

SECOND QUARTERLY REPORT OF THE INDEPENDENT MONITOR
Delphine Allen, et al., v. City of Oakland, et al.

**In the
United States District Court
Northern District of California**

Independent Monitoring Team

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
EXECUTIVE SUMMARY	vi
Introduction.....	vi
IMT's Monitoring Activities During the Second Quarter	vi
OPD Accomplishments & Area of Concern.....	vi
<u>OPD Accomplishments</u>	vi
<u>Area of Concern</u>	vii
Status of Compliance	viii
<u>Policy Compliance</u>	ix
<u>Training Compliance</u>	x
<u>Actual Practice Compliance</u>	x
I. INTRODUCTION	1
II. IMT MONITORING ACTIVITIES	1
III. OPD ACCOMPLISHMENTS & AREA OF CONCERN	2
A. <u>OPD Accomplishments</u>	2
Renewed Effort in Personnel Information Management System (PIMS) ...	2
Developing Mechanisms to Verify Training	3
Improvement in Policy Review Process	3
Internal Compliance Oversight	4
B. <u>Area of Concern</u>	5
Timeliness of the Internal Investigation Process	5
IV. COMPLIANCE OVERVIEW	11
A. <u>Policy Compliance</u>	13
B. <u>Training Compliance</u>	14
C. <u>Actual Practice Compliance</u>	14

V.	DETAILED COMPLIANCE REPORT	15
A.	Internal Affairs Division (IAD) (Tasks 1–16; S.A. III.)	15
1.	IAD Staffing and Resources (Task 1).....	16
2.	Timeliness Standards and Compliance with IAD Investigations (Task 2).....	17
3.	IAD Integrity Tests (Task 3).....	18
4.	Complaint Control System for IAD and Informal Complaint Resolution Process (Task 4).....	18
5.	Complaint Procedures for IAD (Task 5).....	19
6.	Refusal to Accept or Refer Citizen Complaints (Task 6)	20
7.	Methods for Receiving Citizen Complaints (Task 7)	21
8.	Classifications of Citizen Complaints (Task 8)	21
9.	Contact of Citizen Complainants (Task 9).....	22
10.	Procedure Manual for Investigations of Citizen Complaints (Task 10)	23
11.	Summary of Citizen Complaints Provided to OPD Personnel (Task 11)	23
12.	Disclosure of Possible Investigator Bias (Task 12)	24
13.	Documentation of Pitchess Responses (Task 13)	25
14.	Investigation of Allegations of <i>Manual of Rules</i> Violations Resulting from Lawsuits and Legal Claims (Task 14)	25
15.	Reviewing Findings and Disciplinary Recommendations (Task 15).....	26
16.	Supporting IAD Process-Supervisor/Managerial Accountability (Task 16)	27

B.	Supervisory Span of Control and Unity of Command (Tasks 17–23; S.A. IV.)	27
1.	Supervisory Span of Control and Unity of Command (Task 17)	28
2.	Approval of Field-Arrest by Supervisor (Task 18)	28
3.	Unity of Command (Task 19)	29
4.	Span of Control for Supervisors (Task 20)	29
5.	Members', Employees' and Supervisors' Performance Reviews (Task 21)	30
6.	OPD/DA Liaison Commander (Task 22)	31
7.	Command Staff Rotation (Task 23)	32
C.	Use of Force Reporting (Tasks 24–32; S.A. V.)	32
1.	Use of Force Reporting Policy (Task 24)	33
2.	Use of Force Investigations and Report Responsibility (Task 25)	34
3.	Use of Force Review Board (UFRB) (Task 26)	35
4.	Oleoresin Capsicum Log and Checkout Procedures (Task 27)	35
5.	Use of Force-Investigation of Criminal Misconduct (Task 28)	36
6.	IAD Investigation Priority (Task 29)	36
7.	Firearms-Discharge Board of Review (Task 30)	37
8.	Officer-Involved Shooting Investigation (Task 31)	37
9.	Use of Camcorders (Task 32)	38

D.	Reporting Procedures (Tasks 33–39; S.A. VI.)	39
1.	Misconduct (Task 33)	39
2.	Vehicle Stops, Field Investigation and Detentions (Task 34)	40
3.	Use of Force Reports-Witness Identification (Task 35)	41
4.	Procedures for Transporting Detainees and Citizens (Task 36)	42
5.	Internal Investigations-Retaliation Against Witnesses (Task 37)	43
6.	Citizens Signing Police Forms (Task 38)	44
7.	Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39)	47
E.	Personnel Information Management System (PIMS) (Tasks 40–41; S.A. VII.)	48
1.	Personnel Information Management System (PIMS)- Purpose (Task 40)	49
2.	Use of Personnel Information Management System (PIMS) (Task 41)	49
F.	Field Training Program (Task 42; S.A. VIII.)	50
1.	Field Training Program (Task 42)	50
G.	Academy and In-Service Training (Task 43; S.A. IX.)	51
1.	Academy and In-Service Training (Task 43)	51
H.	Personnel Practices (Tasks 44–46; S.A. X.)	52
1.	Performance Appraisal Policy (Task 44)	53
2.	Consistency of Discipline Policy (Task 45)	53
3.	Promotional Consideration (Task 46)	54

I.	Community Policing (Task 47; S.A. XI.)	55
1.	Community Policing Plan (Task 47).....	55
J.	Departmental Management and Annual Management Report (Task 48; S.A. XII.)	57
1.	Departmental Management and Annual Management Report (Task 48)	57
K.	Independent Monitor Selection and Compensation (Task 49; S.A. XIII.)	58
1.	Independent Monitor Selection and Compensation (Task 49)	58
L.	Compliance Unit (Tasks 50–51; S.A. XIV.)	59
1.	Compliance Unit Liaison Policy (Task 50)	59
2.	Compliance Audits and Integrity Tests (Task 51)	61
VI.	CONCLUSION	61

EXECUTIVE SUMMARY

Introduction

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement) resolving allegations of police misconduct raised by private plaintiffs in the civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* On August 28, 2003, Judge Thelton Henderson approved the appointment of Rachel Burgess, Kelli Evans, Charles Gruber and Christy Lopez to serve as the Independent Monitoring Team (IMT). This report is the Second Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from October 16, 2003, to January 15, 2004.

IMT's Monitoring Activities During the Second Quarter

The IMT conducted a variety of on- and off-site monitoring activities during the second quarter reporting period. On-site activities included: reviewing OPD documents and files, including a substantial number of Internal Affairs and Division level misconduct investigation files; meeting with individual OPD officers, officer associations, and command officials; meeting with other stakeholders to the Settlement Agreement including public officials and community members; attending hearings of the Citizens' Police Review Board (CPRB); meeting with CPRB staff and leadership; and observing and evaluating officer training sessions.

During this reporting period, the IMT also spent considerable time off-site devoted to monitoring tasks. Off-site activities included: reviewing draft policies and other compliance materials; participating in teleconferences with OPD regarding technical assistance; interviewing command staff regarding OPD's internal investigations process; communicating with stakeholders regarding Settlement Agreement compliance issues; and auditing OPD's compliance with Task 38, Citizens Signing Police Forms (the results of this audit are reported below).

OPD Accomplishments and Area of Concern

OPD Accomplishments

OPD achieved several notable accomplishments during the second quarter reporting period. Below is a highlight of the accomplishments, each of which is discussed in more detail in the attached Report.

- **Renewed Effort in Personnel Information Management System (PIMS)**

In response to the IMT's concerns about OPD's status in developing the

Personnel Information Management System (PIMS), OPD has taken a number of encouraging steps. For example, the PIMS committee and sub-committee have been meeting regularly and OPD issued its Request for Proposals (RFP) to begin the bid process for creation of the PIMS database.

- **Developing Mechanisms to Verify Training**

In order to ensure compliance with the Settlement Agreement, OPD is in the process of developing a mechanism to track training of Settlement Agreement policies. It has developed a new training roster and is working with its Training Division and other units to make sure that all of its officers receive the required training and that the training is documented.

- **Improvement in Policy Review Process**

OPD made significant progress in drafting new policies during the second quarter reporting period. As noted in our compliance overview, OPD published compliant policies for several tasks and made significant progress in drafting compliant policies related to numerous other tasks. OPD's progress was facilitated by improvements in the policy review process, detailed in the attached Report.

- **Internal Compliance Oversight**

During the second quarter reporting period, OIG continued its strong efforts to evaluate and track the status of OPD's compliance with the Settlement Agreement. OIG's work has been multi-faceted, including: overall coordination of OPD's compliance efforts; convening monthly stakeholder meetings; producing straightforward and fair internal accounts of progress; facilitating the IMT's access to OPD personnel and documents; and conducting audits of OPD.

Area of Concern

The IMT notes one area as an area of concern. Our review of the timeliness of OPD's internal investigation process revealed systemic delays at nearly every step of the process, with few internal mechanisms designed to prevent such delays. These findings apply to cases that were investigated during the past year—after the Settlement Agreement was signed. While our findings will be detailed in a subsequent report, due to the seriousness and prevalence of the deficiencies we found, we are highlighting our concerns in the attached Report.

The most striking overall finding is the failure of OPD's structure as a whole to support the internal investigations process. For example, firm deadlines within the investigative process are sparse, and the deadlines that are in place are routinely not met.

OPD internal investigations are delayed or halted for reasons that have little if anything to do with the complexities of the case. In some instances, OPD has not disciplined officers despite sustained misconduct findings because the investigation took longer than one year to complete. This problem is exacerbated by OPD's failure to enforce deadlines and hold commanders accountable when investigations wither and die under their watch. Nor does OPD adequately track the progress of investigations, or even the location of investigative files. There are, for example, reports of investigations that disappeared when the manager to whom they were assigned retired.

In addition, OPD engages in problematic practices that systematically severely impact investigation timeliness. For example, OPD's practice of "filing," rather than investigating, cases that are in civil litigation or under criminal investigation—and never reopening them—effectively prevents investigation of incidents that often involve the most serious allegations of misconduct. Similarly, OPD has no consistent criteria for determining which allegations of misconduct will be "informally resolved," rather than investigated. While we observed many incidents that were properly resolved informally, we observed many more in which an investigation was clearly warranted.

We also address related problems with OPD's use of force and discipline tracking. Specifically, the IMT is concerned that internal oversight mechanisms appear to have been inadequate to identify and correct OPD's failure to ensure that IAD received use of force reports as required; and that there is no centralized system within OPD that permits accurate tracking of the discipline imposed upon officers.

Status of Compliance

Because of extensions granted by the Plaintiffs' Attorneys, no new tasks were due during the second reporting period.¹ In addition, because one of the extensions granted by Plaintiffs was for a task due last reporting period (Task 45, Consistency of Discipline), the number of tasks with due dates decreased from sixteen at the end of the first reporting period, to fifteen at the end of the second reporting period. These fifteen tasks are:

- Span of Control for Supervisors (Task 20)
- OPD/DA Liaison Commander (Task 22)
- Reporting Misconduct (Task 33)
- Vehicle Stops, Field Investigation and Detentions (Task 34)
- Use of Force Reports-Witness Identifications (Task 35)
- Procedures for Transporting Detainees and Citizens (Task 36)
- Internal Investigations-Retaliation Against Witnesses (Task 37)
- Citizens Signing Police Forms (Task 38)
- Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39)

¹ In the IMT's view, the extensions granted to date by the Plaintiffs' Attorneys have been appropriate and reasonable.

Performance Appraisal Policy (Task 44)
Promotional Consideration (Task 46)
Community Policing Plan (Task 47)
Department Management and Annual Management Report (Task 48)
Monitor Selection and Compensation (Task 49)
Compliance Unit Liaison Policy (Task 50)

At the end of the second reporting period, OPD is in compliance with two Settlement Agreement requirements with due dates that have passed: Monitor Selection and Compensation (Task 49) and Compliance Unit Liaison Policy (Task 50). These are the same requirements with which OPD was in compliance at the end of the first reporting period. While OPD's failure to come into compliance with any additional Settlement Agreement requirements during the second reporting period is cause for concern, it should not be mistaken for a complete lack of progress. As noted in our first report, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement. Although OPD did not complete each of these three steps for any other requirement due, it did make significant progress on the first two steps (policy development and training) for many other requirements due.

In addition, as noted in our previous report, OPD is in compliance with some Settlement Agreement requirements not yet due. OPD is in compliance with two Settlement Agreement requirements well before their due dates: exploring the use of in-car video recorders (Task 32) and locating IAD offices off-site (part of Task 7). In addition, OPD is significantly ahead of schedule on other tasks, including publishing policies prohibiting the refusal of citizen complaints (Task 6) and requiring command staff rotation (Task 23). OPD has also decertified all of its Field Training Officers and, pursuant to the Settlement Agreement, overhauled its entire Field Training program (Task 42). The IMT is encouraged by OPD's progress on these tasks far in advance of their due dates.

Policy Compliance

OPD achieved policy compliance for three Settlement Agreement tasks that were due this period: OPD/DA Liaison Commander (Task 22); Procedures for Transporting Detainees and Citizens (Task 36); and Department Management and Annual Management Reports (Task 48). OPD completed five other policies that the IMT found to comply with the Settlement Agreement. These policies correspond to portions of tasks and bring OPD closer to policy compliance with five additional Settlement Agreement tasks. In addition, OPD is nearing completion of approximately ten additional compliant policies relating to eight Settlement Agreement requirements. When policies completed during the first reporting quarter are included, OPD has achieved policy compliance with a total of seven of the fifteen requirements now due.

Training Compliance

OPD has not completed the second step of compliance, training, for any of the compliant policies it has published. The IMT is concerned about OPD's ability to quickly and reliably train officers in new policies, and will continue to closely monitor this aspect of compliance. Nevertheless, OPD's failure to complete training does not reflect a lack of progress or effort. As noted in the Accomplishments section of the attached Report, OPD has made significant progress in this area and training appears to be gaining momentum.

Actual Practice Compliance

During the second quarter reporting period, the IMT conducted an audit of OPD's compliance in actual practice with Task 38, Citizens Signing Police Forms, and determined that OPD is not in compliance with this Settlement Agreement requirement. Task 38 requires that OPD officers ensure that citizens who sign written statements draw a diagonal line from the end of the written narrative to the bottom of the page and sign along the line. It further requires that citizens' statements on offense reports are signed immediately following the statement. This measure is intended to prevent third parties from altering citizen statements.

To assess whether OPD's actual practices comply with Task 38 of the Settlement Agreement, the IMT reviewed 176 citizen statements taken over three days in December 2003, after OPD was to have completed training on this Task. The IMT also reviewed training rosters to determine the number of officers completing reports on these days who had received training on Task 38.

Based on this review, the IMT found that OPD's actual practices in this area are not in compliance with the Settlement Agreement. Despite the importance of Task 38 and its relative simplicity, only 77.3% of signed citizen statements were completed in compliance with the Settlement Agreement. This falls significantly short of the 95% necessary to achieve compliance in this area. The IMT further determined that only 52% of the officers completing citizen statements during the period audited had received training on Task 38, even though the IMT had asked for citizen statements taken after training was completed.

Based on the results of the audit, the IMT recommends that OPD: 1) provide officers with refresher training that clearly articulates the distinct requirements for Statement Forms vs. offense reports; 2) explain to officers the intent and importance of this Settlement Agreement provision and reinforce the importance and necessity of adherence to policy and the consequences for a failure to do so; 3) explore using a single, uniform method for obtaining citizen statements; and 4) require that supervisory review of reports always include a determination of whether citizen statements are completed

correctly. A detailed discussion of this audit is included in our discussion of Task 38 in the Detailed Compliance section of the attached Report.

During the first reporting period, OPD conducted an audit of its actual practice compliance with Task 34, Vehicle Stops, Field Investigation and Detentions, and determined that OPD is not in compliance with this Task. OPD has not yet completed the “refresher training” the audit recommended, and OPD does not assert that it has come into compliance since its audit.

Because training has not yet been completed for any of the remaining requirements now due, it was premature for the IMT to assess OPD’s compliance in actual practice with these requirements. Overall, the IMT can confirm that OPD is in compliance with three Settlement Agreement requirements in actual practice: Use of Camcorders (Task 32); Monitor Selection (Task 49); and Compliance Unit Liaison Policy (Task 50).

I. INTRODUCTION

On January 22, 2003, the City of Oakland (City) and the Oakland Police Department (OPD) entered into a Negotiated Settlement Agreement (Settlement Agreement) resolving allegations of police misconduct raised by private Plaintiffs in the civil lawsuit, *Delphine Allen, et al., v. City of Oakland, et al.* On August 28, 2003, Judge Thelton Henderson approved the appointment of Rachel Burgess, Kelli Evans, Charles Gruber and Christy Lopez to serve as the Independent Monitoring Team (IMT). This report is the Second Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from October 16, 2003, to January 15, 2004.

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

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

II. IMT MONITORING ACTIVITIES

The IMT conducted a variety of on- and off-site monitoring activities during the second quarter reporting period. During a series of visits to the Department, the IMT, among other activities, reviewed and analyzed OPD documents and files, including a substantial number of Internal Affairs and Division level misconduct investigation files; observed and evaluated officer training sessions; observed an orientation session for newly assigned sergeants; observed an Internal Affairs complaint intake session; attended hearings of the Citizens' Police Review Board (CPRB); reviewed CPRB reports; participated in the monthly meetings required by the Settlement Agreement; and heard an officer's self-report of a citizen's allegation of misconduct by the officer.²

While on-site the IMT met with individual OPD officers; officer associations; command officials, including sergeants, lieutenants, captains, and each of the Deputy

² The IMT overheard the officer's self-report of alleged misconduct while reviewing files in the office of Internal Affairs. The alleged misconduct that was the subject of the officer's report was of an extremely minor nature. Nonetheless, the IMT was encouraged by the officer's obvious concern with and strict adherence to OPD policies regarding misconduct reporting, and by the investigator who followed up on the report by immediately calling the citizen.

Chiefs; and continued to meet with Chief Richard Word. In addition, the IMT met with a variety of other stakeholders, including: the Oakland Police Officers' Association; Oakland community members and groups; the Mayor; the City Manager; City Council Members; the City Attorney; the Public Defender; the District Attorney; and CPRB staff and leadership.

During this reporting period, the IMT also spent considerable time off-site devoted to monitoring tasks. As during the first quarter reporting period, much of this time was spent reviewing materials relevant to the Settlement Agreement including: draft publications; Internal Affairs databases, logs and files; OPD audits; and materials provided by officers and citizen groups. In addition to reviewing these documents off-site, the IMT also participated in teleconferences with OPD to discuss OPD requests for technical assistance; interviewed command staff regarding OPD's internal investigations process; and fielded stakeholder reports related to the Settlement Agreement. While off-site this quarter, the IMT also conducted an audit of OPD's compliance with Task 38, Citizens Signing Police Forms. The results of this audit are reported below.

III. OPD ACCOMPLISHMENTS & AREA OF CONCERN

A. OPD Accomplishments

OPD made important progress during the second quarter reporting period. It achieved notable accomplishments in several distinct areas.

Renewed Effort in Personnel Information Management System (PIMS)

In its First Quarterly Report, the IMT expressed concern with the status of OPD's progress developing PIMS. The IMT is encouraged by the steps OPD has taken in response to our concerns. Although OPD reports that this task is only 7% complete and that it is progressing with concern, it reports that it has taken several steps to bring this task back on target.

OPD has appointed a new commander to handle Task 40 and reports that the PIMS committee and sub-committee have been meeting regularly. New members with assigned roles and responsibilities were appointed to the committee, and subcommittees were formed. The day after the end of this reporting period, OPD issued its Request for Proposals (RFP) to begin the bid process for creation of the PIMS database. Since issuing this RFP, PIMS committee members have met with interested vendors and responded to additional inquiries. The PIMS committee has established a working relationship with University of California, Berkeley's public policy department to aide in researching the effectiveness of current PIM systems as a precursor to developing an effective PIMS at OPD.

The IMT is encouraged by the progress OPD has made in this area both as it reflects progress on this specific task and responsiveness to deficiencies identified by the IMT.

Developing Mechanisms to Verify Training

OPD has not had a reliable, centralized system for accurately and consistently tracking whether its officers actually receive required training in new policies. In order to ensure compliance with the Settlement Agreement, OPD is in the process of developing a mechanism to track training on Settlement Agreement policies. It has developed a new training roster, TF-3230, and is working with its Training Division and other units to make sure that all of its officers receive the required training and that the training is documented. If implemented for all OPD training, a centralized training tracking system will assist not only in Settlement Agreement compliance, but also in OPD's overall training operations.

Improvement in Policy Review Process

While not all the policies drafted by OPD satisfied the requirements of the Settlement Agreement, OPD made significant progress in drafting new policies during the second quarter reporting period. As noted in our compliance overview, OPD published compliant policies for several tasks and made significant progress in drafting compliant policies related to numerous other tasks.

OPD's progress was facilitated by improvements in the policy review process. Because of logistical changes recommended by OPD's Office of Inspector General (OIG), turn-around on policy review is quicker than when the IMT first began monitoring. In addition, OIG has adopted several measures that have reduced the time necessary for the IMT to review policies. OIG now waits to provide draft policies to the IMT for review until internal staffing is complete. This ensures that the IMT does not waste time reviewing drafts that OPD has not yet completed reviewing internally. OIG provides "disaggregated language" along with policies, allowing the IMT to easily identify where a particular Settlement Agreement provision is incorporated into a policy. OIG also provides the IMT with comment-by-comment responses, allowing the IMT to quickly decide whether OPD's response remedies an IMT concern. Additionally, OIG provides accurate charts that allow the IMT to easily compare OPD's self-assessment to the IMT's accounting and quickly clear up any mistakes or misunderstandings.

While these measures (and many similar ones) may seem mundane, they translate into better policy review, more timely compliance, and cost savings to the City of Oakland. As such, they are worthy of note in this report.

Internal Compliance Oversight

During the second quarter reporting period, OIG continued to evaluate and track the status of OPD's compliance with the Settlement Agreement. This task is always difficult and the IMT commends OIG's continued strong efforts in this area. OIG's work has been multi-faceted, including overall coordination of OPD's compliance efforts; convening monthly stakeholder meetings; producing straightforward and fair internal accounts of progress; facilitating the IMT's access to OPD personnel and documents; and conducting audits of OPD.

To assist it in conducting audits, OIG staff attended comprehensive audit training during the second quarter reporting period. OIG staff also conducted several audits of OPD operations. Each of the audits conducted during the second quarter revealed significant deficiencies in OPD operations. OPD is to be commended for identifying the deficiencies, proposing a range of remedial actions, and openly reporting these issues in its Second Semi-Annual Status Report.

In the same vein, the IMT is impressed by OPD's frank assessment of its progress and the recommendations contained in OPD's Second Semi-Annual Status Report. In the report, OPD expresses concern regarding policy implementation and compliance, noting that its audits and reviews have revealed that overall compliance with the newly published policies falls "notably short" of Settlement Agreement requirements. The report lists a series of sensible and realistic recommendations, many of which are aimed at reinforcing command accountability. For example, the report recommends requiring the commander of any Division and/or Watch that fails an audit to provide a written report explaining the deficiencies and outlining an improvement plan to achieve compliance.

According to the report, Chief Word has agreed to the recommendations and they will be implemented during the next six months. The IMT looks forward to evaluating how or whether these measures impact OPD's compliance with the Settlement Agreement.

Each of these accomplishments has been critical in preventing OPD from falling further behind in Settlement Agreement compliance. However, a host of policies are due in the upcoming quarters and implementation of the policies OPD has already published must now begin. We encourage OPD to build on and expand these accomplishments to avoid a more serious delay in compliance.

B. Area of Concern

Timeliness of the Internal Investigation Process

The IMT's Review

During the past several months, the IMT has been familiarizing itself with the internal investigation process by reviewing files and databases; interviewing OPD officers within IAD and throughout the Department about the internal investigation process; and talking with representatives from the District Attorney's Office, the City Attorney's Office, the Public Defender's Office, and the Citizens' Police Review Board about their interactions with OPD regarding the internal investigation process. Soon after the IMT began this work, it became apparent that OPD misconduct investigations are not completed in a timely manner. This is a concern because investigations of officer misconduct can be extremely stressful for the subject officer, and provide complainants and the community an indelible view of their police department. Investigations that are unnecessarily delayed are thus unfair to officers, particularly those who did not commit the conduct of which they are accused, and can destroy a community's trust in its police department. Recognizing this, the Settlement Agreement, OPD policy, and accepted standards of law enforcement practice require the timely completion of misconduct investigations.

The Settlement Agreement requires, for example, the implementation of timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline; increased IAD staffing where necessary to ensure timely investigations; improvements in OPD's complaint intake process; and centralized tracking of IAD and Division level investigations and any resulting discipline. See, e.g., S.A. III. The Settlement Agreement further requires that the IMT conduct audits and reviews to ensure that OPD's policies and procedures implementing these reforms are consistent with the language and purpose of the Settlement Agreement, as well as with best practices in law enforcement. S.A. XIII.H.1. The IMT must also conduct reviews to ensure that OPD's enforcement activities "fully comply with all applicable Department procedures and federal and state law." S.A. XIII.H.11.

In light of these Settlement Agreement requirements, the IMT is currently reviewing the timeliness of OPD's internal investigations. Within this review, the IMT is focusing on complaints that were not resolved within one year from the time OPD became aware of the complaint. We focus on these cases because, while any unnecessary delay in internal investigations is unfair, California's one-year statutory deadline for notifying an officer s/he will be disciplined makes cases that take longer than a year to complete especially troubling.

Our review of OPD's internal investigation process revealed systemic delays at

nearly every step of the process, with few internal mechanisms designed to prevent such delays. OPD internal investigations are delayed or halted for reasons that have little if anything to do with the complexities of the individual cases. In some instances OPD has not disciplined officers despite sustained misconduct findings because the investigation took longer than one year to complete. These findings apply to cases that were investigated during the past year—after the Settlement Agreement was signed. While our findings will be detailed in a subsequent report, due to the seriousness and prevalence of the deficiencies we found, we are highlighting our concerns in this report.⁴

Description of OPD's Current Investigation Process

A very brief and general overview of OPD's internal investigation process is helpful to an understanding of its shortfalls. For the most part, all complaints alleging Class I violations are supposed to be investigated by IAD. Very generally, Class I violations involve allegations of more serious misconduct, such as excessive force and planting evidence. Class II violations, those involving allegations of less serious misconduct, are investigated at the Division level, i.e. by the Bureau in which the subject officer serves. Depending upon information discovered during investigations by the Division, an investigation may be transferred to IAD from the Division.

Once IAD has completed an investigation, it is sent to the subject officer's Division so that IAD's investigative findings can be reviewed by the chain of command. If any allegation has been sustained, the chain of command recommends corrective action or discipline. Once the chain of command, up through the Deputy Chief, has completed its review of the investigation, it should be returned to IAD. The IAD commander has a regularly scheduled meeting with the Chief of Police to discuss cases that have been reviewed by the chain of command. If the Chief is satisfied with the investigation and its findings, he approves the investigation and, where appropriate, discipline or other corrective action. Cases conducted at the Division level are handled similarly and Division investigators are supposed to keep IAD informed at every step of the investigation, including forwarding copies of documents to IAD so that IAD can maintain a centralized investigation tracking system. Similarly, IAD is supposed to be apprised of all disciplinary findings, as it currently houses the database that purportedly tracks discipline within OPD.

⁴ It is important to note that the IMT has not yet systematically assessed the *quality* of OPD's misconduct investigations. As our review was focused on evaluating the timeliness of internal investigations, we necessarily focused on OPD's internal investigations process, i.e., its system for receiving; assigning; coordinating with other agencies; reviewing; and approving investigations, rather than on the quality of any particular investigation or set of investigations. We do have concerns about the quality of misconduct investigations, based upon our review so far, and intend to conduct systematic reviews of this in the future.

Summary of Findings

As detailed more fully below, the most striking overall finding is the failure of OPD's structure as a whole to support the internal investigations process. For example, firm deadlines within the investigative process are sparse, and the deadlines that are in place are routinely not met. This problem is exacerbated by OPD's failure to enforce these deadlines and hold commanders accountable when investigations wither and die under their watch. In addition, OPD does not adequately track the progress of investigations, or even the location of investigative files. There are, for example, reports of investigations that disappeared when the manager to whom they were assigned retired.

Moreover, OPD engages in problematic practices that systematically severely impact investigation timeliness. For example, OPD's practice of "filing," rather than investigating, cases that are in civil litigation or under criminal investigation—and never reopening them—effectively ignores incidents that often involve the most serious allegations of misconduct. Similarly, OPD has no consistent criteria for determining which allegations of misconduct will be "informally resolved," rather than investigated. While we observed many incidents that were properly resolved informally, we observed many more in which investigations were clearly warranted.

Discussion

The problems the IMT observed in OPD's internal investigations process can be generally grouped into one of two areas: insufficient or unenforced deadlines and a lack of investigation oversight/tracking. These areas are addressed in detail below. In addition, we address below related problems regarding OPD's tracking of use of force and discipline.

Insufficient or Unenforced Deadlines

- **No documented deadlines** In most instances OPD has no deadline for completing a particular stage of an investigation, or the nominal deadline is not documented in any OPD policy or procedure. For example, while Division review of IAD investigations is supposed to be completed within three weeks, this requirement is not in writing. Similarly, there is no deadline for how quickly the Chief must review and approve an internal investigation after it has been completed and reviewed through the chain of command. The many areas where OPD lacks deadlines include: assigning cases to an investigator after they have been received by IAD or the Division; notifying officers that discipline has been ordered; notifying complainants of an investigation's results; and evaluating whether a 3304 exception applies.

- Unenforced Deadlines Even where there are deadlines, OPD routinely does not meet them. Moreover, the managers failing to meet deadlines are rarely asked about the delay, much less held accountable. Cases assigned to the Bureaus for investigation or review too frequently are not completed/reviewed in a timely manner. According to OPD's own audit of its IAD investigations, the *average* length of time to complete an IAD investigation is in excess of 180 days, well beyond the standard set by accepted police practices and OPD's own policies.⁵ In addition, OPD does not have a policy or written guidance or criteria regarding the appropriate circumstances for requesting an extension, or for determining when such requests should be granted.

Lack of Investigation Oversight/Tracking

- "Filed" internal investigations OPD currently designates as "filed" complaints it receives but does not investigate. OPD routinely "files" cases because they are in civil litigation, under criminal investigation, or came to OPD's attention via the Citizens' Police Review Board (CPRB). This violates the Settlement Agreement and often results in a complete failure by OPD to investigate some of the most egregious allegations of misconduct. Once cases are "filed," they are rarely opened later for investigation, even after the criminal or civil proceeding has ended. OPD has no system for monitoring the progress of civil proceedings. Neither civil litigation nor criminal investigations are appropriate substitutes for investigations by the Department. For example, a determination that an officer should not be charged criminally does not resolve the question of whether the officer committed serious violations of OPD rules.
- Division Level Investigation Tracking There is no consistent, reliable process for tracking the progress of IAD investigation reviews or Division level investigations throughout OPD. Each Bureau now appears to be working to create its own reliable internal investigations tracking mechanism, but there is currently no centralized system tracking progress or reliably notifying commanders when investigations are overdue.
- Informal Resolution There is currently no standardized method for determining when an allegation of misconduct should be resolved informally (i.e. without investigation). While informal resolution can be appropriate in many instances, there must be strict parameters on its use. OPD commanders have expressed their concern that some officers are

⁵ OPD's policy requires that IAD investigations be completed within 45 days "absent a documented reason or extenuating circumstances."

permitted to avail themselves of this informal means of resolving misconduct complaints too frequently and under inappropriate circumstances. This concern underscores the need for standardizing the informal resolution process and developing written criteria for its use.

- Incomplete & Missing Investigation Files In many instances, the IMT was unable to review internal investigation case files because they were completely missing; no one in OPD had any idea where they might be. Several of these files were many years old, while others were relatively recent. Some OPD officials spoke anecdotally of investigations that disappeared when the manager to whom they were assigned retired. Other OPD officials spoke of files disappearing in inter-office mail. No one we interviewed could recall such allegations ever being investigated.
- No Investigation After Separation OPD currently does not complete investigations when the subject officer leaves OPD employment. This practice is outdated and problematic for several reasons. It prevents OPD from enforcing supervisory accountability; increases the likelihood that a problem officer will become a problem officer on another force (or be re-hired by OPD in the future); and inhibits OPD's ability to identify and correct systemic problems and training needs.
- Identifying 3304 Exceptions California Government Code §3304 lists several exceptions to the general rule that an officer must be informed within one year of a complaint whether s/he will be subjected to discipline. OPD has no process in place for identifying, tracking, and/or consistently documenting cases in which a longer investigation should be permitted pursuant to a 3304 exception. Many cases that are listed by IAD as having exceeded the 3304 deadline may in fact still be "within statute" because an exception applies. According to OPD's IAD supervisors and commanders, IAD does not have an accurate count of how many investigations are in danger of running the statute of limitations because it does not know which cases might fall under a 3304 exception. Among the negative consequences of this failure to identify possible 3304 exceptions is that, by OPD's own account, after cases have exceeded the one year mark, the investigation is still listed as open, but may be "put on the back burner," regardless of whether an exception might apply. This practice means that cases that could otherwise be completed within the statutory deadline may nonetheless be allowed to exceed the statute of limitations due to poor tracking.

Tracking Use of Force and Discipline

- Use of Force Tracking Failure to collect and analyze use of force data systematically makes it virtually impossible for managers and supervisors to measure or manage use of force. Without systematic tracking and analysis of use of force data, supervisors cannot measure whether certain officers use force more often than others; under what circumstances officers use force; what kinds of force are being used; how often officers are using force; and officer and civilian injuries. A failure to systematically track and analyze use of force data may also facilitate the underreporting of force incidents.

OPD had designated IAD to input use of force reports into a database maintained in IAD. However, several months ago, without explanation, IAD stopped receiving use of force reports. Immediately upon learning this, the IMT spoke with Chief Word to determine why IAD had stopped receiving use of force reports and whether any entity within OPD was tracking use of force. After a second IMT conversation with Chief Word, OPD again began forwarding use of force reports to IAD for inclusion in its tracking database. The IMT is satisfied with OPD's assertion that this problem arose because of clerical miscommunication rather than intentional obstructionism. What is of greater concern is that it was not until months after IAD suddenly stopped receiving the use of force reports without explanation, when the IMT discovered and raised this issue with the Chief, that the matter was resolved.

- Tracking Discipline OPD has also designated IAD to track the various units' imposition of discipline. However IAD is not consistently notified when discipline is imposed. A review of IAD's disciplinary database makes clear the woeful inadequacy of this would-be tracking mechanism. For example, one officer is listed as terminated even though the termination was rescinded and the officer is again on the force. As we noted in our last report, we view consistency of discipline as a lynchpin to the Settlement Agreement. Such consistency requires that OPD have an accurate global view of the discipline it imposes on its officers.

Conclusion

We recognize that OPD's internal investigations process is currently being reformed. Most commendably, we recognize that, upon learning of the IMT's findings and concerns in this area, OPD has begun to take steps to correct many of the problems we identified. In addition, the IMT is impressed with the new IAD commander, despite his lack of experience in this area. He has a reputation for diligence and integrity, and we are so far pleased with his commitment and energy.

Nevertheless, implementation of Settlement Agreement requirements has been significantly delayed and substantial work remains before OPD's internal investigation process complies with the Settlement Agreement even on paper. In short, over one year after the Settlement Agreement was signed, OPD's internal investigations process falls far short of Settlement Agreement requirements and, currently, full-scale change is not expected in the foreseeable future. We highlight misconduct investigation timeliness as an area of concern to underscore the need for rapid reform in this area and to identify areas in need of short-term solutions and long-term consideration as OPD develops and implements the Settlement Agreement requirements.

IV. COMPLIANCE OVERVIEW

Our discussion of OPD's compliance efforts and status is organized around the twelve Settlement Agreement sections from which OPD derived fifty-one "tasks." The IMT has reviewed OPD's task designations, determined that the task division is workable, and in the interests of clarity and consistency, has adopted the same designations.⁶

The twelve Settlement Agreement areas around which we organize our report are: 1) Internal Affairs Division; 2) Supervisory Span of Control and Unity of Command; 3) Use of Force Reporting; 4) Reporting Procedures; 5) Personnel Information Management System (PIMS); 6) Field Training Officer Program; 7) Academy and In-Service Training; 8) Personnel Practices; 9) Community Policing Plan; 10) Departmental Management and Annual Management Report; 11) Independent Monitoring; and 12) Compliance Unit.

Because of extensions granted by the Plaintiffs' Attorneys, no new tasks were due during the second reporting period.⁷ In addition, because one of the extensions granted by Plaintiffs was for a task due last reporting period (Task 45, Consistency of Discipline), the number of tasks with due dates decreased from sixteen at the end of the first reporting period, to fifteen at the end of the second reporting period. These fifteen tasks are:

Span of Control for Supervisors (Task 20)
OPD/DA Liaison Commander (Task 22)
Reporting Misconduct (Task 33)
Vehicle Stops, Field Investigation and Detentions (Task 34)

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

⁷ In the IMT's view, the extensions granted to date by the Plaintiffs' Attorneys have been appropriate and reasonable.

Use of Force Reports-Witness Identifications (Task 35)
Procedures for Transporting Detainees and Citizens (Task 36)
Internal Investigations-Retaliation Against Witnesses (Task 37)
Citizens Signing Police Forms (Task 38)
Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39)
Performance Appraisal Policy (Task 44)
Promotional Consideration (Task 46)
Community Policing Plan (Task 47)
Department Management and Annual Management Report (Task 48)
Monitor Selection and Compensation (Task 49)
Compliance Unit Liaison Policy (Task 50)

At the end of the second reporting period, OPD is in compliance with two Settlement Agreement requirements with due dates that have passed: Monitor Selection and Compensation (Task 49) and Compliance Unit Liaison Policy (Task 50). These are the same requirements with which OPD was in compliance at the end of the first reporting period. While OPD's failure to come into compliance with any additional Settlement Agreement requirements during the second reporting period is cause for concern, it should not be mistaken for a complete lack of progress. As noted in our first report, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.⁸ Although OPD did not complete each of these three steps for any other requirements due, it did make significant progress on the first two steps (policy development and training) for a number of the tasks.

Additionally, as noted in our previous report, OPD is in compliance with some Settlement Agreement requirements not yet due. OPD is in compliance with two Settlement Agreement requirements well before their due dates: exploring the use of in-car video recorders (Task 32) and locating IAD offices off-site (part of Task 7). In addition, OPD is significantly ahead of schedule on other tasks, including developing policies related to prohibiting the refusal of citizen complaints (Task 6) and publishing a policy requiring command staff rotation (Task 23). OPD has also decertified all of its Field Training Officers and, pursuant to the Settlement Agreement, overhauled its entire Field Training program (Task 42). The IMT is encouraged by OPD's progress on these

⁸ Compliance with a Settlement Agreement provision requires that: 1) OPD has a published policy or other appropriate directive(s) (e.g. General Order, Training Bulletin, Manual, etc.) that accurately reflects the requirements of the Settlement Agreement; 2) OPD has adequately trained the appropriate OPD personnel regarding how to implement the requirements of the Settlement Agreement provision; and 3) actual practice comports with the requirements of the Settlement Agreement provision. The IMT's general methodology is to first review the policy or other directive to determine whether it facially complies with the Settlement Agreement; then assess whether training is sufficient; and finally, to conduct audits and other reviews to determine whether the actual practices of OPD officers comply with the terms of the Settlement Agreement.

tasks far in advance of their due dates.

A. Policy Compliance

OPD achieved policy compliance during this reporting period for three Settlement Agreement tasks: OPD/DA Liaison Commander (Task 22); Procedures for Transporting Detainees and Citizens (Task 36); and Department Management and Annual Management Reports (Task 48).

OPD completed five other policies that the IMT found to comply with the Settlement Agreement. These policies correspond to portions of tasks and bring OPD closer to policy compliance with five additional Settlement Agreement tasks (Tasks 6, 33, 37, 39, and 47). OPD is nearing completion of approximately ten additional compliant policies relating to eight Settlement Agreement requirements (Tasks 18, 19, 20, 33, 35, 37, 39, and 47). Thus, although OPD did not come into compliance with any new Settlement Agreement requirements, and came into policy compliance with only three new requirements, OPD did complete an additional five compliant policies during the second reporting period and appears close to completing approximately ten more. When policies completed during the first reporting quarter are included, OPD has achieved policy compliance with a total of seven of the fifteen requirements now due.

OPD's policy compliance with the Settlement Agreement requirements now due is summarized in the following table.

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>
20	Span of Control for Supervisors	August 14, 2003	
22	OPD/DA Liaison Commander	April 15, 2003	✓*
33	Reporting Misconduct	August 25, 2003	
34	Vehicle Stops, Field Investigation and Detentions	August 25, 2003	✓
35	Use of Force Reports-Witness Identifications	August 25, 2003	
36	Procedures for Transporting Detainees and Citizens	August 25, 2003	✓*
37	Internal Investigations-Retaliation Against Witnesses	August 25, 2003	

<u>Task</u>	<u>Task Name</u>	<u>Due Date</u>	<u>Compliant Policy</u>
38	Citizens Signing Police Forms	August 25, 2003	✓
39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	August 25, 2003	
44	Performance Appraisal Policy	July 8, 2003	
46	Promotional Consideration	July 8, 2003	
47	Community Policing Plan	August 1, 2003	
48	Department Management and Annual Management Report	September 5, 2003	✓*
49	Monitor Selection and Compensation	April 15, 2003	✓(N/A)
50	Compliance Unit Liaison Policy	March 4, 2003	✓(N/A)

* Indicates that policy compliance achieved during this reporting period.

B. Training Compliance

OPD has not completed the second step of compliance, training, for any of the compliant policies it has published. The IMT is concerned about OPD's ability to quickly and reliably train officers in new policies, and will continue to closely monitor this aspect of compliance. Nevertheless, OPD's failure to complete training does not reflect a lack of progress or effort. As noted above in the Accomplishments section of this Report, OPD has made significant progress in this area and training appears to be gaining momentum.

C. Actual Practice Compliance

The IMT cannot find OPD in compliance in actual practice with any additional Settlement Agreement requirements due this quarter. The IMT conducted an audit of OPD's compliance in actual practice with Task 38, Citizens Signing Police Forms, and determined that OPD is not in compliance with this Settlement Agreement requirement. Only 77.3% of signed citizen statements were completed in compliance with the Settlement Agreement, falling significantly short of the 95% necessary to achieve

compliance. This audit is discussed in full under the Detailed Compliance discussion of Task 38.

As noted in our last report, OPD conducted an audit of its compliance with Task 34, Vehicle Stops, Field Investigation and Detentions, and determined that OPD is not in compliance with this Task. OPD has not yet completed the “refresher training” the audit recommended, and does not assert that it has come into compliance since its audit.

Because training has not yet been completed for any of the remaining requirements now due, it was premature for the IMT to assess OPD’s compliance in actual practice with these requirements.

OPD’s status of compliance, including progress made during the second reporting period, is summarized in the following table.

Settlement Agreement Requirements Due at End of Second Reporting Period		Change Since Last Reporting Period
Number of Requirements Due	15	-1
Requirements with Compliant Policies	7*	+3
Requirements with Compliant Training	2*	0

* Includes Tasks 49 and 50, which do not require a policy or training.

V. DETAILED COMPLIANCE REPORT⁹

In the interest of completeness, we discuss below the requirements for each section of the Settlement Agreement, as well as provide a brief statement of OPD’s progress thus far. As noted above, because of extensions granted by Plaintiffs, no new tasks were due this period. As further noted above, many of the tasks that were due during the first reporting period remain incomplete.

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.

⁹ The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

Because of a series of extensions requested by OPD and agreed to by Plaintiffs, none of these requirements has yet become due. Most recently, the policy covering many of these tasks was due December 3, 2003. As it became clear that OPD would not be able to meet this deadline, OPD asked Plaintiffs to agree to an extension until March 15, 2004 (with training to be completed by July 1, 2004).

The IMT's concerns about the timeliness of OPD's current system for investigating allegations of officer misconduct are discussed above. Our discussion here is limited to a reiteration of the Settlement Agreement requirements and a brief statement of OPD progress. We anticipate a fuller discussion in subsequent reports, as many of these tasks become due during the third quarter reporting period (January 16, 2004, through April 15, 2004).

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

a. Settlement Agreement Requirements

- By June 1, 2005, 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 June 1, 2005, 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 June 1, 2005, 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 compliance deadline for this task has not yet occurred. OPD has provided the IMT with a draft of General Order M-3 *Complaints Against Departmental Personnel or Procedures*, intended to incorporate many Settlement Agreement requirements into policy. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft.

The IMT's review of M-3, as well as our recent review of dozens of internal investigations, has reaffirmed our view that OPD cannot view the relatively distant deadline for completing the actual internal investigation procedural manual as a barrier to immediate development of written policies and procedures governing the IAD (and Division level) investigation process. As discussed above and in the IMT's comments on General Order M-3, written guidance and concrete rules for investigating allegations of misconduct are sorely needed and OPD cannot come into compliance with the Settlement Agreement, or with the minimal requirements of police practice and fair treatment, until such written policies and procedures are in place.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. As discussed above, in current practice, untimely misconduct investigations appear to be endemic to OPD, to the disadvantage of OPD's upstanding officers and Oakland's citizens. OPD noted in its Second Semi-Annual Status Report that OIG recommends establishing misconduct investigation timelines based on OIG's calculation of "average completion times" during 2003.

The IMT has informed OPD that it would be wholly inappropriate to establish acceptable investigation timelines based on IAD's "average completion times" in the past. OPD's "average completion time" significantly exceeds the time limits of

acceptable police practices. In addition, it is particularly inappropriate to use OPD's "average completion time" as a baseline given that IAD has historically been understaffed and lacking in fundamental timeliness parameters, including enforcement of the deadlines that are in place.

3. IAD Integrity Tests (Task 3; S.A. III.C.)

a. Settlement Agreement Requirements

- By June 1, 2005, IAD must conduct integrity tests in situations where members/employees are the subject of repeated allegations of misconduct.
- By June 1, 2005, IAD must set frequency standards, among other parameters, for such integrity tests.

b. Status of Compliance and Assessment

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

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must develop a policy regarding an informal complaint resolution process to be used by supervisors and IAD to resolve minor complaints not rising to the level of Class II misconduct. The Settlement Agreement sets forth certain criteria that must be included in this informal complaint resolution process.
- By July 1, 2004, OPD must implement this informal complaint resolution process.
- By March 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 July 1, 2004, OPD must implement this central control system.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By March 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 March 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 March 15, 2004, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints, including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the "preponderance of evidence" standard; and permanently retain all notes related to the investigation. This provision also defines the five investigative dispositions (unfounded;

sustained; exonerated; not sustained; and filed) and requires that each allegation in a complaint be resolved with one of these dispositions.

- By July 1, 2004, OPD must implement the above referenced policies.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has determined that *Manual of Rules* insert 398.76, incorporating one part of this task (complainant access to a supervisor), complies with the Settlement Agreement. OPD provided the IMT with Jail Policy & Procedure 05.01, which OPD asserts pertains to this task, after the end of the second reporting period. The IMT is currently reviewing this directive. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft.

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 IMT has determined that *Manual of Rules* insert 398.76, which covers this task, complies with the Settlement Agreement. The IMT commends OPD for being substantially ahead of schedule in drafting this policy. Training in this policy was scheduled to begin shortly after the end of the second reporting period. In subsequent reports, the IMT will report whether training is completed and whether OPD's actual practices comply with the Settlement Agreement.

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

a. **Settlement Agreement Requirements**

- By March 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 July 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**

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. As noted in our last report, the IMT has verified that OPD is already in compliance with the requirement that IAD offices be located off-site.

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

a. **Settlement Agreement Requirements**

- By March 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 July 1, 2004, OPD must implement this

classification system.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft.

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

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must develop and, by July 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

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft.

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

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

a. Settlement Agreement Requirements

- By June 1, 2005, 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 June 1, 2005, OPD must train all personnel to ensure that they have received, understand, and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16.)

b. Status of Compliance and Assessment

The compliance deadline for this task has not yet occurred. This task will be completed once OPD has created its IAD procedural manual for conducting complaint investigations, including the provisions articulated in Tasks 1–9 and 11–16, and has adequately trained the appropriate OPD personnel in the new and revised policies and procedures.

As discussed above, OPD’s complaint investigations process suffers from a number of significant deficiencies. While the deadline for completion of this task is more than a year away, immediate improvement, including written guidance and concrete rules for investigating allegations of misconduct, is necessary. OPD will not be in compliance with even the minimal requirements of police practice and fair treatment, until these policies and procedures are in place.

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

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy requiring that complaint investigators:

- o 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;
 - o notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
 - o 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 June 1, 2004, OPD must implement this policy.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must develop and, by July 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

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task has not yet occurred. OPD reports that work on this task is progressing without concern. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must develop and, by July 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

As discussed above, this task represents a stark change to OPD's current practice. It will require significant forethought to be implemented successfully. Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft.

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

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

a. Settlement Agreement Requirements

- By March 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy requiring that, except upon written authorization from the Chief of Police, the operational chain of command, from lieutenant up, review recommended findings and make disciplinary recommendations in sustained internal investigations.
- By July 1, 2004, OPD must implement this policy.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By March 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 July 1, 2004, OPD must implement this policy.

b. Status of Compliance and Assessment

Because of extensions granted by Plaintiffs, the compliance deadlines for this task have not yet occurred. The IMT has reviewed General Order M-3, which OPD asserts will cover this task. The draft, however, does not comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the draft. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

B. Supervisory Span of Control and Unity of Command (Tasks 17-23; S.A. IV.)

Section IV of the Settlement Agreement, Tasks 17–23, covers a number of changes required to improve supervision of OPD officers and employees, particularly field supervision of OPD's patrol officers. In addition to the key requirement of a 1:8 supervisor to patrol officer ratio, this section also 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 requirements, Span of Control for Supervisors (Task 20) and

OPD/DA Liaison Commander (Task 22), were due during the first reporting period. Since the first reporting period, OPD has developed a compliant policy for Task 22, but training on this policy has not been completed. OPD still has not developed and implemented a compliant policy for Task 20. Accordingly, practical progress in this area continues to be incomplete and tenuous. During the second reporting period, no additional tasks in this area were due. Several tasks will become due during the upcoming third reporting period.

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

a. **Settlement Agreement Requirements**

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

b. **Status of Compliance and Assessment**

This task has no separate requirements. It will be completed once OPD has completed tasks 18, 19, 21 and 23 (detailed below) and is in compliance with section IV, paragraphs A–F of the Settlement Agreement.

2. **Approval of Field-Arrest by Supervisor** (Task 18; S.A. IV.A.)

a. **Settlement Agreement Requirements**

- By January 20, 2004, OPD must develop and implement a policy requiring the approval of field-arrests by a supervisor in most cases. This policy necessitates that OPD develop standards for field supervisors that encourage or mandate close and frequent supervisory contacts with subordinates. The Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.

b. Status of Compliance and Assessment

The compliance deadline for this task did not occur during the second quarter reporting period. OPD has drafted a policy incorporating a portion of this provision, General Order M-18 *Arrest Approval and Report Review in the Field*. The IMT reviewed the re-draft of M-18 and determined that it remains noncompliant with the Settlement Agreement. The IMT provided OPD with comments detailing the changes necessary for compliance. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

3. 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 did not occur during the second quarter reporting period. The IMT reviewed General Order A-3 *Department Organization*, and determined that it does not comply with the Settlement Agreement. The IMT provided OPD with comments detailing the changes necessary for compliance. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By August 14, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The Settlement Agreement sets forth certain provisions that must be included in the policy. Most notably, the

Settlement Agreement requires that, under normal conditions, OPD assign one primary sergeant to each Area Command Field Team. Additionally, a supervisor's span of control cannot exceed eight members.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD still is not in compliance with this task. The IMT reviewed the Bureau of Field Operations Policy & Procedure 03-02, *Span of Control*, and determined that it does not comply with the Settlement Agreement. The IMT provided OPD with comments detailing the changes necessary for compliance. Without making the necessary changes, OPD began training officers in the policy. As a result, OPD will have to retrain officers in a policy that complies with the Settlement Agreement before the IMT can find training to be in compliance.

As we reported in our first report, in January 2003, OPD took the important step of assigning additional sergeants to patrol in order to provide closer supervision of patrol officers, improving the ratio of supervisors to officers. A September 2003 audit by OPD's OIG found that OPD was not in compliance with Task 20. The recent Bureau of Field Operations assignment draw may have improved OPD's potential for compliance with this provision, but based on a preliminary review of logs detailing daily attendance, the IMT remains concerned that OPD's actual practices may not comply with the Settlement Agreement. Prior to conducting an audit of OPD's actual practices in this area, the IMT must gain a better understanding of the parties' intent in this area as OPD's draft policy covering this task raises a number of questions. The IMT has communicated its questions and concerns regarding the span of control policy to OPD and hopes to resolve these questions before the end of the third quarter.

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

a. Settlement Agreement Requirements

- By July 7, 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

Because of extensions granted by Plaintiffs, this task was not due during the second reporting period. OPD has drafted a policy incorporating this provision, General Order B-6, *Performance Appraisal*. As we reported previously, the IMT provided comments on this draft and OPD committed to revising the policy. OPD did not meet the extended deadline for the re-draft, but very recently has provided a draft to the IMT.

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

6. 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

The compliance deadline for this task occurred during the first reporting period. At that time, the IMT reported that OPD was not in compliance with this task. During the second quarter reporting period, OPD completed and published General Order A-18, *Management Level Liaison*, which the IMT has determined complies with the Settlement Agreement. Training on this policy, however, was not completed during the second reporting period. During the upcoming quarters, the IMT will determine whether OPD has conducted appropriate training on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

- By January 20, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a regular rotation of Departmental command staff, consistent with the Department's immediate needs and best interests.

b. Status of Compliance and Assessment

The compliance deadline for this task did not occur during the second reporting period. In April 2003, OPD published a directive (*Chief of Police Memorandum*) which the IMT has determined complies with the Settlement Agreement. The IMT commends OPD for being substantially ahead of schedule in publishing this directive. During the upcoming quarters, the IMT will determine whether OPD's actual practices comply with this Settlement Agreement provision.

C. Use of Force Reporting (Tasks 24–32; S.A. V.)

Section V of the Settlement Agreement, Tasks 24–32, requires OPD to make a number of significant changes in the way it reports and investigates uses of force. This section requires changes in reporting uses of force ranging from Oleoresin Capsicum (OC) spray to officer-involved shootings, and enhances the requirements for OPD's Use of Force Review Board (UFRB) and Firearms-Discharge Board of Review. The Settlement Agreement also requires significant changes to use of force investigations, including requiring mandatory training in this area for supervisors. As discussed in the IMT's First Quarterly Report, we continue to urge OPD to complete these changes and to begin training recently promoted supervisors in the new use of force procedures as soon as possible.

None of these requirements had a due date during this or the previous reporting periods. Although the IMT's monitoring in this area was thus limited, we did review policies related to the logging and checkout procedures for Oleoresin Capsicum (OC) spray, as discussed below. In addition, as noted in the IMT's First Quarterly Report, OPD has achieved compliance with Task 32, which required OPD to explore the use of camcorders in patrol vehicles.

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:
 - o all members/employees to notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force;
 - o 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;
 - o OPD personnel to document any use of force and/or the drawing and intentional pointing of a firearm at another person;
 - o 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;
 - o 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
 - o OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS).

b. Status of Compliance and Assessment

The compliance deadlines for this task have not yet occurred. The Settlement Agreement requires OPD to develop and implement a revised Use of Force policy and reporting forms by July 20, 2004. OPD reports that work on this task is progressing with concern.

As discussed above, of particular concern to the IMT was its discovery of the recent sudden and unexplained halting of use of force tracking by IAD. While OPD had designated IAD as the central repository for use of force reports, without policy change or explanation, IAD stopped receiving the reports for approximately four months. After speaking with the Chief twice about this situation, it appears that it is being remedied. While the IMT is satisfied that this error was unintentional, we remain concerned that it required intervention by the IMT to correct.

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

2. 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 has not yet occurred. OPD reports that work on this task is progressing with concern. On December 23, 2003, OPD published Special Order 8066, *Use of Force Reports-Witness Identification*. This policy pertains to one discrete component of use of force investigations—the identification of witnesses during investigations. The IMT reviewed this policy and determined that it does not comply with the Settlement Agreement because it fails to provide officers with sufficiently specific guidance about when statements must be taken from witnesses. Without making the necessary changes, OPD began training officers in the policy. As a result, OPD will have to retrain officers once it completes a policy that complies with the Settlement Agreement.

OPD reports that it intends to incorporate the provisions of the witness identification Special Order into its new use of force policies. The Settlement Agreement requires that these policies be developed and implemented by July 20, 2004. The IMT will review these draft policies, and subsequent training, to ensure that they in fact

provide officers with adequate guidance regarding taking witness statements.

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 deadlines for this task have not yet occurred. OPD reports that work on this task is progressing with concern. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy, conducted appropriate training on the policy, and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadlines for this task did not occur within the first or second quarter reporting periods. OPD reports that work on this task is progressing without concern. OPD published a policy related to this provision, Special Order 8061, *Control of Oleoresin Capsicum*, before the IMT began its work. The IMT has reviewed this policy and determined that it complies with the Settlement Agreement. The IMT commends OPD for being substantially ahead of schedule in publishing this policy. During the upcoming quarters, the IMT will determine whether OPD has conducted appropriate training on the policy and whether OPD's actual practices comply with this

Settlement Agreement provision.

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 has not yet occurred. OPD reports that work on this task is on target and that it has revised General Order M-4, *Coordination of Criminal Investigations* to incorporate the requirements of this task. Upon receipt of the revised draft from OPD, the IMT will review it for compliance with the Settlement Agreement.

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 has not yet occurred. OPD reports that work on this task is progressing with concern. OPD reports that this task will be addressed in two General Orders, M-3 and M-4, *Coordination of Criminal Investigations*. Upon receipt of M-4 from OPD, the IMT will review it for compliance with the Settlement Agreement. As noted above, M-3 does not yet comply with the Settlement Agreement and the IMT has provided OPD with detailed comments and recommendations regarding the policy. The IMT will provide status/compliance updates on this task as appropriate.

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 has not yet occurred. OPD reports that work on this task is progressing with concern. The IMT will provide status/compliance updates as appropriate.

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

a. Settlement Agreement Requirements

- By July 20, 2004, OPD must develop and implement an officer-involved shooting (OIS) investigation policy that requires that in every OIS in which a person is struck:
 - o Homicide and Internal Affairs investigators respond to the scene;
 - o the investigation be conducted in partnership with, and in some cases by, the Alameda County District Attorney's office;

- o subject officers be interviewed jointly by Homicide and District Attorney investigators;
- o the District Attorney and City Attorney be notified in accordance with the Settlement Agreement; and
- o 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 has not yet occurred. OPD reports that work on this task is progressing without concern. OPD published two training bulletins related to this task before the IMT began its work. The IMT provided comments on one of these training bulletins (Training Bulletin V-O), informing OPD that it did not sufficiently incorporate the requirements of the Settlement Agreement. OPD committed to modifying the bulletin in light of the IMT's comments, but has not yet done so. OPD reports that it has completed training on this directive. OPD will not be in compliance with the policy or training components of this task until it makes the necessary revisions to the bulletin and retrains officers accordingly. During the upcoming quarters, the IMT will determine whether OPD has developed the required policy; conducted appropriate retraining on the policy; and whether OPD's actual practices comply with this Settlement Agreement provision.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task has not yet occurred. However, OPD has already produced research reports regarding the use and cost-effectiveness of camcorders in Patrol vehicles. While OPD concluded that it is not able at the present time to install camcorders in Patrol vehicles due to budgetary constraints, it reports that it is continuing to explore possible funding sources for the camcorders. The IMT reviewed OPD's reports and has found OPD to be in compliance with this task. The IMT commends OPD for being substantially ahead of schedule on this task.

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

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

Each of the seven tasks in this section was due during the first reporting period. During the first reporting period, OPD developed compliant policies for two of the tasks (Task 34, Vehicle Stops, Field Investigations, 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). However, OPD remains out of compliance for four of the seven tasks in this section (Task 33, Misconduct; Task 35, Use of Force Reports-Witness Identification; Task 37, Internal Investigations-Retaliation Against Witnesses; and Task 39, Personnel Arrested, Sued and/or Served with Civil or Administrative Process).

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

a. Settlement Agreement Requirements

- By August 25, 2003, OPD must require its personnel to report misconduct to his/her 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

The compliance deadline for this task occurred during the first reporting period. OPD, however, still has not yet published policies that adequately incorporate all of the requirements of this task or completed training in the new requirements.

Before the IMT was retained, OPD revised its *Manual of Rules* (MOR) to incorporate many of the Settlement Agreement requirements related to reporting misconduct. The IMT has reviewed the revisions and determined that MOR Section 314.48, *Reporting Violations of Laws, Ordinances, Rules or Orders* and MOR Section 314.49, *Confidential Reporting of Police Misconduct* comply with the Settlement Agreement. Additionally, the IMT has reviewed OPD's new Departmental General Order D-16, *Check-In and Orientation*. This policy was published on December 24, 2003, and requires that officers receive, read, review, understand and comply with OPD policies and procedures. The IMT has found that this policy also complies with the Settlement Agreement. Training on these provisions has not yet been completed.

The IMT has determined that MOR Section 370.18, *Arrests* and MOR Section 370.27, *Use of Physical Force* do not comply with the Settlement Agreement. The IMT has informed OPD that, in addition to not complying with the Settlement Agreement, these MOR Sections are inconsistent with MOR Section 314.48 and with acceptable police practices. These policies do not comply with the Settlement Agreement because they permit officers unnecessarily to delay reporting apparently improper arrests and uses of force. The IMT has informed OPD that these MOR sections will not comply with the Settlement Agreement until they are revised to require reporting of apparently improper arrests and uses of force as soon as is practical, but in no case more than 24 hours.

During the upcoming quarters, the IMT will determine whether OPD has made the necessary revisions to the policies to bring them into compliance with the Settlement Agreement; whether appropriate training has been conducted; and will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

2. Vehicle Stops, Field Investigation and Detentions (Task 34; S.A. VI.B.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD members must complete a basic report on every vehicle stop, field investigation and detention. The Settlement Agreement sets forth particular information that must be included in this report.

- OPD must enter this report data into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD published a policy (Special Order 8012, *Racial Profiling Stop-Data Collection Form*) that complied with the Settlement Agreement and conducted training within the timeline set by the Settlement Agreement. However, many of the officers ordered to attend the training failed to do so.

OPD's internal audit of its officers' compliance with this task revealed that only 26% of the required forms were being turned in. To OPD's credit, during the course of its audit, it identified a number of compliance deficiencies and has begun implementing measures designed to ensure future compliance. Such measures include ensuring that officers actually attend required training, and that their supervisors are held accountable if they do not. The IMT is concerned that the necessary retraining has not been conducted.

The IMT will closely monitor compliance with this Settlement Agreement requirement in upcoming quarters, and report the result of OPD's compliance efforts.

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD is still not in compliance with this task. It has not yet published a policy that accurately reflects the requirements of this Settlement Agreement task or completed

training on the task.

On December 23, 2003, OPD published Special Order 8066, *Use of Force-Witness Identification*. As discussed above, the IMT reviewed this Special Order and determined that it does not comply with the Settlement Agreement because it fails to provide officers with sufficiently specific guidance about when statements must be taken from witnesses. OPD reports that it intends to incorporate the provisions of the witness identification Special Order into its new use of force policies. The Settlement Agreement requires that these policies be developed and implemented by July 20, 2004. The IMT will review these draft policies, and subsequent training, to ensure that they in fact provide officers with adequate guidance regarding taking witness statements.

During the upcoming quarters, the IMT will determine whether the Special Order is revised as required; whether subsequent policies comport with the Settlement Agreement; whether appropriate training has been conducted; and will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

4. Procedures for Transporting Detainees and Citizens (Task 36; S.A. VI.D.)

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. On November 25, 2003, OPD published Special Order 8055, *Transportation of Persons in Custody*. The IMT has determined that this policy complies with the Settlement Agreement. However, training on the new policy has not been completed.

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

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

a. **Settlement Agreement Requirements**

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

b. **Status of Compliance and Assessment**

The compliance deadline for this task occurred during the first reporting period. OPD is still not in compliance with this task. It has not yet published a policy that accurately reflects the requirements of this Settlement Agreement task.

On November 23, 2003, OPD published Special Order 8092 consisting of two *Manual of Rules* revisions: MOR Section 398.73, *Retaliation Against Witnesses* and MOR Section 398.74, *Retaliation Against Witnesses, Accountability*. The IMT provided comments to OPD on the MOR revisions while they were in draft form, noting that the revisions did not comply with the Settlement Agreement because they did not make dismissal the presumptive disciplinary penalty for retaliation. The published version of MOR Section 398.73 complies with the Settlement Agreement. However, the published version of MOR Section 398.74 does not. MOR Section 398.74 purports to describe the standard of accountability OPD has established for supervisors who fail to hold their subordinates responsible for retaliation. It is the IMT's understanding that OPD intends to hold supervisors as accountable for retaliation under their watch as it holds officers accountable who engage in retaliation. Because MOR Section 398.74 does not clarify that dismissal is the presumptive penalty for failing to take proper measures to prevent

retaliation, it does not comply with the Settlement Agreement. Training on these revisions has not been completed and will need to be redone upon completion of policies that comply with the Settlement Agreement.

During the upcoming reporting periods, the IMT will determine whether the *Manual of Rules* revisions have been modified to accurately reflect the requirements of the Settlement Agreement; whether appropriate training has been conducted; and whether OPD's actual practices comply with this Settlement Agreement provision.

6. Citizens Signing Police Forms (Task 38; S.A. VI.F.)

a. Settlement Agreement Requirements

- By August 25, 2003, OPD personnel must ensure that citizens who sign written statements on Statement Forms draw a diagonal stripe from the end of the written narrative to the bottom of the page and sign along the stripe. Citizen statements on offense reports must be signed by the citizen immediately following the statement.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. Shortly after the reporting period ended, on October 22, 2003, OPD published *Information Bulletin on Citizens Signing Police Forms*. The IMT has determined that the Information Bulletin complies with the Settlement Agreement.

Following publication of the Information Bulletin, OPD initiated training on this task, but was unable to complete it within the timeframe established by the Settlement Agreement. According to OPD training logs, only 52% of the officers who obtained citizen statements during the three-day sample period reviewed by the IMT had received training on the Information Bulletin. Since OPD has not completed the required training of all sworn personnel, it is not yet in compliance with the training component of Task 38.¹⁰

To assess whether OPD's actual practices comply with Task 38 of the Settlement Agreement, the IMT reviewed a three-day sample of citizen statements from the following dates: Monday, December 15, 2003; Thursday, December 18, 2003; and Saturday, December 20, 2003. In addition to reviewing statements, the IMT reviewed

¹⁰ The IMT asked OPD to provide reports from three representative days after training on the Information Bulletin had been completed. Because OPD training was behind schedule, OPD provided reports before training was complete.

training rosters to determine the number of officers completing reports on these days who had received training on Task 38. The Settlement Agreement requirements are reiterated below along with the compliance criteria and the IMT's findings and recommendations.

Task 38 Requirements:

- Statements on Statement Forms have a diagonal stripe from the end of the written narrative to the bottom of the page and have citizens' signatures along the stripe.
- Statements on offense reports have citizens' signatures immediately following the statement.

Compliance Criteria and Status:

Policy:	OPD has published a policy incorporating the above-listed requirements	<i>In Compliance</i>
Training:	OPD has trained its officers on the policy and made arrangements to provide training to all officers who have not yet completed the training. Required Level of Compliance: 95%	Actual: 52-80% <i>Not in Compliance</i>
Practice:	Statements on Statement Forms and offense reports must comply with above-listed requirements. Required Level of Compliance: 95%	Actual: 77.3% <i>Not in Compliance</i>

Findings:

OPD's actual practice in this area is not in compliance with the Settlement Agreement. Despite the importance of Task 38 and its relative simplicity, insufficient numbers of OPD officers are obtaining signed citizen statements as required by the Settlement Agreement.

The IMT identified a total of 176 citizen statements. The IMT found that 77.3% of all statements were completed in compliance with the requirements of the Settlement Agreement.¹¹ A lower percentage of statements taken on Statement Forms were

¹¹ While this percentage is insufficient to find OPD's actual practice to be in compliance with the Settlement Agreement, the IMT's audit revealed significant improvement from OPD's audit of a sample of reports from the previous month. In OIG's review of statements taken by officers from November 1, 2003,

completed in compliance with the Settlement Agreement than statements taken directly on offense reports: 76.3% of the statements taken on Statement Forms were completed in compliance with the Settlement Agreement¹² and 85% of the statements taken directly on offense reports were completed in compliance with the Settlement Agreement.

As noted above, only 52% of the officers who obtained citizen statements during the three-day sample period reviewed by the IMT had received the training. The IMT found that trained officers completed the forms correctly slightly more often than untrained officers. Of the statements taken by trained officers, 78.4% were completed in compliance with the Settlement Agreement while 76.1% of the statements taken by untrained officers were completed in compliance with the Settlement Agreement.

Recommendations:

1) Many of the non-compliant Statement Forms were non-compliant because they lacked diagonal stripes and, instead, simply had the citizen's signature immediately following the narrative. While this is the required procedure for statements taken directly on offense reports, it is not the procedure required for statements taken on Statement Forms. Most of the non-compliant forms appeared to be the result of confusion regarding the distinct requirements and/or inattention rather than intentional failures to adhere to policy. Accordingly, OPD should provide officers with refresher training that clearly articulates the distinct requirements for Statement Forms vs. offense reports.

2) To improve the efficacy of training, in addition to explaining the distinct requirements for the two formats, trainers should explain to officers the intent and importance of this Settlement Agreement provision—to prevent the alteration of citizens' statements by third parties once the citizen has completed the statement. Sufficient time should be allowed for questions and trainers should reinforce the importance and necessity of adherence to policy and explain the consequences for a failure to do so.¹³

through November 15, 2003, only 55% of the forms were completed in compliance with the Settlement Agreement.

¹² In determining whether a Statement Form was completed in the manner required by the Settlement Agreement, the IMT counted as compliant those Statement Forms that contained non-diagonal lines as long as the lines started at the end of the narrative and were drawn to the bottom of the page. Likewise, the IMT counted as compliant those Statement Forms lacking a diagonal line where the narrative itself ended at or very close to the signature box. The IMT counted these forms as compliant because they are consistent with the intent of this Settlement Agreement provision.

¹³ It is worth noting that during the IMT's observation of one line-up training covering this task, the sergeant conducting the training did not provide an adequate opportunity during the training for officers to ask questions, nor, in our assessment, did the sergeant properly respond to comments by an officer about the training. After presenting the materials, the sergeant quickly asked, "Are there any questions?" He did not, however, even look up or pause before proceeding to the next topic. After the line-up, an officer addressed the entire line-up, asserting that the people who drafted the citizen statement policy had obviously never filled out a Statement Form and that the policy made no sense because if done correctly, would require officers to complete a new form even where the same citizen wants to provide additional

Given that Task 38 and the training bulletin associated with it are simple and straightforward, training can be accomplished efficiently at patrol line-ups and should be completed without further delay.

3) In order to help minimize confusion, OPD may wish to explore using a single, uniform method for obtaining citizen statements (e.g., require that all citizen statements be taken on Statement Forms and eliminate the use of offense reports for this purpose).

4) Finally, supervisors' review of their subordinates' reports should always include a determination of whether citizen statements are completed correctly. When the statements are not completed as required, appropriate corrective action should be taken.

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

b. **Status of Compliance and Assessment**

The compliance deadline for this task occurred during the first reporting period. OPD is still not in compliance with this task. It has not yet published policies that

information or amend their previous statement. The sergeant did not take this opportunity to reinforce the policy or educate the officers that this is precisely what is intended and why. Nor did he support the reform process by noting that the persons drafting these policies are subject matter experts in the topic areas or explain that OPD officers are required to follow OPD policies even where they disagree with them. Instead, the sergeant responded vaguely ("Um huh, I see, um huh") in a way that indicated a reluctance to engage the officer about his concerns and/or tacit agreement with the officer.

accurately reflect the requirements of this Settlement Agreement task or completed training on the task.

OPD reports that the draft General Order covering these requirements (General Order B-4, *Personnel Transfers and Loan Transfer Waiver Procedures*) continues to be “on hold” while discussions with the Oakland Police Officers’ Association (OPOA) regarding transfer policies ensue. OPD has drafted Special Order 8064, *Reporting Civil Actions Served* as a stop-gap measure to cover this task until a permanent policy can be drafted and implemented. OPD published Special Order 8064 on December 16, 2003, but because the published version is confusing and likely to leave officers unsure of what they are required to report, the IMT cannot find it to be in compliance with the Settlement Agreement.

In addition to Special Order 8064, the IMT reviewed a related *Manual of Rules* revision, MOR Section 314.28, regarding when officers must report being arrested, sued, or served with civil or administrative process. The IMT determined that this policy accurately reflects the requirements of the Settlement Agreement and OPD published the policy on November 23, 2003.

During the upcoming reporting periods, the IMT will monitor the development of General Order B-4 and determine whether OPD makes the necessary revisions to Special Order 8064. The IMT will further determine whether appropriate training has been completed and will monitor whether OPD’s actual practices comply with these Settlement Agreement provisions.

E. **Personnel Information Management System (PIMS)** (Tasks 40–41; S.A.VII.)

Section VII of the Settlement Agreement, Tasks 40–41, requires OPD to develop a computerized relational database that will permit it to record, track and retrieve data necessary for OPD to appropriately supervise and manage members and employees.

Use of such systems is becoming increasingly common as police departments seek to effectively gather and organize data currently recorded in a variety of formats and locations. It is widely believed that better tracking of this information facilitates consistency in performance evaluations, corrective actions, and other management decisions. OPD’s system, the Personnel Information Management System, or “PIMS,” is not due to be completed until mid-2005.

1. **Personnel Information Management System (PIMS)-Purpose**
(Task 40; S.A. VII.A.)

a. **Settlement Agreement Requirements**

- By June 28, 2005, OPD must develop and implement a Personnel Information Management System (PIMS). This computerized relational database must maintain, integrate and retrieve data necessary for supervision and management of OPD and its personnel. Specifically, this data must be used by OPD to promote professional police practices; manage the risk of police misconduct; and evaluate and audit the performance of OPD members of all ranks, employees and OPD units, subunits and shifts. The Settlement Agreement sets forth particular information that must be captured by PIMS.

b. **Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. However, in its First Quarterly Report, the IMT expressed a number of concerns with the status of OPD's progress on this task. As noted above, the IMT is encouraged by the steps OPD has taken in light of the concerns raised in our First Quarterly Report. Although OPD reports that this task is only 7% complete and that it is progressing with concern, it reportedly has taken several steps that should help bring this task back on target. OPD has appointed a new commander to handle Task 40 and reports that the PIMS committee and sub-committee have been meeting regularly. New members with assigned roles and responsibilities were appointed to the committee, and subcommittees were formed. The day after the end of this reporting period, OPD issued its Request for Proposals (RFP) to begin the bid process for creation of the PIMS database. Since issuing this RFP, PIMS committee members have met with interested vendors and responded to additional inquiries. The PIMS committee has established a working relationship with University of California, Berkeley's public policy department to aide in researching the effectiveness of current PIM systems as a precursor to developing an effective PIMS at OPD. At OPD's request, the IMT has agreed to provide extra technical assistance in this area.

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

a. **Settlement Agreement Requirements**

- By June 28, 2005, OPD must develop a policy for the

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

b. Status of Compliance and Assessment

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

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

Section VIII of the Settlement Agreement, Task 42, requires OPD to make significant changes in the manner in which its Field Training Officers are selected, certified, trained, supervised, rotated and evaluated. These enhancements are designed to ensure that rookie officers receive field training from seasoned officers who have demonstrated their leadership abilities, professionalism and commitment to OPD values. In order to ensure that the training is effective, the Settlement Agreement also requires OPD to conduct daily audits and regular evaluations of all Field Training Officers. None of the compliance deadlines related to the Field Training Officer section of the Settlement Agreement occurred during this reporting period.

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

a. Settlement Agreement Requirements

- By April 16, 2004, OPD must develop and implement a plan to enhance its Field Training Program. This plan must address: the criteria and method for selecting Field Training Officers (“FTOs”); the training provided to FTOs to perform their duty; 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 has not yet passed. OPD reports that it is progressing without concern and that the grievance filed by the Oakland Police Officers' Association regarding decertification of field training officers has been resolved. Because there are currently no police academies scheduled, the new FTO program has not been fully implemented or audited. OPD reports, however, that it held a focus group session for the members of the last Academy and provided the results to the Training Section commander. Additionally, OPD reports that, to the extent possible, it is utilizing the new procedures for an individual trainee officer who is in training. OPD also reports that it provided training on the new Field Training Program to sergeants attending the Supervisor Transition Course. The IMT will review the new FTO policies and protocols to determine whether they comport with the Settlement Agreement and will monitor actual FTO practice at the earliest opportunity.

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

Section IX of the Settlement Agreement, Task 43, requires OPD to ensure that both new recruits and experienced officers receive adequate and regular training. In particular, the Settlement Agreement requires OPD to develop and implement a training plan that includes curriculum enhancements in professionalism and ethics, critical thinking and problem solving, conflict resolution, and relationships with the community.

The compliance deadline related to the Academy and In-Service Training section of the Settlement Agreement did not occur during this reporting period. Our discussion of this section of the Settlement Agreement is thus largely limited to a reiteration of the Settlement Agreement requirements and a very brief statement of progress so far. We anticipate a much fuller discussion in subsequent reports, as the tasks related to this section of the Settlement Agreement become due beginning in February 2005.

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

a. Settlement Agreement Requirements

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

service training. In addition, this provision sets new training criteria for sergeants and command staff.

b. Status of Compliance and Assessment

The compliance deadline for this task has not yet passed. OPD reports that it is progressing without concern and that it has started to research best practices in instructor selection and training, and evaluation of the content and quality of training. When appropriate, the IMT will review the development and implementation of the required plans and policies to determine whether they comply with the Settlement Agreement.

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

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

The Settlement Agreement's Performance Appraisal section, Task 44, requires OPD to write performance appraisals for each officer, documenting the officer's conduct and performance in a variety of areas, which has 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.

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 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 deadlines for the Personnel Practices section of the Settlement Agreement occurred during the first reporting period. OPD, however, still has not achieved compliance in any of these areas.

1. **Performance Appraisal Policy** (Task 44; S.A. X.A.)

a. **Settlement Agreement Requirements (see also Task 21)**

- By July 8, 2003, OPD must write performance appraisals individually for the member/employee being evaluated. These performance appraisals must accurately reflect the quality of each 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**

Because of extensions granted by Plaintiffs, this task was not due during the second reporting period. OPD has drafted a policy incorporating this provision, General Order B-6, *Performance Appraisal*. As we reported previously, the IMT provided comments on this draft and OPD committed to revising the policy. OPD did not meet the extended deadline for the re-draft, but very recently has provided a draft to the IMT.

During the upcoming reporting periods, the IMT will determine whether the General Order is published and complies with the Settlement Agreement; whether appropriate training has been conducted; and will monitor 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 March 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 original compliance deadline for this task occurred during the first reporting period. OPD did not meet this deadline for either policy development or training. OPD requested and Plaintiffs have agreed to an extension until March 15, 2004 (with training to be completed by July 1, 2004). The IMT's concerns about OPD's current system for documenting and tracking discipline and corrective action are discussed above.

During the upcoming reporting periods, the IMT will closely monitor OPD's development of its disciplinary system. The IMT will determine whether the policy comports with the Settlement Agreement; whether appropriate training has been conducted; and will monitor whether OPD's actual practices comply with this Settlement Agreement provision.

3. Promotional Consideration (Task 46; S.A. X.C.1.)

a. Settlement Agreement Requirements

- By July 8, 2003, OPD's promotion policy must be modified so that sustained misconduct cases against a member/employee are an important factor in determining promotability, including presumptive ineligibility for promotion for twelve months following the sustained finding of a Class I violation.
- The Settlement Agreement further requires the Chief of Police to consider the following criteria, in addition to other factors, in making promotional determinations:
 - o Commitment to community policing;
 - o Quality of citizen contacts;
 - o Number of citizen complaints;
 - o Instances of unnecessary use of force; and
 - o Support for Departmental integrity measures.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD still is not in compliance with this task. OPD has not yet published a policy reflecting the requirements of this Settlement Agreement task.

OPD drafted a memorandum from the Office of the Chief of Police addressing these Settlement Agreement requirements. The IMT reviewed the memorandum and found that it was too vague to facilitate compliance with the Settlement Agreement. OPD subsequently decided not to publish the memorandum until the OPD policy defining Class I and Class II offenses is published in M-3, *Complaints Against Departmental Personnel or Procedures*. This policy was due December 3, 2003, but OPD did not meet this deadline. OPD subsequently requested and received from Plaintiffs' Attorneys an extension on M-3 until March 15, 2004. As discussed above, the IMT has reviewed OPD's draft of M-3, determined that it does not comply with the Settlement Agreement, and provided OPD with detailed comments and recommendations.

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

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

Section XI of the Settlement Agreement, Task 47, requires OPD to develop and implement a community policing plan to strengthen its relationships with communities in Oakland. This section requires a number of changes designed to provide officers the opportunity to directly hear community groups' concerns. This section also requires OPD to develop mechanisms to measure community policing activities so that officers are fully recognized for this work. The compliance deadline for the Community Policing section of the Settlement Agreement occurred during the first reporting period.

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

a. Settlement Agreement Requirements

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

officer assigned to a regular beat or geographic area of the City must attend a minimum of one community meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in “Crime-Stop” meetings, along with information on citizen complaints and use of force incidents; and OPD must arrange a meeting within sixty days unless not feasible with representatives of an organization active within Oakland, if the organization communicates a concern regarding specific police personnel or practices.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD still is not in compliance with this task. OPD has not yet published policies accurately reflecting the requirements of this Settlement Agreement task and training has not been completed.

OPD has drafted a number of publications related to the Settlement Agreement’s community policing provisions, including 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*. The IMT reviewed these drafts, determined they were not in compliance with the Settlement Agreement and provided OPD detailed comments.

OPD has since published General Order B-7 and BFO Policy 03-03. These policies, however, remain deficient and do not comply with the Settlement Agreement. General Order B-7 does not comply with the Settlement Agreement because it permits OPD to deny or delay community meeting requests in circumstances not authorized by the Settlement Agreement. BFO Policy 03-03 does not comply with the Settlement Agreement because it does not incorporate the Settlement Agreement’s requirement that OPD host at least one community meeting per quarter in each Patrol Service Area.

The IMT’s initial review of Training Bulletin III-A.5 raised numerous concerns. In general, the IMT found that this training bulletin explaining OPD’s community oriented policing approach and its recent reorganization was confusing on paper and may be difficult to implement in practice. Based on the IMT’s comments regarding Training Bulletin III-A.5, OPD made a number of revisions that improved the bulletin, although many of the same concerns remain. However, like General Order B-7, the bulletin does

not comply with the Settlement Agreement because it permits OPD to deny or delay community meeting requests in circumstances not authorized by the Settlement Agreement. The training bulletin has not yet been implemented because the Oakland Police Officers Association has filed a grievance regarding the policy.

It should be relatively easy for OPD to bring its community policing policies and training bulletin into compliance with the Settlement Agreement. The challenge for OPD going forward will be to make its actual practices meet both the letter and intent of the community policing section of the Settlement Agreement and OPD's own policies. In order to do this, OPD must proactively solicit community input and involvement and be responsive to community concerns. It will require a commitment from the Chief of Police that is reinforced through the ranks on a daily basis. The IMT has observed that a number of OPD officers continue to have a profound misapprehension of community policing, believing that it is "not their job" to routinely engage in dialogue or positively interact with community members. As long as this attitude continues to pervade OPD, it will not be able to live up to the requirements of the Settlement Agreement, much less foster the type of relationships with Oakland that the community and police department need and deserve.

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

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

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

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

a. Settlement Agreement Requirements

- By September 5, 2003, OPD must develop and implement a policy requiring each functional unit of OPD to prepare a management report every twelve months. The report must include relevant operating data and highlight ongoing or extraordinary problems and noteworthy accomplishments. The Settlement

Agreement further requires that Division commanders meet individually with the Chief of Police and their respective Deputy Chiefs to thoroughly review the management reports of that Division.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. On November 24, 2003, OPD published Departmental General Order A-7, *Annual Management and Departmental Report*. The IMT has determined that this policy complies with the Settlement Agreement. OPD is not yet in compliance with the training component of this task because training has not yet been provided to all members and employees.

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

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

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

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

a. Settlement Agreement Requirements

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

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD obtained and remains in compliance with this Settlement Agreement task. On July 15, 2003, the City Council approved the parties' selection of a Monitoring team. This Court approved that selection on August 28, 2003.

While the IMT's Scope of Services contemplated that the IMT would hold regular "office hours" in Oakland, the parties have determined that currently this would not be a cost-efficient use of resources because of the lack of demand for set office hours on-site and the IMT's desire to proactively reach out to stakeholders on their own ground: in their neighborhoods, on their beats, and in their own offices. This approach appears appropriate at present, as the IMT is frequently contacted by OPD officers, community members, and other stakeholders while on site and, via email and telephone, while off-site, and no one has expressed a need or desire for set office hours in Oakland. The IMT does routinely meet with community members and conduct interviews in its on-site office, and will continue to do so.

L. Compliance Unit (Tasks 50–51; S.A. XIV.)

Section XIV of the Settlement Agreement, Tasks 50–51, requires OPD to establish a Compliance Unit to oversee and coordinate OPD's compliance with the Settlement Agreement and to conduct a variety of annual audits to determine OPD's compliance with selected provisions of the Settlement Agreement. The compliance deadline for establishing the Compliance Unit (Task 50) occurred during the first reporting period. OPD is in compliance with this task as it has not only established a Compliance Unit, but staffed it with diligent individuals who are working hard to facilitate implementation of the Settlement Agreement. The compliance deadline for conducting the annual audits (Task 51) has not yet passed. Nonetheless, OPD has already conducted several audits and has published a Special Order incorporating the requirements of this task.

1. Compliance Unit Liaison Policy (Task 50; S.A. XIV.A.)

a. Settlement Agreement Requirements

- By March 4, 2003, OPD must create an OPD Compliance Unit to serve for the duration of the Settlement Agreement. The Compliance Unit will serve as the liaison between OPD, the Monitor and Plaintiffs' counsel, and will assist with OPD's compliance with the Agreement. Among the Compliance Unit's many duties is the preparation of a semi-annual report describing the steps taken, during that reporting period, to comply with the provisions of the Settlement Agreement.

b. Status of Compliance and Assessment

The compliance deadline for this task occurred during the first reporting period. OPD obtained and remains in compliance with this Settlement Agreement task. As the IMT reported in its First Quarterly Report, 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 has been particularly impressed with the work of the Compliance Unit/OIG. The OIG began leading monitoring meetings before the IMT began its work; is closely tracking and facilitating compliance efforts within the department; and has thoroughly documented OPD's progress. The OIG has already conducted several internal audits of OPD compliance with Settlement Agreement provisions and has a realistic work plan for future audits. As required by the Settlement Agreement, the OIG has been responsive to the IMT's requests for documents, information and assistance in setting up meetings with OPD personnel. The IMT believes that without the high quality of the OIG's work, OPD would be much further behind in its compliance efforts.

As discussed above, the IMT commends OPD for its frank assessment of its progress and the recommendations contained in OPD's Second Semi-Annual Status Report. In the report, OPD expresses concern regarding policy implementation and compliance and notes that its audits and reviews have revealed that overall compliance with the newly published policies falls "notably short" of Settlement Agreement requirements. The report lists a series of excellent recommendations, many of which are aimed at reinforcing command accountability. For example, the report recommends requiring the commander of any Division and/or watch that fails an audit to provide a written report explaining their deficiencies and outlining an improvement plan to achieve compliance. According to the report, Chief Word has agreed to the recommendations and they will be implemented during the next six months. The IMT looks forward to evaluating how or whether these measures impact OPD's compliance with the Settlement Agreement.

The City and Chief of Police should also be commended for ensuring that this office is staffed with sufficient numbers of high caliber personnel to perform OIG's difficult and important function. OPD recently made a number of personnel changes to the office. The IMT will report on how or whether these changes impact the work of the unit.

2. **Compliance Audits and Integrity Tests** (Task 51; S.A. XIV.B.)

a. **Settlement Agreement Requirements**

- By September 1, 2005, following the implementation of policies and procedures required by the Settlement Agreement, OPD must conduct annual audits of: arrest and offense reports (including follow-up investigation reports); use of force incident reports and use of force investigations; complaint processing and investigation; Mobile Data Terminal traffic; personnel evaluations; and citizen accessibility to the complaint process and the availability of complaint forms.
- The Settlement Agreement further sets minimum requirements for these audits and requires that their results be reported in OPD's semi-annual compliance reports.

b. **Status of Compliance and Assessment**

The compliance deadline for this task has not yet passed. OPD has published Special Order 8011, *Compliance Unit Liaison Policy*, incorporating the requirements of this task. OPD has also published Training Bulletin V-P, which provides guidance for conducting audits. To its credit, as noted above, the OIG has already begun auditing OPD's compliance with the Settlement Agreement's provisions and has attended comprehensive audit training. During upcoming quarters, the IMT will report on the nature and quality of OPD's audits.

VI. **CONCLUSION**

The IMT was especially encouraged by OPD's express recognition this quarter that the reforms required by the Settlement Agreement will improve, rather than compromise, the quality and quantity of policing in Oakland. The IMT agrees and believes further that the implementation of these Settlement Agreement requirements is essential for effective law enforcement.

As OPD nears the completion of the bulk of policy development required by the Settlement Agreement, its commitment to reform will be tested on a daily basis. During the next two reporting periods, a number of additional requirements will become due. OPD must take the planning steps necessary to meet these deadlines and the ones that have already passed. Implementing these new policies and procedures while infusing the ranks and command staff with a sense of ownership and responsibility for their success

will be challenging. This challenge should be welcomed however, as it offers the opportunity for OPD to become a more effective police force and a model agency nationwide.