of misconduct. Our review indicated that every complaint is assigned either an intake number or an IAD case number. There continue to be problems with matters that are inappropriately considered service complaints or "No MOR" complaints, and thus assigned only intake numbers rather than IAD case numbers. Since instances of this are relatively rare and because matters with intake numbers are tracked, the lack of an IAD case number is less problematic.

OPD is not yet in compliance with the requirement that it meet specified criteria before deciding whether a complaint should be informally resolved, administratively closed, or investigated. We found that 90% of the administratively closed cases we reviewed were appropriate for administrative closure pursuant to OPD policy. We attribute this high compliance level in part to extraordinary efforts by IAD to review administratively closed cases to ensure that they were handled properly. Our review indicated that numerous cases were reopened and investigated as a result of this review.

We found that 69% of the ICRs we reviewed were appropriate for ICR and that 27% of the formal investigations we reviewed complied with OPD's own investigative criteria. Many instances of non-compliance with these requirements occur because OPD does not interview the subject officer or other relevant persons prior to completing an investigation as required by the Settlement Agreement. This often happens when investigations are resolved via "Summary Finding." This term is used by OPD to indicate cases that are completed by IAD's intake unit rather than its investigative unit.

They do not include investigative reports and often do not include interviews of the subject officer. The Settlement Agreement requires that the subject officer be interviewed, and our review indicates that this interview is often necessary to adequately investigate a complaint. OPD recognizes that cases resolved via "Summary Finding," do not comply with all NSA requirements and is seeking to have those requirements changed, because, in OPD's view, cases resolved via Summary Finding are still thorough investigations, reduce IAD workload, and provide quicker resolution to investigations, a benefit to both officers and complainants. In our judgment, Summary Findings, as currently defined by OPD, are not appropriate for resolving the majority of internal investigations. However, we do not object to their use in some instances, provided that the Settlement Agreement is revised so that their use is consistent with it.

OPD is in compliance with the requirement that it maintain a process for informally resolving Class II misconduct allegations. It has almost attained compliance with the requirement that complaints that are informally resolved include certain documented information. Ninety percent of the informally resolved complaints reviewed included the required information.

In addition, OPD is in compliance with the requirements that formal complaints be initiated when the informal complaint process is not successful and that it not unduly influence individuals to participate in the informal complaint process.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices fully 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 had 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 two reporting periods, OPD completed these policies and trained its personnel on them.

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 this reporting period, the IMT audited OPD’s actual practice compliance with this task. Tasks 5.1 through 5.5 involve procedures related to OPD’s response to complaints in the field. OPD is in the process of developing a system to document compliance with these tasks. The IMT agreed to refrain from auditing these provisions of this task until the next reporting period while that system is being implemented. Tasks 5.6 through 5.14 relate to complaints by Oakland City Jail inmates. Because the jail has been closed, OPD’s remaining responsibilities under these tasks require that an on-duty supervisor respond to the Alameda County Jail if there are complaints from inmates arrested by OPD, and that the complaints be processed in accordance with OPD policies. As above, OPD is in the process of developing a system to document compliance with this aspect of this task. The IMT agreed to refrain from auditing these provisions of this task until that system is implemented.

Tasks 5.15 and 5.16 require that OPD gather all relevant evidence, and then adequately consider that evidence, to make credibility determinations and resolve inconsistent statements. OPD has made extraordinary gains in this area in every respect.

In marked contrast to past practice, canvassing for witnesses is routine; witnesses to the alleged misconduct are interviewed; follow-up interviews with complainants, officers, and others are commonplace; investigators make repeated visits to the homes of witnesses to secure a statement or obtain additional information; and medical records are routinely sought and obtained. OPD's analysis of evidence, credibility determinations, and resolution of inconsistent statements is also improving. In addition, where an investigation is not sufficient, supervisors often return it for more work, something we did not routinely see in previous reviews.

Despite the obvious and significant improvements we saw in OPD's investigations, its compliance with these requirements remains relatively low. In the formal investigations we reviewed, OPD obtained all relevant evidence in only 47% of the cases and adequately considered relevant evidence in only 43% of these cases. We found that the resolution of each allegation was supported by a preponderance of evidence as required by the Settlement Agreement in 47% of formal investigations. We intend to work closely with OPD to explore ways to improve compliance with this task and maintain the significant gains it has made in this area already.

We found case files far better organized and easier to follow than we had during previous reviews. A large part of this improvement is due to the use of chronological logs, particularly by IAD. OPD, however, is not yet in compliance with the requirement that all notes be maintained in the investigative file. We recognize that most, and in some cases all, investigator notes are kept in these chronological logs. Still, while it appeared that investigators retained notes in 63% of formal investigations, we were unable to determine whether such notes were retained in 27% of the cases reviewed. It appeared that notes were not retained in the file in 10% of the cases. While the files should contain adequate contemporaneous documentation verifying compliance with this requirement, we conducted several supplemental interviews of IAD staff regarding their practices in this area. Staff reported that they did not generate additional notes and shared with us the efforts they are making to ensure more complete and consistent documentation of this task going forward, including adding a check box on the investigator checklist regarding investigator notes. Such efforts, if implemented, should help enable OPD to attain full compliance with this requirement.

Task 5 also requires OPD to identify each allegation of misconduct in a complaint and resolve it with one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. OPD has improved significantly in this area and is very near compliance. In 84% of the cases we reviewed, OPD identified and resolved each allegation of misconduct.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices fully 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 completed and trained its staff on *Manual of Rules* insert 398.76, incorporating the requirements of 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are 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, the IMT audited OPD's actual practice compliance with this task. OPD has made its complaint system more transparent and accessible to individuals who live and work in Oakland. In addition to locating IAD offices off-site from the police department, these efforts include setting up a recordable, toll-free complaint hotline, providing complaint information and posters at locations throughout the City, and translating informational brochures regarding the complaint system into Spanish, Chinese, and Vietnamese.

Task 7.1 requires OPD to operate a recordable, toll-free complaint hotline. While OPD has set up the hotline, based on several unanswered calls we placed to the complaint hotline on different days, OPD is not yet in compliance with this task. Task 7.2 requires the Department to make complaint forms available and prominently post information regarding the complaint system at designated Department and municipal locations. The IMT visited all nine locations listed in OPD's policies and found prominently posted complaint guidelines. However, neither complaint forms nor informational brochures were always available. The guidelines and brochures also are required to be provided to Neighborhood Services Coordinators for "availability at Neighborhood Crime Prevention Council meetings." The IMT interviewed 10 of the 15 current NSCs to verify this requirement; nine of the 10 (90%), confirmed that OPD has provided them with complaint forms and brochures for distribution to interested community members.

OPD is in compliance with the requirement that officers have complaint forms and brochures available while on duty. It is also in compliance with the requirement that complaint forms be processed in accordance with state law. It is not, however, in compliance with the requirement that the complaint forms and brochures be translated consistent with City policy. While *Your Guide to Filing a Complaint Against the Police* has been translated into Chinese, Spanish, and Vietnamese, the complaint forms stapled inside all four versions of this brochure are only in English. According to OPD, although it has not translated the complaint forms, it provides translators to non-English speakers who wish to file a complaint.

This task also requires OPD to accept and investigate anonymous complaints to the extent reasonably practicable. Since the implementation of General Order M-3, six anonymous complaints have been filed with OPD. Based on available documentation, we were able to determine that OPD complied with this requirement in three of the cases.

We were unable to determine whether OPD's investigative steps were adequate in the remaining three cases based on available documentation. We have requested additional information and will make a compliance assessment upon reviewing it.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices fully 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 two reporting periods, OPD completed the policies that comply with this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*. 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 this reporting period, the IMT audited OPD's actual practice compliance with this task. Based on our review of cases from the last three months, OPD is in compliance Task 8.1 which requires OPD to classify all misconduct allegations as Class I or Class II offenses. Until very recently, OPD was not in compliance with this task. Through the publication of M-3, OPD is also in compliance with Tasks 8.2, 8.3, 8.6, and 8.7, which define Class I and Class II offenses and how they may be handled.

OPD is close to compliance with the requirement that Class I allegations of misconduct be investigated by IAD unless otherwise directed by the Chief. Seventy-nine percent of the cases we reviewed were properly assigned. The Department is not yet in compliance with this task's requirements regarding the recording of interviews. Interviews were properly recorded in 91% of the applicable cases in our review.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices comply fully 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. Task 9 requires that complainants be contacted as quickly as possible by IAD or other OPD staff to begin gathering information regarding the complaint. One of the most striking and beneficial improvements we observed this reporting period is how quickly IAD contacts complainants to learn the details of their complaint and to begin the investigative process. IAD was diligent in its efforts to contact complainants; it was not uncommon for an investigative file to record repeated attempts to make initial investigative contact with complainants. The greatly improved quality of OPD internal investigations is in large part due to the quick contact of complainants by the IAD intake unit. Complainants in 74% of the cases we reviewed were contacted as soon as possible by IAD in accordance with this requirement. As OPD continues to improve in this area, we expect it will shortly attain compliance with this task.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices comply fully 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 during the seventh 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 last reporting period that OPD had 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its staff on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. Task 11.1 requires OPD to provide members/employees with a brief synopsis of any complaint alleged against them, and not to allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee's interview. OPD now asserts that it is not required to notify its employees of pending complaints unless it interviews the employee. In the IMT's judgment, the Settlement Agreement requires that OPD notify officers of pending complaints regardless of whether the officer is interviewed, and documentation in internal investigation case files indicates that IAD shares this understanding. We found insufficient documentation that subject employees were provided a brief synopsis of complaints against them regardless of whether they were interviewed. We were able to verify that subject employees were provided a synopsis of the complaint against them and that the synopsis was retained in the file in only 37% of cases reviewed. We also found insufficient documentation that interviewed subject employees were not permitted to read complainant or witness statements prior to being interviewed.

In addition to the above requirements, Task 11 requires IAD to notify the subject's immediate supervisor and commander when notifying a member/employee that a complaint has been filed against him or her. While OPD initially indicated this task was ready for audit in July 2006, we were informed during the course of our review that OPD only recently began documenting notification of the subject's immediate supervisor and commander in the investigative file. In the cases we reviewed, we were able to confirm notification in only 38% of the relevant cases.

OPD is in compliance with the final requirement of Task 11 which requires it to provide subject member/employees access to the underlying data on which the complaint investigation reports are based upon conclusion of the investigation.

During the upcoming reporting periods, the IMT will determine whether OPD's actual practices comply fully 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. Task 12 requires OPD complaint investigators to disclose relationships that might lead to bias or a perception of bias. OPD is not yet in compliance with this task. OPD's newly developed disclosure forms were filled out and included in 70% of the formal investigations. Because use of these forms was in its initial stages, many disclosure forms were not completed until the investigation was well underway or completed. OPD should be able to attain compliance with this task as the use of these forms becomes more routine.

Task 12 requires that investigators be recused when it is clear that their relationship with the subject or involvement in the incident might lead to bias or a perception of bias. OPD is not yet in compliance with this task. We identified seven cases in which investigators had relationships to the incident and/or individuals involved in the incident where the nature of the relationship could compromise or be perceived to compromise the investigative process. In five of the seven cases, the investigators disclosed involvement in the incident or a close working relationship to a subject officer. In the remaining two cases, the investigators did not disclose their involvement as supervisors or witnesses to the incident being investigated. The investigators were not recused in any of these seven cases and none of these cases document any evaluation of whether the investigator should have been replaced, other than a checkmark indicating

that the investigator was not reassigned. The place on the recusal form directing commanders to provide a reason why reassignment was or was not justified was left blank on every form that was completed.

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. During the last two reporting periods, OPD published the policies which incorporate the requirements of Task 13 and trained its personnel on the policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and IAD P&P 05-03.

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

The Oakland Police Department/City of Oakland receive, on average, 12 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.

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.

While our audit indicated that OPD appeared to be locating the vast majority of cases responsive to Pitchess Motions, using IAD's database, we identified over 80 cases that were not identified in the City's Pitchess responses, even though they appeared to fit the City's criteria for identification. To its credit, OPD reviewed each of these cases to determine whether any of them should have been identified and/or produced but were not and, if so, why they were not. In July 2006, OPD produced a report to the IMT detailing its findings. The Department determined that human error, policy gaps, and outdated database entries caused improper omissions in some of OPD's Pitchess responses. Based on its findings, the Department has implemented several new policies and procedures to help ensure that future Pitchess responses are complete and accurate. These enhancements include improvements in IAD's database practices and 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). The Department also committed to conducting its own audit in January 2007, of its Pitchess responses to determine whether these and other remedial measures are working as intended. OPD also met with local judges, prosecutors, and defense attorneys to explain its findings and committed to cooperating fully with the Public Defender's Office to provide it with cases that should have been produced but were not.

The IMT has been impressed by OPD's efforts to improve its handling of Pitchess responses and will continue to work with OPD to address outstanding issues. During the upcoming reporting periods, the IMT will determine whether OPD's actual practices continue to comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The implementation deadline for this task occurred in October 2004. During the last two reporting periods, OPD completed General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and trained its personnel on the policy. This policy incorporates the requirements of this task.

During the seventh reporting period, the IMT conducted an audit of OPD's compliance with Task 14 in actual practice and found that OPD is in actual practice compliance with this task. 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

During this reporting period, the IMT audited OPD's actual practice compliance with this task. Task 15 contains two distinct requirements. The first requires that the chain of command review recommended findings in completed investigations. While the chain of command continues to review recommended findings in Division-level investigations, OPD no longer requires this review for investigations conducted by IAD. Instead, these investigations are reviewed by IAD commanders. This practice is consistent with General Order M-3 which has been approved by the parties and IMT. The IMT has reminded OPD several times of the need to obtain a stipulation to conform this NSA requirement to current policy and practice. OPD also may wish to consider whether the chain of command review should be eliminated for Division-level

investigations as well. Since OPD's practices are consistent with a policy that has been approved, we find OPD in conditional compliance with this portion of Task 15 pending completion of an appropriate stipulation.

As discussed below in our Task 45 audit summary, OPD is in compliance with the second requirement of Task 15 which requires that the Discipline Officer make disciplinary recommendations in sustained internal investigations.

During the upcoming reporting periods, the IMT will determine whether OPD completes the required stipulation and whether its actual practices continue to 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 two reporting periods, OPD completed the policies incorporating this Settlement Agreement task and trained its personnel on these policies. The policies are General Order M-3, *Complaints Against Departmental Personnel or Procedures*, and Training Bulletin V-T.1, *Internal Investigation Procedure Manual*.

During this reporting period, the IMT began a compliance review of Task 16 and assessed several cases that had been identified by IAD as responsive to this task. We also reviewed additional cases we identified as responsive to this task during the course of our broader case review. It became apparent during the course of our review that there is not currently a mechanism to ensure that all cases responsive to Task 16 can be identified, absent extraordinary effort by IAD staff. IAD has developed a method for identifying

Task 16 cases in the future and this will soon be implemented. The IMT elected to postpone its formal compliance review with this task until the upcoming reporting period to provide OPD the opportunity to ensure all Task 16 cases are identified. In the interim, the IMT will meet with IAD to review our findings of the Task 16 cases we did review to ensure that IAD and the IMT have a common understanding regarding how these cases will be assessed and to allow OPD to address any problems prior to the IMT's formal compliance assessment of this task.

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

17. Audit, Review and Evaluation of IAD Functions (Task 17; S.A. III.P.)

a. Settlement Agreement Requirements

- OPD and the Monitor shall conduct audits, reviews and evaluations of IAD functions, as specified in the Settlement Agreement.

b. Status of Compliance and Assessment

Task 17 has no separate requirements. Task 17 reiterates Task 51, which requires OPD to conduct several annual audits, including audits of IAD functions, and the duties of the Monitor, reflected elsewhere in the Settlement Agreement. As discussed in our task update for Task 51, OPD remains in compliance with this Settlement Agreement task. It has conducted on-going reviews and evaluations of IAD's complaint intake and investigation functions, including providing feedback to IAD regarding complaint quality and timeliness.

B. Supervisory Span of Control and Unity of Command (Tasks 18–23; S.A. IV.)

Section IV of the Settlement Agreement, Tasks 18–23, 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, three additional tasks became due: 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 six of the tasks in this area. Additionally, during the sixth reporting period, OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel for all but two of the tasks in this section requiring training. During this reporting period, OPD reported that it completed training of its personnel for the final two tasks. The IMT will verify training on these policies and report the results in our next status report.

1. **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 had trained 95% or more of relevant personnel on this policy. 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 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. 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, OIG conducted an internal audit of Task 18 that resulted in findings similar to those of the IMT. The OIG found that, although the Department still was not in compliance with Task 18, it had made significant improvements in the review and approval of field-arrests since our initial audit. During the past year, OPD has drafted new arrest reporting forms to help facilitate supervisors' review of arrests. OPD is in the process of training officers on the new form and reports that it intends to begin using them in December 2006.

During the seventh 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 this area 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 over 95% of relevant personnel.

During this reporting period, the IMT initiated our second audit of OPD's actual practice compliance with this task. This audit is currently underway. We are unable to report the results of this audit in this status report due to significant delays in OPD's production of the documentation necessary to assess compliance with this task. Notwithstanding the substantial efforts of OIG staff to compile the requested documents, OPD had an inordinately difficult time locating the basic police data requested—a sample of crime and arrest reports. 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. In our last status report, we included as an area of concern the significant deficiencies in the Department's collection and management of data. As we previously reported, OPD's continuing inability to track and retrieve data efficiently severely impacts the Department's ability to demonstrate compliance with any number of Settlement Agreement provisions in a timely or adequate fashion. Moreover, as we reported, these continuing deficiencies may impact OPD's ability to provide the level and type of crime fighting and customer service to which it aspires.

OPD has recently started including in its weekly management meetings reports on arrest approvals for selected OPD units. The IMT was encouraged to see this topic included in the meetings given the importance of ensuring that arrests made by OPD officers meet legal and policy requirements. However, based on the reports we have observed, OPD commanders may not be sufficiently addressing arrest approval lapses as they are reported. In particular, we have observed reports of arrests made that lacked the

required documentation yet OPD commanders made no efforts during the management meeting to learn how or why such deficiencies resulted. We have been informed that OPD addresses such issues directly with responsible supervisors and commanders outside of management meetings. Likewise, in our review of internal investigations this reporting period, we observed instances where supervisors have failed to review arrest documentation adequately, yet this issue was not addressed by investigators or commanders. Unless OPD commanders routinely begin to inquire about deficient arrest approvals and address the underlying causes for such deficiencies, the Department will continue to face difficulty attaining compliance with this task.

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

2. 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 attained training compliance on General Order A-3 and BFO Policy 03-02. However, OPD never completed training on BOI Policy 04-02.

During this reporting period, OPD replaced BFO 03-02 and BOI 04-02 by publishing General Order A-19, *Supervisory Span of Control*. The IMT determined that General Order A-19 incorporates the requirements of Task 19. Accordingly, OPD remains in policy compliance with this task. According to OPD, it recently completed training more than 95% of relevant personnel on the new policy. The IMT will verify training on this policy and report the results in our next status report.

During this reporting period, the IMT initiated an audit of OPD's actual practice compliance with this task. This audit is currently underway. As with Task 18 above, we are unable to report the results of this audit in this status report due to significant delays in OPD's production of the core documentation necessary to assess compliance with this task. Despite the basic operational nature of the data requested for this task (identification of member and employee schedules and assignments), OPD's

Personnel Division struggled to produce timely and reliable data responsive to our requests. Following lengthy delays, Personnel produced some information. However, based on our own knowledge of staff schedules, assignments, and personnel moves, we were able to quickly discern that much of the data provided was inaccurate and/or simply outdated. We spent a considerable amount of time working with Personnel, OIG, and other OPD units to assist them in compiling accurate staffing rosters. The Department has acknowledged the deficiencies in its management of basic personnel data and has reported that it is working on improving and modernizing its recordkeeping systems. As with Task 18 above, unless and until OPD is better able to manage data, including basic operational data, it will have a difficult time demonstrating compliance with this and other NSA provisions.

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

3. 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 attained training compliance on General Order A-3 and BFO Policy 03-02. OPD, however, never completed training on BOI Policy 04-02.

During this reporting period, OPD replaced BFO 03-02 and BOI 04-02 by publishing General Order A-19, *Supervisory Span of Control*. It also published Special Order 8435, *Acting Sergeant Selection Process*, establishing procedures for ensuring that those individuals who serve as acting sergeants have the necessary skills and training to function effectively as acting supervisors. The IMT determined that these policies

comply with the NSA. Accordingly, OPD remains in policy compliance with this task. According to OPD, it recently completed training more than 95% of relevant personnel on the new policies. The IMT will verify training on these policies and report the results in our next status report.

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 with Task 20. OIG is currently auditing OPD's compliance with Task 20. OPD has recently started including in its weekly management meetings reports on the span of control for selected OPD units. This is a positive development given the importance of ensuring adequate field supervision. We have observed occasional reports of units significantly exceeding the 1:8 span of control on certain days with little, if any, further discussion or inquiry by commanders during the management meetings. According to OPD, it discusses these issues outside of management meetings directly with relevant commanders.

OPD has not yet implemented the acting sergeant selection process set forth in its new special order. If OPD does not implement the acting sergeant policy, it likely will continue to face difficulty attaining compliance with this task much less ensuring that its officers are being adequately supervised. Moreover, failing to address these deficiencies as they arise may inadvertently encourage staff to ignore policy requirements.

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

4. 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 had trained 95% or more of relevant personnel on this task. During this reporting period, OPD published a revised version General Order B-6 to provide additional guidance to supervisors and managers. The IMT determined that the revisions comply with the Settlement Agreement. According to OPD, during this reporting period it trained more than 95% of its personnel on the revised policy. The IMT will verify training on this policy and report the results in our next status report.

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.

During the last reporting period, the IMT audited OPD's actual practice compliance with this task. We requested documentation of the required meetings for a random sample of members and employees for a three month period following implementation of the new reporting forms. 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. While more meetings may have occurred, OPD was unable to provide sufficient documentation. Accordingly, OPD remained out of compliance with Task 21.

As a result of the audit and OIG's attempts to collect the necessary documentation, OPD began beta-testing a centralized log to use for tracking the required meetings. Some centralized tracking is occurring in BFO, but most other departmental units are continuing to rely on the paper forms.

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. As we discussed in our last status report, the Department still does

not have any systematic way of documenting that these meetings are occurring as required. While OPD has been aware of and acknowledged these deficiencies for some time, it continues to lack 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. During the last reporting period, we found that OPD's supervisory personnel are doing a much improved job of reviewing their subordinates' conduct for patterns of potential misconduct. Over 95% of the performance appraisals we 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, we found that OPD was 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.

5. 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 seventh reporting period, 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 this task. Accordingly, OPD attained conditional training compliance with this task.

During the last 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. During our audit last reporting period, we determined that OPD's actual practices were no longer in compliance with the Settlement Agreement because OPD was doing an inadequate job of tracking MLL cases to ensure that they are resolved in a timely and appropriate fashion. As we have previously noted, MLL referrals 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 courts, prosecutors, and defense attorneys with whom it must work on a continuing basis.

During the course of this audit, the IMT discussed with the MLL the necessity of closely tracking MLL cases. As a result, the MLL began including in his monthly memoranda summary information regarding the status of MLL cases, including the case number, subject officers, and any disposition. 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 monthly reports has improved significantly. Additionally, IAD has added to its weekly meeting with the Chief a standing item regarding the status of pending MLL cases. These measures, if continued, will assist OPD in attaining compliance with this task and help to ensure that these unique and significant referrals get resolved in a timely and thorough fashion. While some MLL referrals have resulted in disciplinary recommendations, others have resulted in recommended improvements in OPD policies, procedures, or training.

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

6. 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 the seventh 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 confirmed 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.

B. 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 the last 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. 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.

During this reporting period, OPD completed several critical subsidiary use of force policies associated with the primary policies discussed above. Additionally, OPD reports that it has met or is on target to meet the training deadlines established by the Court. The IMT will verify OPD's training figures and report on them in our next status report. Updating and/or drafting the new use of force policies was 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 and the Court have commended 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 the last reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. 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. During this reporting period OPD completed and the IMT approved the following critical subsidiary use of force policies: General Order C-4, *Safety Equipment*; General Order K-9, *Department Canine Program*; Training Bulletin III-B.4, *Handcuffing Techniques*; Training Bulletin V-G, *Use of Police Canines*; Training Bulletin III-H.1, *Use of Taser*; Training Bulletin III-H.2, *Use of Handheld Impact Weapons*; Training Bulletin V-F.2, *Use of Chemical Agents*; Training Bulletin III-X, *Deadly Force and Vehicles*; and Training Bulletin III-N, *Recognizing and Handling Mentally Disturbed People*. The Court ordered completion of the majority of the subsidiary policies by August 1, 2006, and the remaining policies by October 1, 2006, with training on all policies to be completed no later than December 30, 2006. OPD met the policy publication deadlines and has reported that it already has met or is on target to meet the training deadlines established by the Court. The IMT will verify OPD's training figures and report on them in our next status report.

The new use of force reporting policies represent a significant enhancement over prior policy which did not require officers to report all uses of force. Consistent with contemporary law enforcement practices, the new policies require OPD officers to report whenever they point their firearms at an individual or use force of any type. The new policies also require officers to summon their supervisors to the scene whenever force is used or there is an allegation that force was used.

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 the last reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. 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.

During this reporting period, OPD completed the following critical subsidiary use of force policies: General Order C-4, *Safety Equipment*; General Order K-9, *Department Canine Program*; Training Bulletin III-B.4, *Handcuffing Techniques*; Training Bulletin V-G, *Use of Police Canines*; Training Bulletin III-H.1, *Use of Taser*; Training Bulletin III-H.2, *Use of Handheld Impact Weapons*; Training Bulletin V-F.2, *Use of Chemical Agents*; Training Bulletin III-X, *Deadly Force and Vehicles*; and Training Bulletin III-N, *Recognizing and Handling Mentally Disturbed People*. The Court ordered completion of the majority of the subsidiary policies by August 1, 2006, and the remaining policies by October 1, 2006, with training on all policies to be completed no later than December 30, 2006. OPD met the policy publication deadlines and has reported that it already has met or is on target to meet the training deadlines established by the Court. The IMT will verify OPD's training figures and report on them in our next status report.

Like the new use of force reporting policies, the new use of force investigation policies also represent a significant enhancement over prior policy. Consistent with contemporary law enforcement standards, the new policies require OPD supervisors to respond to the field when officers use certain types of force and to review these incidents for consistency with the law and OPD policies, procedures, and training. Supervisors are also required to assess whether officers used proper tactics; reasonable verbal means to attempt to resolve incidents without force, if time and circumstances permitted; and whether the force was de-escalated or stopped when appropriate.

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 the last reporting period, OPD completed General Order K-4.1, *Force Review Boards*. This policy incorporates the Settlement Agreement's requirements for this task. OPD also trained over 95% of relevant personnel on this policy. 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 seventh reporting period, 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 this policy.

During the seventh 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 seventh reporting period, the IMT also 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 was 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 the last 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 this reporting period, OPD drafted General Order C-8, *Oleoresin Capsicum*, addressing the Department's purchase, receipt, distribution, and destruction of OC Spray delineating the responsibilities of OPD officers, units, supervisors, and commanders. The IMT has provided OPD with extensive comments on the draft with the aim of assisting OPD to attain compliance with this task and to better manage this important tool.

During the upcoming reporting periods, the IMT will report on the status of General Order C-8 and on 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.

During the last reporting period, the IMT determined that General Order M-4.1 adequately incorporates this Settlement Agreement Requirement. OPD published this policy on April 21, 2006. According to OPD, it completed training on this policy during this reporting period.

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 seventh 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 the last reporting period 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 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 the last reporting period, OPD completed General Order K-4.1, *Force Review Board*. This policy incorporates the Settlement Agreement's requirements for this task. The IMT has verified that OPD had trained over 95% of relevant personnel on this policy. 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, including police pursuits resulting in death or serious injuries.

As previously reported, even before the new 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. OPD has continued operating under the new policy which has continued to result in more focused and complete incident assessments. Review Board members continued to be engaged and Board deliberations have continued to benefit 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.

During this review period, the Board worked to review a backlog of cases that had started to develop. As previously reported, the Board continued to struggle to provide the Chief with a report of its findings within a reasonable time period. Improvements in the investigative reports, binders, and presentations upon which Board members base their deliberations continued. This is due to the continuing, 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. As noted in our last status report, 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 the last reporting period, OPD completed its primary use of force policies, and trained over 95% of relevant personnel on these policies. 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 addressed most of the other 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 *Lethal Force Investigations Training Bulletin*. Additionally, both Internal Affairs and Homicide have created detailed investigative checklists used for conducting officer-involved shooting investigations. These policies were completed and approved during this reporting period. The IMT will verify OPD's training of personnel on these policies report on training compliance in our next status report.

During this reporting period, OPD attained policy compliance with the final outstanding provision of this task. OPD and the District Attorney's Office reached an agreement requiring that, when appropriate, the District Attorney's office or another appropriate outside agency will conduct the criminal investigation of officer-involved shootings in lieu of OPD.

During the last review period, the IMT completed a comprehensive 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 provided OPD with an 85-page report detailing our findings, including an analysis of each shooting, along with global observations and recommendations.

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 implemented or is in the process of implementing a number of these recommendations. A detailed summary of our review and findings is contained in our eighth status report.

During the upcoming reporting periods, the IMT will determine 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. During this reporting period, the City authorized OPD to enter into contract negotiations with the selected vendor and the negotiations are underway.

We continue to commend OPD and the City for their efforts in this area.

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

Section VI of the Settlement Agreement, Tasks 33–39, requires OPD to change or enhance 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 had 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 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 seventh 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 appeared 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.

Commendably, OPD developed a “refresher” lesson plan including instruction on the requirements of this task. According to OPD, during this reporting period, it completed training of over 95% of personnel on this lesson plan.

During the sixth 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 this reporting period, OPD published Training Bulletin V-T.3, *Reporting Misconduct*, designed to give personnel concrete examples of their reporting responsibilities. The training bulletin appropriately discusses reporting misconduct as an act of integrity, not betrayal. Additionally, during this reporting period, OPD published an informational bulletin instructing personnel on the differences between anonymous and confidential reporting. The bulletin was accompanied by a quiz that was administered to IAD staff to test their understanding.

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. 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 over 95% of relevant personnel.

During the last 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 was 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. A complete summary of our audit can be found in our eighth status report.

OPD, aware of problems with its SDF data entry and analysis, contracted with a third-party vendor to input SDF information into an appropriate database. We have encouraged 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. Based on our review of internal investigations this reporting period, we have continuing concerns regarding whether forms are being completed for all required stops and about the manner in which the stop data forms are being maintained. We reviewed a number of investigations regarding stops and detentions that should have had stop data forms completed but investigators rarely if ever were able to locate the forms, citing in one instance unavailability because the forms were in the possession of the vendor.

In our last audit, the IMT found OPD in conditional compliance with the requirement that stop data forms be completed fully and accurately. We identified ambiguities in the SDFs that were likely the cause of substantial confusion among OPD officers about how to accurately complete them. We informed OPD of the deficiencies in the current SDF form and notified it 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. During this reporting period, OPD drafted new stop data forms. It remains to be seen whether these forms will decrease confusion because OPD has opted to create two new forms, containing somewhat different fields. The Department intends for one form to be used for those stops that result in a citation and for another form to be used for stops not involving citations. As of the date of this report, however, the new forms are not yet being used in the field.

During this reporting period, OPD started rolling out field based computerized reporting. Unfortunately, it did not include the stop data forms among the computerized forms which officers can complete electronically from their vehicles. We recommend that OPD add stop data forms to the list of forms as soon as possible.

As we previously reported, 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 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. According to OPD, it is undertaking efforts to identify funding and a researcher to conduct a comprehensive analysis of OPD’s stop data.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in August, 2003. OPD achieved policy compliance by publishing Special Order 8055, *Transportation of Persons in Police Vehicles*, on November 25, 2003. As discussed below, this special order has been replaced by Special Order 8262. OPD provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on Special Order 8055 and reports that they have trained 97.7% of required personnel on Special Order 8262.

During the seventh 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 seventh 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 this reporting period, the IMT initiated our second audit of OPD’s actual practice compliance with this task. This audit is currently underway. We are unable to report the results of this audit in this status report due to significant delays in OPD’s production of the documentation necessary to assess compliance with this task. Notwithstanding the substantial efforts of OIG staff to compile the requested documents, OPD had an inordinately difficult time locating the basic police data requested—radio

purges to accompany a sample of crime and arrest reports. As discussed above, 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 have substantial concerns about the apparent lack of compliance with this task by OPD's Crime Reduction Teams (CRTs) when conducting buy/bust narcotics and similar special operations. We have learned that when transport wagons are not available during these operations, the CRT units routinely arrest subjects and drive them to multiple locations without logging in or out on the radio. Not only does this practice violate the Settlement Agreement, it poses considerable officer and detainee safety issues, not to mention may raise serious legal questions regarding contraband and other recovered evidence. All of these concerns are heightened by the units' frequent practice of engaging in this conduct while transporting multiple subjects in the same vehicle. According to OPD, it must engage in these practices due to resource constraints (the lack of transport vehicles and officers and sufficient bandwidth on OPD communication lines). OPD has asserted that the risks associated with the conduct of its CRT units are mitigated because the units' supervisors work in close contact with the officers. This, however, does little to address the significant risks discussed above. OPD has recently informed us that its CRT units have started to comply with Task 36.

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. V.I.E.)

a. Settlement Agreement Requirements

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

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

b. Status of Compliance and Assessment

On November 23, 2003, OPD published Special Order 8092 consisting of two *Manual of Rules* revisions: MOR Section 398.73, *Retaliation Against Witnesses*, and MOR Section 398.74, *Retaliation Against Witnesses, Accountability*. These MOR provisions incorporate the requirements of Task 37. OPD's 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. Commendably, OPD developed a "refresher" lesson plan including instruction on the requirements of this task. OPD reports that, during this reporting period, it completed the refresher training for over 95% of relevant personnel. During the last reporting period, OPD also provided in-depth training to many of its supervisors, commanders, and managers regarding retaliation.

During the seventh reporting period, the IMT audited OPD's compliance in actual practice with Task 37. The IMT determined that OPD was not in compliance with Task 37 because its investigations of retaliation were 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 detailed discussion of this audit is provided in our seventh status report.

In response to our audit, OPD has made a number of significant changes in its approach to complaints of retaliation. The Court has ordered OPD to consult with the City Attorney's Office any time it receives an allegation of retaliation and to report the results of its investigations to the Court. While this consultation and reporting has occurred, the required consultation has not occurred for each case as required by the Court's Order. During this reporting period, the City Attorney's Office developed additional training for IAD staff regarding analyzing and investigating allegations of retaliation. As discussed above, OPD has also implemented integrity tests aimed at identifying possible retaliatory conduct.

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 had 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 the last reporting period, the IMT conducted a second actual practice audit of this task and found OPD in compliance with this task in actual practice. Ninety-seven percent of the statements reviewed complied with the requirements of the Settlement Agreement. 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 seventh reporting period, 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 this task.

During the sixth 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 the requirements of this task (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. These discussions have been pending for over a year. 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 the last 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 was poised to audit this task during this reporting period, but OPD acknowledged that it had not yet implemented sufficient measures to attain compliance with this task.

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

D. 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. While OPD has made significant progress towards the completion of the requirements of this section of the Settlement Agreement, it is not yet 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 system must include a computerized relational database to 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. During this reporting period, OPD completed a policy for PAS (formerly PIMS). The IMT found this policy in conditional compliance with the Settlement Agreement. In order to have a fully compliant policy, OPD must complete an operations guide and users' manual that provides more detailed instruction to OPD units and personnel responsible for implementing the PAS system. The Court has ordered that OPD complete the operations guide by January 17, 2006, and that it keep the Court, IMT, and plaintiffs' counsel apprised of its progress in developing and testing the PAS system and completing the PAS user guide. OPD did not meet the Court's deadlines for installing system software and hardware, in part, due to delays from its vendor. However, during this reporting period, OPD personnel and City information technology staff devoted significant time and energy in developing an interim computerized PAS system.

During this reporting period, with the assistance of a licensed therapist with extensive experience working with OPD and other law enforcement agencies, OPD provided training to supervisors regarding identifying and addressing at-risk behavior. The IMT was impressed with the training which already has resulted in a number of supervisors identifying employees who may be in need of counseling, remedial training, or other specialized assistance. Additionally, OPD continued creating reports of personnel data and, with the assistance of the licensed therapist, analyzing personnel data relevant to identifying and addressing at-risk behavior. Due to the de-centralized and outdated state of many OPD recordkeeping systems, production of these PAS threshold reports remains 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. During this and the last two reporting periods, OPD generated PAS threshold reports based on absolute numerical thresholds contained in the Settlement Agreement.

These thresholds did not include peer group analyses and may have over-identified individuals who may be engaging in at-risk behavior. During this reporting period, the parties stipulated to substituting the absolute numerical thresholds with peer group analysis-- identifying members and employees based on deviations from their peers. OPD has yet to define the precise peer groups or types of analysis that will be performed, but must do so in consultation with the Plaintiffs' attorneys and IMT.

During upcoming reporting periods, the IMT will determine whether OPD develops the required policies, including appropriate peer group analyses; 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.

E. 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 seventh reporting period. The IMT reviewed the policy and found that it complies with the Settlement Agreement. During the seventh reporting period, OPD also provided the IMT with sufficiently reliable training data to enable us to confirm that OPD had trained 95% or more of relevant personnel on this policy.

During the seventh reporting period, the IMT evaluated whether OPD’s actual practices comply with Task 42. We determined that although OPD had not yet fully complied with the requirements of Task 42, it had made substantial and impressive progress. Moreover, throughout the course of our first review of Task 42, as shortcomings were identified OPD took immediate steps to remediate deficiencies. Based on our review, we made several additional recommendations to OPD focusing on improving the FTO selection process; ensuring anonymity for trainee evaluations; and improving supervisory review of FTO evaluations. A fuller description of this audit is included in our seventh status report.

During this reporting period, we conducted a second audit of the Field Training Program. Task 42.1 defines the role and responsibilities of the Field Training Program Coordinator (FTPC). OPD is in compliance with this task. Since the inception of the Settlement Agreement, an officer has served as the FTPC on a full-time basis. As we reported in our last audit of this task, this officer is a talented, well-respected officer who is conscientious, organized, and thoughtful. We continue to be impressed by his strong leadership skills and the steps he has continued to take to modernize, standardize, and improve OPD’s Field Training Program.

Task 42.2 requires OPD to rotate trainee officers to a new Field Training Officer (FTO) at predetermined intervals and to new geographic areas of the City. It also requires that prior to rotation, trainee officers are interviewed and given an opportunity to raise any questions or concerns they may have about the quality of training received. OPD remains in compliance with these requirements. All trainees evaluated were rotated to new FTOs at the required intervals and to new geographic areas of the City. They were also interviewed prior to their rotations.

OPD also remains in compliance with Task 42.3 by continuing to offer increased incentives to officers who serve as FTOs. These incentives include a paid day off every six months, an “FTO of the Year” award, and priority selection for participating in Academy instruction. These incentives are in addition to the 5% salary increase and special insignia that are provided to FTOs.

Task 42.4 establishes minimum requirements for nominating and certifying FTOs. OPD has attained compliance with all of the nomination and qualification requirements except the requirement that it bar from selection for two years candidates with an excessive number of citizen complaints, sustained investigations, or excessive numbers of use of force incidents. OPD did not evaluate the actual complaints or investigative summaries or files for candidates with sustained cases. Similarly, OPD did not evaluate the actual use of force reports or any other substantive information regarding candidates’ use of force histories. Absent such an examination, it is impossible to discern whether a candidate should be disqualified for having an “excessive number” of complaints or use of force incidents.

Moreover, when we cross-referenced the complaint data contained in the FTO files with a query of the complaint data maintained by IAD, we found that the FTO files often contained inaccurate and/or incomplete information regarding candidates’ complaint histories. Frequently, the FTO files failed to list candidates’ complete complaint history for the relevant time period. Because OPD is not yet analyzing complaint or use of force data to determine whether candidates have an excessive number of complaints, OPD remains out of compliance with this important provision of Task 42.4.

Task 42.5 requires that removal from the FTO program be the presumptive result of a sustained allegation of excessive force; unlawful arrest; false testimony; racial, ethnic, sexual-orientation, or gender-based discrimination or slurs; or other serious examples of police misconduct. During this review period, two FTOs had Class I allegations sustained. OPD is not in compliance with this requirement because removal of the FTO was not the presumptive result in one of the two cases. The Field Training Unit did not realize that the officer had been sustained for a Class I offense (an unlawful entry of a residence) because the case did not list the offense category. As a result, no one reviewed the case or a summary of the case to discern the nature of the sustained violation. Consequently, OPD did not decertify the FTO or otherwise explain why decertification was inappropriate.

OPD remains in compliance with Task 42.6 which makes assignment to an FTO position contingent upon the successful completion of a training course designed for FTOs and approved by OPD and POST.

Task 42.7 establishes criteria for evaluating the performance of FTOs. OPD has attained compliance with all of the provisions of this task except the requirement that each FTO's commander and supervisor review evaluations of the FTO's performance.

OPD remained in compliance with Task 42.8 which requires the FTPC or his/her designee to conduct random audits of the FTO program to ensure that FTOs complete daily evaluations of trainee officers and that the selection standards for FTOs are maintained. While OPD remained in compliance with this requirement, doing so in the future will depend on adequate staffing of the Field Training Unit.

Task 42.9 prohibits OPD from assigning trainee officers to field duties with "acting" FTOs when regularly assigned FTOs are absent. OPD remains in compliance with this requirement. However, unless unit staffing keeps pace with the growing demands of the program, OPD risks falling out of compliance with this and other provisions of Task 42.

Task 42.10 requires OPD to provide field commanders and supervisors training on the FTO program, including: the field-training curriculum; the role of the FTO; supervision of FTOs and probationary employees; the evaluation process; and individual duties and responsibilities within the FTO program. OPD remains in compliance with this requirement and with Task 42.11's requirement to conduct focus groups with randomly selected trainees regarding their field training experiences. Due to increasing workloads and reduced staffing, however, OPD has not always been successful at conducting the focus groups within the required timeframes. If this slippage continues, OPD risks falling out of compliance with this and other provisions of Task 42.

Task 42.12 requires, among other provisions, that specified commanders (Training Division Commander, FTO Program Coordinator, BFO Deputy Chief, and BOS Deputy Chief) meet to review the results of focus group sessions. OPD remains in compliance with this requirement. However, it risks falling out of compliance if it does not ensure that required participants or their designees attend all of the review meetings.

Our audit contained several recommendations to assist OPD in achieving full compliance with Task 42.

We believe that OPD is capable of achieving full compliance with Task 42 in the very near future. However, as discussed above as an area of concern, it may also start to fall further out of compliance if the Field Training Unit is not provided the resources it needs to keep up with the significantly larger number of trainees and FTOs entering the program.

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.

F. 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 seventh reporting period, OPD also graduated seven officers from its Sixth Lateral Academy. During the eighth reporting period, OPD's 155th Basic Academy class graduated. During this reporting period, the 156th, 157th, and 158th Basic Academies graduated, along with the Seventh Lateral Academy.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred in February 2005. OPD published General Order B-20, *Departmental Training Program*, which the IMT reviewed and found compliant with the Settlement Agreement. During the seventh reporting period, 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 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.

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 seventh 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.

The IMT was scheduled to conduct an audit of Task 43 during this reporting period. However, OPD reported that it was not yet complying with the requirements of Task 43. OIG conducted an assessment of the Training Division during this reporting period and found that OPD was not complying with the instructor selection, in-service training, or promotional training requirements. Consistent with the IMT's review, OIG found poor record-keeping, including documentation and tracking of training. OIG made a series of recommendations to address these deficiencies and the Department has retained a law enforcement training expert to assist it in modernizing and enhancing its training programs. The IMT has met with the Department's expert and has shared our observations of the Training Division, including the inconsistent and unreliable methods in which training is documented. For example, when OPD provides training to officers that is not required by the Settlement Agreement, it frequently neglects to document or

track such training. This makes it virtually impossible to ensure that all relevant staff have received training that may be critical for their positions or to hold them accountable when they do not perform as required by the training. Moreover, this approach may make it difficult for OPD to establish the necessary expertise or competence of staff that may be needed in court or other contexts.

As a result of its self-assessment efforts, OPD has reported that it is taking a number of remedial measures to improve its performance in this area. For example, according to OPD, it has identified individuals who have not received required training and provided the training to them or scheduled them to attend training. OPD also reports that it is completing an instructor development course and hiring an experienced individual to begin the important task of evaluating the performance of academy instructors. Additionally, in conjunction with its training consultant, OPD is working on new testing specifications for the Academy. The Training Division also is updating its filing system and requiring improved documentation regarding the content of training provided to its members.

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.

G. 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 had 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. However, OPD still has not completed a policy incorporating the requirements of 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 seventh reporting period, 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 this task. During this reporting period, OPD published a revised version General Order B-6 to provide additional guidance to supervisors and managers. The IMT determined that the revisions comply with the Settlement Agreement. According to OPD, during this reporting period it trained more than 95% of its personnel on the revised policy. The IMT will verify training on this policy and report the results in our next status report.

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

OPD 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, we found OPD in compliance with this requirement. The Department's average compliance rate across all six categories was 96.6%. This is in stark contrast to our first audit where inclusion of the required content was sporadic and more often than not missing than present. 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.

Pursuant to Task 44, when appropriate, supervisors and commanders must be 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 was not yet in compliance with this requirement because four out of 24 supervisory and commander appraisals reviewed did not include the required assessment. A fuller discussion of our audit is included in our eighth status report.

We observed marked progress on this task between our first and second audits. In our last report, we attributed some of this progress to the Department's attention to performance appraisals at MAP meetings and to its advisement to personnel that it would hold individuals accountable for not completing appraisals as required. It remains to be seen whether or how quickly the Department will continue to improve in this area. This is

because despite repeated admonitions that personnel will be held accountable for delinquent appraisals, to our knowledge, such accountability does not occur. As a result, it is not uncommon for Personnel to report week after week on dozens of delinquent appraisals. Following such reports, the Inspector General or another commander will state that the appraisals must be turned in but, when they are not, no consequences attach. This likely explains the continuing large number of delinquent appraisals notwithstanding the clear deadlines.

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-6 ahead of schedule and during the seventh reporting period, completed the remaining policies incorporating this Settlement Agreement task. During the eighth reporting period, 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 this task.

Task 45 requires the Department to implement discipline that is both fair and consistent. In response to this Settlement Agreement requirement, OPD has created and implemented a progressive discipline system, including a new disciplinary policy and a Discipline Matrix. The Department developed this policy and Matrix after consultation

with other agencies and months of internal deliberations regarding a variety of issues, including appropriate penalty ranges. Before the Matrix was finalized, Chief Tucker reviewed, adjusted, and approved it. The Chief has expressed his commitment to implementing a disciplinary system that is fair and consistent and that uses a variety of means to correct behavior.

The Matrix, properly implemented, helps ensure that the discipline system is transparent and objectively applied. The Matrix lists rule violations contained in the Department's Manual of Rules and sets out specific criteria for calculating discipline recommendations. For each rule violation, the Matrix provides a specific, progressively higher penalty range for first, second, and third offenses. Each of the ranges includes a lower limit, midpoint, and upper limit penalty. The Department's Discipline Officer is required by policy to determine the appropriate penalty by reviewing disciplinary histories and obtaining mitigating and aggravating information from supervisors, and make a disciplinary recommendation to the Chief. According to OPD's discipline policy, the Discipline Matrix is to be "administered in a systematic and equitable manner to all personnel," in order to "ensure fair and consistent implementation of discipline within the Oakland Police Department." The policy expressly preserves the Chief's discretion to impose any level of discipline he deems appropriate to achieve these goals.

During this reporting period, we evaluated OPD's implementation of the new disciplinary system by reviewing the discipline recommendations and decisions in every sustained case involving conduct occurring on or after December 6, 2005, the date the new policy was implemented. There were 29 relevant cases. In reviewing these cases we observed a number of practices that in our judgment undermine the Department's efforts to establish a disciplinary system that is fair and consistent. Many of these practices have occurred because the Department has decided that a number of the current penalties and formulas, if applied, would result in unduly harsh discipline.

In the majority of cases we reviewed, the Department selected and/or sustained violations that did not fit the facts of the alleged misconduct. Without exception, this practice resulted in lower discipline levels than if the Matrix had been applied as written. We also found that, in cases with multiple violations, OPD incorrectly calculated the correct presumptive penalty. The Matrix requires that in cases with more than one sustained violation, penalties be added together. However, in cases we reviewed, these calculations were often in error, again resulting in lower disciplinary recommendations than if the Matrix had been applied as written. We also observed instances of discipline recommendation memoranda with inaccurate accounts of an employee's disciplinary history. These memoranda stated that members or employees had no disciplinary records or less serious ones than they actually had. By understating the actual disciplinary history, these inaccurate memoranda served to justify a lower level of discipline than would otherwise have been appropriate.

OPD asserts that this practice of imposing penalties lower than the ranges contemplated by its disciplinary policy is not cause for concern but is rather the Chief's attempt to correct what he views to be overly punitive penalties. In OPD's view,

imposing lower penalties makes OPD's disciplinary system more, not less, fair and brings it into line with the Chief's disciplinary philosophy. OPD also points out that it is substantially revising the Matrix to bring it more in line with the Chief's approach to discipline and OPD's actual practice. Nevertheless, we remain concerned that variances outside of the Matrix's penalty ranges in disciplinary recommendations and final discipline decisions have become the norm rather than the exception, and that no specific justification was given for these departures, as required by OPD's own policy. These facts risk undermining the perception within the Department and the community that OPD's disciplinary system is fair and consistent, and diminish the confidence-building transparency that the adoption of a Matrix was meant to provide. We have recommended that OPD complete its proposed revisions to its disciplinary system as soon as possible and that it implement safeguards against incorrect charging and sustaining decisions so that deviations from the Matrix are the exception and, where they do occur, their justification is documented.

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 was published in M-3, *Complaints Against Departmental Personnel or Procedures*. OPD completed M-3 during the seventh reporting period, and in our last status report, we reported that OPD was in policy compliance with this task based on information provided by OPD regarding the status of the Chief of Police memorandum. While auditing this task during this reporting period, we learned that OPD never finalized or published the Chief of Police memorandum or any other policy incorporating the requirements of this task. According to OPD, it is in the process of drafting a new promotions policy. In addition, according to OPD, its Personnel Department is operating pursuant to a draft policy that incorporates the Settlement Agreement requirements in this area. This draft policy has not yet been provided to the IMT to determine whether it adequately incorporates Settlement Agreement requirements. At this time OPD remains out of policy compliance with this task.

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 seventh 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 the eighth 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 reported that the Department’s actual practices now comply with the Settlement Agreement.

During this reporting period, the IMT assessed OPD’s actual practice compliance with this task. During the period covered by our audit, we found continuing improvement in how information about internal investigations is gathered and provided to the Chief for review. OPD now provides the Chief "Historical Summaries" that summarize promotional candidates’ internal investigation histories and other pertinent

information. OPD continues to make improvements in this area, but the information in these summaries was not always accurate or complete. Despite the steady improvement we saw during the period under review, the lack of accurate and complete information compromised OPD's compliance efforts.

Task 46.1 requires OPD to consider sustained misconduct cases as an important factor when determining an individual's suitability for promotion. Task 46.3 requires OPD to consider sustained Class I offenses as important factors in evaluating promotability for three years. For the promotions audited, there was one sustained allegation of Class I misconduct completed within § 3304 and within three years (but more than 12 months) prior to promotion. This violation was not identified as Class I misconduct and the Chief did not recognize it as such. However, it is apparent from conversations with the Chief and others close to the process that the incident was important to the Chief's promotion decision, notwithstanding his decision to promote the individual despite the sustained misconduct. Accordingly, OPD is in compliance with Task 46.1 and 46.3.

Task 46.2 makes individuals with a sustained Class I offense presumptively ineligible for promotion for twelve months following the sustained finding. In the promotions audited, there was one sustained allegation of Class I misconduct that was completed within § 3304 and within twelve months prior to promotion. The investigation found that a Sergeant (subsequently promoted to Lieutenant) did not properly supervise subordinate officers during a high-risk arrest that resulted in an officer-involved shooting. This sustained allegation of Class I misconduct should have made the Sergeant presumptively ineligible for promotion. It is apparent that the Chief did take the sustained allegation of misconduct seriously. However, the sustained misconduct was not identified as Class I misconduct and the Chief did not recognize it as such. There is no indication that the Chief was aware that the candidate was presumptively ineligible for promotion or that he considered the candidate presumptively ineligible when making his promotion decision. OPD is thus out of compliance with Task 46.2.

We were not able to clarify exactly why the sustained MOR violations noted above were not identified as Class I in materials provided to the Chief. According to OPD, if these MOR violations were alleged today, they would immediately be assigned a Class I designation and this information would be provided to the Chief during the promotional process. According to OPD, the Department is in the process of assigning each MOR provision a class designation and ensuring that each allegation of misconduct is assigned a class designation at the outset of the investigation. We have encouraged OPD to complete this process promptly and to ensure that this information is provided to the Chief, as he is expected to make many more promotional decisions before the end of the year and will need accurate internal investigations histories.

Task 46.4 requires that promotional determinations include consideration of the following five elements: 1) commitment to community policing; 2) quality of citizen contacts; 3) number of citizen complaints; 4) instances of unnecessary use of force; and 5) support for Departmental integrity measures. OPD is in compliance with Task 46.4

because its promotions process incorporates all of these elements. However, we found substantial room for improvement in the manner in which citizen complaint information is handled in the promotions process. We found that the Chief was being presented with inconsistent information that was at times overbroad in light of state law restrictions, and at other times incomplete, omitting cases that were “not sustained.” OPD is working to ensure that the Chief is not provided information that should not be considered for promotional decisions.

The incomplete information was due to a variety of factors including improperly narrow instructions to individuals responsible for gathering the information and OPD’s inconsistent and decentralized data management practices. However, the issue of incomplete complaint data was mitigated by OPD’s inclusion of the Complaint Investigation Report index (CIR index) in most of the promotional packets provided to the Chief and City Administrator. Our review indicated that, at least for more recent complaints, the CIR indices that were provided to the Chief and City Administrator for the promotions during the period under review were complete and provided information about cases that were “not sustained.” Still, as noted above, these CIRs also contain information that the Chief should likely not be considering under state law. More importantly, no information is provided that would permit the Chief to evaluate whether the number of complaints is appropriate for the particular candidate given factors such as type of assignment, location and a variety of other criteria that should be considered in determining whether the number of citizen complaints is “excessive” for a particular candidate.

Our audit included several recommendations for assisting OPD to attain full compliance with this task, including: completing the promotions policy as soon as possible; designating each MOR provision as Class I or Class II and ensuring that this information is included in internal investigations from the outset and provided to the decision makers; ensuring that promotions documents are accurate and complete and do not contain inappropriate information; and providing the Chief and City Administrator with copies of investigative files of relevant sustained cases.

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.

H. 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 had 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 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 had 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 had made great strides in its effort to comply with Task 47, we encouraged 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. During this reporting period, OPD began to more regularly include information regarding some of its problem solving efforts into its Crime-Stop meetings. OPD recently initiated discussions with the Plaintiffs' Attorney's regarding interpretation of the Settlement Agreement's distinct references to OPD's problem solving and community policing activities. Future audits of this task will incorporate any agreement reached between the parties and approved by the Court if the agreement requires a modification of the Settlement Agreement.

During this reporting period, OIG audited Task 47. According to OIG, OPD has fallen out of compliance with the community meeting requirement and is not yet in compliance with other requirements of this task.

As we previously reported, 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 youth organizations and community groups, including vocal critics of the Police Department, are encouraging signs of progress in this regard. The IMT continues to commend 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.

I. 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 had 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.

During this reporting period, the IMT assessed OPD's actual practice compliance with this task. While OPD did not meet the report submission deadlines set out in its policies, it remained in compliance with the requirements that each functional unit prepare a management report and that Division Commanders, Deputy Chiefs, and the Chief of Police meet to discuss the reports. Task 41 requires that each management report include relevant operating data and highlights ongoing or extraordinary problems and noteworthy accomplishments. During our last audit of this task, only 22% of the Department's annual management reports included the required information. We saw dramatic improvement in this area—84% of the reports reviewed for this audit contained the required content. While this is short of the required 95% compliance level, it represents radical improvement. As in our last audit, we found the weakest aspect of the reports was their inclusion of "Other Performance Data." This category is defined in OPD policy as "data which indicate a need for corrective action, i.e., uses of force,

discharging of firearms, personnel complaints, vehicle pursuits, and preventable vehicle collisions." Three of the five reports that did not pass would have received passing scores had they included this data.

Other general areas of weakness in the reports were the sections dealing with fiscal management and unit plans and goals. Many of the reports read as if they were written for the benefit of auditors rather than for the benefit of the Chief and police management. While most reports scored "adequate" in the plans and goals area, making the reports sufficient for compliance purposes, their discussion was too vague and conclusory to be of much use to police management. This is unfortunate because, as we noted last year, a thoughtful description of a commander's strategic planning for the coming year can act as a roadmap for the unit and a useful evaluation tool for the Chief of Police.

OPD's 2005 Annual Management Reports are much improved over the previous years' reports. But to truly meet the intent of the NSA and the needs of management, they should include more thoughtful discussions of each unit's challenges and plans for the upcoming year. Our audit included several recommendations for improving the reports, including ensuring that annual management reports are submitted in time to inform budget and management decisions for the following year and improving report content so that they contain information necessary for effective management, planning, and accountability.

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.

J. 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.

K. 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 the eighth 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 coordinate overall compliance efforts; conducting 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 continued to provide invaluable assistance to the IMT in collecting data and evaluating Department policies, procedures, and systems. As during the last reporting period, 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.

During this reporting period, the IMT assessed OPD's actual practice compliance with this task. OPD remains in compliance with Task 51. The NSA requires OPD to conduct six designated audits annually unless the timing of an IMT audit of the same area would make an OIG audit redundant or unnecessary. Due to lengthy delays in publishing directives related to internal investigations, citizen complaints, and use of force (policies in these areas were not published until December 2005 and February 2006), OIG was not able to audit the Department's conformance with these new policies last year. However, in 2005, OIG completed the following audits: Arrest, Offense and Follow-up Investigation Reports (September 30, 2005); Personnel Reviews and Appraisals (September 30, 2005); Field Training Program (November 22, 2005); and MDT Audit (December 31, 2005).

This year OIG has completed the following audits: OC Log and Checkout Procedures (March 30, 2006); Promotional Consideration (April 24, 2006); Personnel Arrested, Sued or Served (May 3, 2006); Transporting Detainees and Citizens (May 19, 2006); In-Service Training and Academy Training (August 29, 2006), and Community Policing Plan (November 17, 2006). OIG also has conducted on-going audits of IAD's complaint intake and investigation. OIG has two additional audits in progress (Use of Force and Span of Control) and anticipates completing them before or near the end of the year to be followed by a second MDT audit. In addition to these audits, OIG also has conducted a number of "mini-audits" or reviews of OPD practices, including narcotics arrest approvals, stop data collection, citizens signing police reforms, and community meeting attendance. Based on the audits conducted to date, OPD remains in compliance with Task 51.1. It has audited the areas required by the NSA, has conducted, or is presently conducting an audit in an acceptable substitute area.

Task 51.2 establishes the minimum substantive requirements for the audits conducted by OPD. In particular, the NSA requires OPD's review of documents to include, at minimum, review for completeness of the information contained; and an examination for inappropriate "boilerplate" language, inconsistent information, or lack of articulation of the legal basis for the applicable action. OIG's audits have met and far exceeded these minimum requirements. In addition to conducting this review, each of OIG's audits have endeavored to evaluate whether OPD's practices are consistent with OPD's policies and procedures, including those required by the NSA. These audits have identified deficiencies and proposed thoughtful recommendations for improvement. Accordingly, OPD is in compliance with Task 51.2.

Task 51.3 requires OPD to report the results of its audits in its semi-annual compliance reports. OPD's combined Fifth and Sixth Semi-annual Compliance Report and its Seventh Semi-annual Compliance report discuss the results of OPD's audits. Accordingly, OPD is in compliance with Task 51.3.

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

VI. CONCLUSION

While much work remains, the Department is making steady and significant progress in implementing the Settlement Agreement. In the past two years, OPD has implemented or enhanced policies, procedures, and systems throughout the Department to bring them in line with contemporary law enforcement practices. This process has not been quick or easy—reform of this magnitude rarely is. Based on the considerable strides we have observed under Chief Tucker’s leadership, we believe that OPD is capable of achieving the goals set out in the Settlement Agreement as long as it stays focused and committed to these goals.