

**THIRD 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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## **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 Third Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from January 16, 2004, to April 15, 2004.

### **IMT's Monitoring Activities During the Third Quarter**

The IMT conducted a variety of on- and off-site monitoring activities during the third quarter reporting period. During a series of visits to Oakland, the IMT, among other activities, participated in ride-alongs with OPD officers; attended the Firearms Discharge Board of Review; reviewed and analyzed OPD documents and files; observed and evaluated officer training sessions; attended hearings of the Citizens' Police Review Board (CPRB); participated in the monthly meetings required by the Settlement Agreement; and IMT staff observed OPD's pre-event briefing and handling of a large demonstration.

While on-site, the IMT met with individual OPD officers; officer associations; command officials, including sergeants, lieutenants, captains, and each of the Deputy Chiefs; and 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 including the NAACP, the Latino Advisory Committee on Crime, the Asian American Advisory Committee on Crime, PUEBLO, and several Neighborhood Crime Prevention Councils; 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 two reporting periods, much of this time was spent reviewing materials relevant to the Settlement Agreement including: draft publications; Internal Affairs databases, logs and investigation 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 various OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

## **OPD Accomplishments and Areas of Concern**

### **OPD Accomplishments**

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

- **Policy Publication**

This quarter, OPD made significant progress in publishing policies required by the Settlement Agreement. A greater number of compliant policies were published during this reporting period than during the entire previous year of the Settlement Agreement's existence. These policies reflect thoughtful consideration of OPD's operational needs and the realities of police work. If training and implementation are completed with this same dedication to fulfilling the word and intent of the Settlement Agreement, while considering the practicalities of day-to-day police operations, OPD and the people of Oakland will have good reason to expect positive change in actual police practices in their communities.

- **Self-Identification of Improper Police Practice**

Police departments that routinely self-identify and respond to improper police practices reap the benefits of greater community cooperation and improved officer morale. They also frequently benefit from a reduction, sometimes drastic, in lawsuit payouts. Thus, the IMT views as no small accomplishment OPD's recent identification, based upon an increase in citizen complaints, of a pattern of possibly improper "strip" searches. An OPD commander noted the increase in complaints and notified the Chief, the Commander of Training, and a Captain in the Bureau of Field Operations about his observations. Training quickly confirmed that such searches were not consistent with OPD training. Chief Word ordered that a legally sufficient policy be created and that necessary training be conducted. This policy is currently being developed.

As discussed below, the IMT is highly concerned about these street strip searches. We nevertheless commend the Police Department for self-identifying an apparent increase in this practice and for quickly committing to develop a policy prohibiting improper and unnecessarily degrading searches. Whether OPD's efforts remain worthy of commendation depends, of course, upon OPD's speed in developing and training officers on an appropriate policy and upon whether OPD holds officers accountable if they do not follow the policy.

- **Biased-Based Policing**

OPD's recent publication of General Order M-19 *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, replacing Special Order 8012, and the impending publication of a comprehensive technical guide, *Promoting Cooperative Strategies to Reduce Racial Profiling*, are important contributions to Settlement Agreement compliance and to nationwide efforts to reduce unjustified racial profiling. OPD's technical guide is the culmination of months of work by a coalition of community/advocacy groups, corporations, the Oakland Police Officers Association and OPD.

This guide has the potential to become a significant resource used by communities interested in ending biased-based policing. General Order M-19, is, in many respects, a model policy in structure and substance. If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

- **Management Level Liaison**

Police officers have an impact on the fairness and effectiveness of the criminal justice system that extends far beyond the initial arrest. Accordingly, the Settlement Agreement requires that OPD appoint a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked. This quarter, the MLL, the District Attorney's Office and the Office of the Public Defender began to coordinate their efforts to track problem cases at an unprecedented level. These efforts are detailed below.

The IMT applauds the MLL for the initiative and diligence he demonstrated this quarter. We also applaud the District Attorney's Office and the Office of the Public Defender for recognizing their responsibilities as stakeholders to the Settlement Agreement and for providing the MLL with information in furtherance of the reforms. We encourage all three entities to continue their efforts as they are essential to the success of the Settlement Agreement.

- **Policing at Port Protest/March**

By all accounts, OPD's policing of the April 7, 2004, protest and march to the Port of Oakland was a huge improvement over its handling of the protest one year earlier. This year, practices that had caused injury were prohibited; planning was thoughtful; and supervision appeared thorough and consistent. Although this year's smaller group of

protesters did little to test police restraint, OPD should be commended for a more professional approach to this protest and for a vastly better outcome.<sup>1</sup>

### **Areas of Concern**

- **Firearms Discharge Review**

Because of the high potential for loss of life, the traumatic effect such shootings have on officers, and potentially significant liability, reviews of officer-involved shootings must be of the highest quality and should include consideration of ways to prevent future shootings. Our observations at a recent Firearms Discharge Board of Review, confirmed by document review and interviews with command staff, revealed a number of significant problems serious enough to increase the likelihood of avoidable shootings. The firearms discharge reviews we observed suffered from several deficiencies, including: untimely Review Boards; lack of tracking of shooting reviews; insufficient involvement by relevant OPD components, most notably the Training and Internal Affairs Divisions; and gaps in shooting investigations. Each of these deficiencies is discussed in more detail below.

The most troubling of these deficiencies is the delay between the shooting and the shooting review. At the Board of Review we attended, one shooting had occurred 16 months earlier; another nine months earlier; and the third three months earlier. In the Board's review of the shooting that had occurred sixteen months earlier, the Board determined that the shooting was non-justifiable. The delays in this firearms discharge Review Board may mean that OPD cannot discipline the officer for this non-justifiable shooting, due to state law prohibiting in most instances the imposition of discipline after one year. This is a significant consequence of the delay; however, more importantly, five months after the non-justifiable shooting (but 11 months before the review of that shooting) this same officer was involved in a second shooting—this time fatal. The IMT takes no position regarding whether earlier disposition of the first shooting might have prevented the second shooting by this officer, or whether the second shooting may or may not have been justified. However, OPD would be remiss if it did not consider the possibility of such consequences in this and other circumstances and take every step necessary to reduce the delay in shooting reviews.

In this Report, the IMT makes a number of recommendations to improve OPD's shooting reviews.

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<sup>1</sup> The IMT did receive reports that at least one officer was taking photographs of protesters without authorization from OPD or permission from the protesters. Any photography or other surveillance of protesters, whether authorized by OPD or not, must adhere to legal requirements, including protesters' constitutional rights.

- **Street Strip Searches**

Recent citizen complaints filed with OPD and presented to the CPRB complain of searches that, if conducted as alleged, raise serious legal concerns. Complaints describe searches on Oakland streets in which young men's pants and underwear were pulled down, exposing their buttocks and genitalia to their friends, family and strangers on the street. In some instances, OPD officers donned latex gloves and performed invasive searches that should be done only in a hospital or under strict protocols by designated personnel during jail intake. Recently, a group of students and teachers who witnessed an invasive "strip" search of a fellow student attended a Citizens Police Review Board meeting to complain about this treatment. OPD lacks an adequate policy covering if and when OPD officers may visibly search individuals' buttocks, genitalia or other private body parts; expose such parts to the public; or perform more invasive body searches.

In our professional experience, such searches are unnecessarily humiliating and dehumanizing (sometimes intentionally), and can immediately alienate citizens and destroy community respect for its police department. Because of this, in our view, upon learning of problematic "strip" searches, OPD should have immediately declared a moratorium on pre-arrest "strip" searches to detect drugs until officers are trained in a policy setting forth the parameters of acceptable body searches.

- **Training in New Settlement Agreement Requirements**

In our last Quarterly Report, the IMT commended OPD for developing a training verification system for its officers. This system, however, is not functioning as intended. While OPD has made significant strides in policy development, it has not made equal progress in conducting and completing necessary training on the new policies or in tracking training in an efficient or reliable manner.

OPD has not yet completed its training obligations for *any* of the eighteen Settlement Agreement Tasks that have become due. An internal audit of training records conducted by OPD in February confirmed that the Department, as a whole, had not completed the required training for any of the policies that had been published to date.

The reasons for OPD's continued training deficiencies are varied and range from a lack of familiarity with a new system and miscommunication, to a lack of accountability that facilitates disobeying orders and missing deadlines. In some instances, required training has been completed, or is in progress, but has not been properly documented. In other instances, however, required training simply has not been conducted despite a series of mandates from the Chief or his designees setting forth specific deadlines by which training was to occur. The IMT is not aware of any commanders or managers being held accountable for failing to ensure that their officers

and employees receive training as required. This lack of accountability may, in part, explain why OPD's training efforts continue to lag behind schedule.

In response to OPD's training deficiencies, OPD's Office of Inspector General (OIG) has proposed a series of sensible short and long-term remedies. These remedies include generating and distributing a non-compliance list; conducting mass trainings; improving data entry and overall coordination of training efforts; and holding commanders and managers accountable when their officers and employees are not trained. It is critical that OPD implement these or like measures forthwith in order to achieve compliance with the Settlement Agreement and to provide its officers with the guidance and direction they need and deserve to perform their challenging jobs.

### **Status of Compliance**

Sixteen new Settlement Agreement Tasks previously had due dates occurring during the third quarter reporting period. However, because of a series of extensions negotiated between the parties, only four new Tasks became due during this reporting period: Supervisory Span of Control and Unity of Command (Task 17);<sup>2</sup> Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). With the addition of these Tasks, a total of eighteen of the fifty-one Settlement Agreement Tasks were due during the third quarter reporting period.<sup>3</sup>

These eighteen Tasks are:

- Supervisory Span of Control and Unity of Command (Task 17)
- Approval of Field-Arrest by Supervisor (Task 18)
- Unity of Command (Task 19)
- Span of Control for Supervisors (Task 20)
- OPD/DA Liaison Commander (Task 22)
- Command Staff Rotation (Task 23)
- Reporting Misconduct (Task 33)
- Vehicle Stops, Field Investigation and Detentions (Task 34)
- Use of Force Reports-Witness Identification (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)
- Promotional Consideration (Task 46)

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<sup>2</sup> Supervisory Span of Control and Unity of Command (Task 17) has no independent requirements. It will be completed upon OPD's completion of Tasks 18, 19, 21, and 23.

<sup>3</sup> The compliance deadline for Task 45, Consistency of Discipline, initially occurred during the first quarter reporting period. However, based upon an extension negotiated by the parties, it now has a compliance deadline of June 15, 2004.

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)

As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

OPD has made significant progress since the last reporting period. At the end of the third quarter reporting period, OPD has completed the first step (policy compliance) for fifteen of the eighteen Tasks that have become due. It has also achieved policy compliance for three Tasks ahead of schedule. A chart summarizing the status of OPD's compliance can be found on page fourteen of this Report. OPD, however, has fallen seriously behind on its training obligations. While OPD has initiated training for most of the new policies it has created, as discussed above OPD has not achieved training compliance for any of the Tasks requiring training.<sup>4</sup>

### **Policy Compliance**

Of the three steps necessary to achieve compliance, policy compliance was the only area in which OPD made significant progress this quarter. OPD achieved policy compliance for two of the four Settlement Agreement Tasks that were due this period: Unity of Command (Task 19) and Command Staff Rotation (Task 23). In addition, OPD achieved policy compliance for six overdue Settlement Agreement Tasks: Span of Control for Supervisors (Task 20); Misconduct (Task 33); Use of Force Reports-Witness Identifications (Task 35); Internal Investigations-Retaliation Against Witnesses (Task 37); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing Plan (Task 47). The three additional Settlement Agreement Tasks for which OPD has achieved policy compliance ahead of schedule are: Refusal to Accept or Refer Citizen Complaints (Task 6); Oleoresin Capsicum Log and Checkout Procedures (Task 27); and Use of Camcorders (Task 32).

When policies completed during the first two reporting periods are included, OPD has achieved policy compliance with a total of fifteen of the eighteen requirements now due and three requirements that have not yet become due.

### **Training Compliance**

OPD still has not completed the second step of compliance, training, for any of the policies it has published. The IMT is concerned about OPD's ability to quickly and

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<sup>4</sup> In order to obtain a compliance finding for training, OPD must be able to demonstrate that it has trained 95% of relevant personnel on the relevant policy.

reliably train officers in new policies, and will continue to closely monitor this aspect of compliance. As noted in the Areas of Concern section of this Report, OPD's deficiencies in these are due to a variety of reasons, including inadequate coordination; miscommunication regarding who is required to be trained; and OPD's failure to hold accountable those commanders who do not fulfill their training obligations.

### **Actual Practice Compliance**

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 was not in compliance with this Task. OPD has not yet completed the "refresher training" the audit recommended or completed training on its recently revised policy for this Task. During the second reporting period, the IMT conducted an audit of OPD's actual practice compliance with Task 38, Citizens Signing Police Forms, and determined that OPD was not in compliance with this Task. Like Task 34, OPD has not yet completed required training on Task 38. OPD commanders report improved compliance with Task 38 and OIG plans to audit compliance with this Task.

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 the 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).

### **Conclusion**

OPD has made significant progress in policy development since the entry of the Settlement Agreement. Its attainment of policy compliance with fifteen of the eighteen Tasks that have become due reflects substantial time, deliberation, and commitment on the part of members and employees throughout the department. To reap the benefits of its efforts to date, OPD must work to ensure that its new policies and procedures become part of the fabric of the department and of each officer's daily police work. In order to achieve this goal, in addition to providing its officers with adequate training, supervision, and support, OPD must demonstrate a greater willingness than the IMT has seen to date to hold its officers and commanders accountable when they do not live up to the standards that OPD has set. Failure to do so will lead to a lack of credibility in the reform process and stymie OPD's ability to implement the new policies and procedures effectively.

## **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 Third Quarterly Report of the IMT and addresses the status of OPD's compliance with the Settlement Agreement from January 16, 2004, to April 15, 2004.

While this Report assesses OPD's compliance as of the last day of the third reporting quarter, April 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 third quarter, but has since come into compliance, the report so indicates.

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

## **II. IMT MONITORING ACTIVITIES**

The IMT conducted a variety of on- and off-site monitoring activities during the third quarter reporting period. During a series of visits to Oakland, the IMT, among other activities, participated in ride-alongs with OPD officers; attended the Firearms Discharge Board of Review; reviewed and analyzed OPD documents and files; observed and evaluated officer training sessions; attended hearings of the Citizens' Police Review Board (CPRB); participated in the monthly meetings required by the Settlement Agreement; and IMT staff observed OPD's pre-event briefing and handling of a large demonstration.

While on-site, the IMT met with individual OPD officers; officer associations; command officials, including sergeants, lieutenants, captains, and each of the Deputy Chiefs; and 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 including the NAACP, the Latino Advisory Committee on Crime, the Asian American Advisory Committee on Crime, PUEBLO, and several Neighborhood Crime Prevention Councils; 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 two reporting periods, much of this time was spent reviewing materials relevant to the Settlement Agreement including: draft publications; Internal Affairs databases, logs and investigation 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 various OPD officers, commanders, and managers to discuss policy development, training, and other compliance issues.

### **III. OPD ACCOMPLISHMENTS & AREAS OF CONCERN**

#### **A. OPD Accomplishments**

##### **1. Policy Publication**

During this reporting period OPD published a number of policies incorporating Settlement Agreement requirements. The number of compliant policies published is a significant step towards compliance and represents the culmination of months of effort by dozens of individuals throughout OPD. As discussed in the Compliance Overview and Detailed Compliance Report sections below, a greater number of compliant policies were published during this reporting period than during the entire previous year of the Settlement Agreement's existence.

The IMT reviewed each policy prior to publication for compliance with the Settlement Agreement and, as detailed below, has determined that each policy is in compliance with the Settlement Agreement. Perhaps as important as technical compliance, for the most part, the published policies reflect more than mere rote iterations of Settlement Agreement requirements. The policies reflect thoughtful consideration of OPD's operational needs and the realities of police work. If training and implementation are completed with this same dedication to fulfilling the word and intent of the Settlement Agreement while considering the practicalities of day-to-day police operations, OPD and the people of Oakland will have good reason to expect positive change in actual police practices in their communities.

##### **2. Self-Identification of Improper Police Practice**

An important factor in a police department's ability to earn the trust and respect of the community it serves is the department's ability to self-identify and forcefully respond to improper police practices. Police departments that have developed this capacity and routinely act upon it reap the benefits of greater community cooperation and improved

officer morale. They also frequently benefit from a reduction, sometimes drastic, in lawsuit payouts. Perhaps in recognition of this, many Settlement Agreement provisions are aimed at enhancing OPD's ability to detect problematic police practices and incidents.

Thus, the IMT views as no small accomplishment OPD's recent identification, based upon an increase in citizen complaints, of a pattern of possibly improper "strip" searches. An OPD commander noted the increase in complaints and notified the Chief, the Commander of Training, and a Captain in the Bureau of Field Operations about his observations. Training quickly confirmed that such searches were not consistent with OPD training. Chief Word ordered that a legally sufficient policy be created and that necessary training be conducted. This policy is currently being developed.

As discussed with Chief Word and noted below, the IMT is highly concerned about these street strip searches. The IMT nevertheless commends the Police Department for self-identifying an apparent increase in this practice and for quickly committing to develop a policy prohibiting improper and unnecessarily degrading searches. Whether OPD's efforts remain worthy of commendation depends, of course, upon OPD's speed in developing and training officers on an appropriate policy and upon whether OPD holds officers accountable if they do not follow the policy.

### **3. Biased-Based Policing Publications**

OPD's recent publication of General Order M-19, replacing Special Order 8012, and the impending publication of a comprehensive technical guide, *Promoting Cooperative Strategies to Reduce Racial Profiling*, are important contributions to Settlement Agreement compliance and to nationwide efforts to reduce unjustified racial profiling. OPD's technical guide is the culmination of months of work by a coalition of community/advocacy groups, corporations, the Oakland Police Officers Association and OPD.

The guide reports and analyzes the results of the coalition's community and departmental personnel surveys, as well as the results of OPD stop-data. This OPD-led coalition makes a series of recommendations for communities interested in combating racial profiling, including providing guidelines on collaborative and credible stop-data collection. This guide has the potential to become a significant resource used by communities interested in ending biased-based policing.

General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, is, in many respects, a model policy in structure and substance. It provides a clear definition of prohibited conduct; straightforwardly sets forth the responsibilities of various departmental subunits; and provides guidance in the form of examples of prohibited conduct. The policy requires, among other things, that officers

advise individuals of their right to refuse a consent search; articulate specific facts and circumstances that support reasonable suspicion or probable cause in a range of law enforcement activity; and not take into account actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability, except when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

#### **4. Management Level Liaison**

Police officers have an impact on the fairness and effectiveness of the criminal justice system that extends far beyond the initial arrest. Accordingly, the Settlement Agreement requires that OPD appoint a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.

OPD has appointed a seasoned commander to act as the Management-Level Liaison (MLL). As required by policy, the MLL has contacted the District Attorney, Public Defender, and local courts to inform them of his role and to ask that they report to him cases that are lost or dropped due to performance problems, misconduct, or indicia thereof. Since April 2003, the MLL has been producing monthly memoranda detailing his activities and whether any relevant cases have been received. Until recently, however, the majority of the memoranda did not list any cases.

The IMT informed the MLL and OPD that, in the view of the IMT, the Settlement Agreement requires OPD to take affirmative steps to identify cases that require tracking. The IMT also met with the District Attorney's Office and the Office of the Public Defender to learn about their interactions with the MLL and to identify the data they maintain that may be of use to the MLL, including data regarding charging decisions and officer conduct.

Both the District Attorney and the Public Defender expressed their willingness to assist the MLL in tracking potentially problematic cases as required by the Settlement Agreement and both offices have since provided information to the MLL in furtherance of this goal. For example, the MLL recently began obtaining and reviewing daily lists from the District Attorney of in-custody cases that the District Attorney has decided not to prosecute and the reasons for such decisions. As a result, the MLL's most recent memorandum serves as a valuable resource for OPD. In addition to identifying a case involving possible misconduct, the memorandum includes policy and training

recommendations that, if implemented, will assist officers who are engaged in lawful, proactive policing to better perform their jobs.

The IMT applauds the MLL's initiative in obtaining and reviewing the in-custody charging decisions as one way of identifying cases that may involve performance problems or misconduct. We also commend the MLL for making solid recommendations for improvement in his most recent memorandum. In addition, we applaud the District Attorney's Office and the Office of the Public Defender for recognizing their responsibilities as stakeholders to the Settlement Agreement and for providing the MLL with information in furtherance of the reforms. We encourage both offices to continue such efforts as they are essential to the success of the Settlement Agreement.

## **5. Policing at Port Protest/March**

By all accounts, OPD's policing of the April 7, 2004, protest and march to the Port of Oakland was a huge improvement over its handling of the protest one year earlier. This year, practices that had caused injury were prohibited; planning was thoughtful; and supervision appeared thorough and consistent. Although this year's smaller group of protesters did little to test police restraint, OPD should be commended for a more professional approach to this protest and for a vastly better outcome.<sup>5</sup>

### **B. Areas of Concern**

#### **1. Firearms Discharge Review**

Because of the high potential for loss of life, the traumatic effect such shootings have on officers, and potentially significant liability, reviews of officer-involved shootings must be of the highest quality and should include consideration of ways to prevent future shootings. The Settlement Agreement requires that OPD convene a Firearms Discharge Board of Review for every officer-involved firearms discharge and that OPD continue to follow the policies and practices for the conduct of Firearms Discharge Boards Of Review contained in Special Order 5095 (July 13, 2001) (Task 30). It further requires that Internal Affairs Division (IAD) investigators respond to the scene of every officer-involved shooting in which a person is struck, and be kept apprised of evidentiary material created during the shooting investigation (Task 31). The Settlement Agreement requires that the Monitor review the quality and timeliness of Firearms Discharge Boards of Review (S.A. XIII.H.).

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<sup>5</sup> The IMT did receive reports that at least one officer was taking photographs of protesters without authorization from OPD or permission from the protesters. Any photography or other surveillance of protesters, whether authorized by OPD or not, must adhere to legal requirements, including protesters' constitutional rights.

The Settlement Agreement deadlines for the above-listed Tasks have not yet become due. However, the IMT recently had the opportunity to observe a Board of Review of three firearms discharges and to review related documentation. This review was undertaken to inform our understanding of OPD's use of force practices generally and in preparation for future compliance reviews. Our observations at the Board of Review, confirmed by document review and interviews with command staff, revealed a number of significant problems with OPD's firearms discharge reviews that expand beyond the three officer-involved shootings we reviewed.

OPD conducts formal reviews of officer-involved shootings at Firearms Discharge Boards of Review. The Board is the culmination of the investigation of the shooting. Boards of Review are comprised of OPD's three Deputy Chiefs (or their representatives) and are attended by the subject officer, any representative for the officer and a Deputy City Attorney. The officer has the right to call witnesses to provide information to the Board and the Board may choose to include other OPD personnel or community members as non-voting members. At the conclusion of each Board, the three Deputy Chiefs decide whether the shooting was justifiable, non-justifiable or accidental and may make training and policy recommendations. The Board's findings are based on the testimony of the officer received during the hearing, the testimony of any other individuals appearing, and its review of the written shooting investigation prepared by the Homicide Division.

OPD's firearms discharge reviews include several positive aspects. The Board's composition is commendable. The involvement of the three Deputy Chiefs underscores the seriousness of the review and the collective responsibility of OPD leadership to prevent unnecessary shootings. The questions asked by the Deputy Chiefs and their representatives during the Board hearing we observed were pertinent and probing. In addition, the shooting investigation witness canvassing was extensive and appeared to be thorough. Permitting the officer to provide information to the Board has benefits. Attendance by a Deputy City Attorney and minute-taking are also helpful. The Board's practice of reaching a decision at the end of each shooting review prevents further delay.

However, alongside these strengths, we observed a number of problems serious enough to increase the likelihood of avoidable shootings. The firearms discharge reviews we observed suffered from several deficiencies, including: untimely Review Boards; lack of tracking of shooting reviews; insufficient involvement by relevant OPD components, most notably the Training and Internal Affairs Divisions; and gaps in shooting investigations. Like the deficiencies noted in our review of the timeliness of OPD's internal investigation process, these deficiencies appear to relate primarily to insufficient tracking and accountability.

- **Untimely Review Boards:** Our observations of the Board of Review, confirmed by document review and interviews, reveal that shooting reviews are routinely delayed for far too long after officer-involved shooting incidents. At the Board of Review we attended, one shooting had occurred 16 months earlier; another nine months earlier; and the third three months earlier. Similarly, a review conducted by OIG in October 2003, noted a 16-month lapse between a shooting and the review. OPD commanders with whom we spoke confirmed that there is a history of long delays in shooting reviews and that, at one point, a number of officer-involved shooting investigations were “found” and belatedly reviewed. OPD’s own OIG has recommended that OPD “require strict timelines [to] be set for convening a Firearms Discharge Board of Review.”

The period between the shooting and its review is rife with danger for the officer involved in the shooting, the police department, and the City. During this period, systemic training and tactical deficiencies that may exist are not corrected; the officer reports for work every day with an unresolved shooting hanging over his or her head; and during this period, there is little or no change in the training, assignment, or supervision of officers although they may have been involved in a non-justifiable shooting.

The potentially tragic consequences of this delay are obvious. In the Board’s review of the shooting that had occurred sixteen months earlier, the Board determined that the shooting was non-justifiable. The delays in this firearms discharge Review Board may mean that OPD cannot discipline the officer for this non-justifiable shooting, due to state law prohibiting in most instances the imposition of discipline after one year. This is a significant consequence of the delay; however, more importantly, five months after the non-justifiable shooting (but 11 months before the review of that shooting) this same officer was involved in a second shooting—this time fatal. The IMT takes no position regarding whether earlier disposition of the first shooting might have prevented the second shooting by this officer, or whether the second shooting may or may not have been justified. However, OPD would be remiss if it did not consider the possibility of such consequences in this and other circumstances and take every step necessary to reduce the delay in shooting reviews.

- **Tracking Officer-Involved Shootings:** Special Order 5095, dating from 2001, requires that the Office of the Chief of Police assign a control number to each firearms discharge incident and issue an administrative memorandum to the Bureau of Field Operations to establish a date by which a Board of Review will be convened. OPD reported that within the past few years a batch of firearms discharge reviews ready for Board hearing were lost for a significant period of time resulting in a backlog that is only now being cleared. In October 2003, an OIG audit noted that there is “no triggering mechanism to follow-up if a Board is

not scheduled,” and recommended a performance audit to reduce the frequency of misplaced/missing Boards of Review files. Nevertheless, three of the four shooting incidents we reviewed were not given tracking numbers by the Office of the Chief of Police, which may have contributed to the long delays in the Board hearings. As with the misplacement of use of force reports, the IMT was told that there was miscommunication in the Chief’s office regarding who was supposed to assign control numbers and track firearms discharge reviews.

- **Consideration of Training/Policy Needs:** Our observation of the firearms discharge Board of Review hearing indicated a lack of adequate consideration of training that might minimize the likelihood of similar shootings in the future. The Board focused only on the “final frame” of the incident, that is, whether the officer was justified in using deadly force at the moment it was used. For the purposes of identifying training needs, at a minimum, the Board should always analyze the officers’ actions leading up to the “final frame.” For example, in one shooting, while the officer may have been justified in using deadly force, it may not have been necessary had the officer not left tactical cover in an attempt to arrest the suspect on his own, making him an easy target and requiring the use of deadly force. The Board should have explored whether officers could or should have approached the situation differently, for example, by establishing a perimeter and developing a less dangerous plan. Police training routinely includes training for avoiding situations requiring the use of deadly force. The firearms discharge Boards of Review should always analyze whether the shooting indicates a need for re-training, or gaps in OPD training, to help officers avoid situations where deadly force is necessary.

Special Order 5095 requires that the firearms discharge Board of Review consider training needs and policy issues. It also permits Board members to ask training section staff or other OPD personnel to participate in the review as non-voting members. In the Board of Review we observed, the Board did not seek the input of training staff, forensic experts or others who may have been useful in determining whether the shootings indicated training needs or policy concerns. In addition, based on our review, it appears that officers do not always comply with the Board’s training recommendations. The OIG noted this as well in their October 2003 audit. Given the significance of officer-involved shootings, OPD must ensure 100% compliance with the Board’s training recommendations.

- **Insufficient Involvement of Relevant OPD Components:** Despite the Settlement Agreement requirement that the Internal Affairs Division respond to each officer-involved shooting in which a person is struck, this is not happening. Nor is IAD involved in subsequent review of the shooting incident. It has been standard practice in many law enforcement agencies for several years now for IAD to “roll-out” on every officer-involved shooting. Internal affairs divisions

bring a unique and valuable perspective to officer-involved shooting reviews and IAD's involvement should be mandatory in every officer-involved shooting. IAD, unlike either OPD's Homicide investigators or County criminal investigators, can focus on whether involved officers adhered to OPD's administrative requirements.

- **Deficiencies in Firearms Discharge Investigations:** The quality of OPD's firearms discharge reviews is compromised by deficiencies in the shooting investigations. Perhaps most notable in the shooting incidents we reviewed was a lack of forensics information such as bullet trajectory, angle, and final resting place, and other basic criminalistics information. Statements were provided in summary, and in some instances (particularly with witness interviews) no verbatim statement was recorded. Even summary statements were not provided to the Board prior to the hearing.
- **Recommendations:** In our view OPD can immediately improve its firearms discharge review by:
  - Setting strict, brief, timelines for firearms discharge reviews. Boards of Review should occur no more than thirty days after the shooting (with the Chief authorizing more time where appropriate). A review should not be delayed or adjourned because the officer is unavailable.
  - Assigning control numbers for every officer-involved shooting; tracking the progress of review, including the progress of investigations, impending statutes of limitation, the scheduling of Boards, and compliance with any discipline, training, or policy recommendations.
  - Holding supervisors strictly accountable for not complying with Board training recommendations for their subordinates.
  - Substantively involving IAD in every step of firearms discharge review, beginning with response to the scene of an officer-involved shooting, as required by the Settlement Agreement. IAD officers should be trained in their proper role on the scene of officer-involved shootings and in the subsequent review.
  - More frequently seeking the input of training and other relevant components to ensure that needed training or policy changes are not missed.
  - Requiring that officer-involved shooting investigations include high-quality forensics analysis; verbatim audio- or video-taped statements of all officers

and witnesses; and that appropriate investigative materials are included in the Board's review package.

## **2. Street "Strip" Searches**

The Settlement Agreement instructs the IMT to conduct reviews deemed relevant to "ensure that OPD enforcement activities fully comply with all Department procedures and federal and state law." (S.A. XIII.H.11). Recent citizen complaints filed with OPD and presented to the CPRB complain of searches that, if conducted as alleged, raise serious legal concerns. Complaints describe searches on Oakland streets in which young men's pants and underwear were pulled down, exposing their buttocks and genitalia to their friends, family and strangers on the street. In some instances, OPD officers donned latex gloves and performed invasive searches that should be done only in a hospital or under strict protocols by designated personnel during jail intake. Recently, a group of students and teachers who witnessed an invasive "strip search" of a fellow student attended a Citizens Police Review Board meeting to complain about this treatment. OPD has no adequate policy covering if and when OPD officers may visibly search individuals' buttocks, genitalia or other private body parts; expose such parts to the public; or perform more invasive body searches.

As discussed with Chief Word, the IMT is highly concerned about the street strip searches conducted by some OPD officers. In our professional experience, such searches are unnecessarily humiliating and dehumanizing (sometimes intentionally) and can immediately alienate citizens and destroy community respect for its police department. Because of this, in our view, upon learning of problematic "strip" searches, OPD should have immediately declared a moratorium on pre-arrest "strip" searches to detect drugs until officers are trained in a policy setting forth the parameters of acceptable body searches.

Although the IMT commends the Police Department for self-identifying an apparent increase in this practice and for quickly committing to develop a policy prohibiting improper and unnecessarily degrading searches, OPD must quickly build on these initial efforts by immediately implementing and training officers on an appropriate policy, and by holding officers accountable if they do not follow the policy. The IMT continues to recommend that OPD declare a moratorium on pre-arrest "strip" searches to detect drugs until an appropriate policy is implemented.

## **3. Training in New Settlement Agreement Requirements**

In our last Quarterly Report, the IMT commended OPD for developing a training verification system for its officers. This system, however, is not functioning as intended. While OPD has made significant strides in policy development, it has not made equal

progress in conducting and completing necessary training on the new policies or in tracking training in an efficient or reliable manner.

In order to achieve compliance with the Settlement Agreement, OPD must provide training to its officers on how to implement new policies and procedures. OPD, however, has not yet completed its training obligations for *any* of the eighteen Settlement Agreement Tasks that have become due. An internal audit of training records conducted by OPD in February confirmed that the Department, as a whole, had not completed the required training for any of the policies that had been published to date. A number of commanders and managers have taken their training obligations seriously and provided required training to officers since the February audit. OPD as a whole, however, still has not yet completed the required training for any of the published policies.

Unless and until OPD completes and accurately documents such training, the Department will remain out of compliance with the Settlement Agreement. Moreover, OPD's delay in providing the required training has hampered the IMT's ability to monitor OPD's actual practices because compliance monitoring generally is premature in the absence of adequate training.

The reasons for OPD's continued training deficiencies are varied and range from a lack of familiarity with a new system and miscommunication, to a lack of accountability that facilitates disobeying orders and missing deadlines. In some instances, required training has been completed, or is in progress, but has not been properly documented. In other instances, however, required training simply has not been conducted despite a series of mandates from the Chief or his designees setting forth specific deadlines by which training was to occur. The IMT is not aware of any commanders or managers being held accountable for failing to ensure that their officers and employees receive training as required. This lack of accountability may, in part, explain why OPD's training efforts continue to lag behind schedule.

In response to OPD's training deficiencies, OIG has proposed a series of sensible short and long-term remedies. These remedies include generating and distributing a non-compliance list; conducting mass trainings; improving data entry and overall coordination of training efforts; and holding commanders and managers accountable when their officers and employees are not trained. It is critical that OPD implement these or like measures forthwith in order to achieve compliance with the Settlement Agreement and to provide its officers with the guidance and direction they need and deserve to perform their challenging jobs.

## **II. COMPLIANCE OVERVIEW**

Our discussion of OPD's compliance efforts and status is organized around the twelve Settlement Agreement sections from which OPD derived fifty-one "Tasks." At the start of the monitoring process, the IMT reviewed OPD's Task designations, found the Task division to be workable, and in the interests of clarity and consistency, adopted the same designations.<sup>6</sup>

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.

Sixteen new Settlement Agreement Tasks previously had due dates occurring during the third quarter reporting period. However, because of a series of extensions negotiated between the parties, only four new Tasks became due during this reporting period: Supervisory Span of Control and Unity of Command (Task 17);<sup>7</sup> Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23). With the addition of these Tasks, a total of eighteen of the fifty-one Settlement Agreement Tasks became due during the third quarter reporting period.<sup>8</sup>

These eighteen Tasks are:

Supervisory Span of Control and Unity of Command (Task 17)  
Approval of Field-Arrest by Supervisor (Task 18)  
Unity of Command (Task 19)  
Span of Control for Supervisors (Task 20)  
OPD/DA Liaison Commander (Task 22)  
Command Staff Rotation (Task 23)  
Reporting Misconduct (Task 33)

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<sup>6</sup> 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.

<sup>7</sup> Supervisory Span of Control and Unity of Command (Task 17) has no independent requirements. It will be completed upon OPD's completion of Tasks 18, 19, 21, and 23.

<sup>8</sup> The compliance deadline for Task 45, Consistency of Discipline, initially occurred during the first quarter reporting period. However, based upon a series of extensions negotiated between the parties, it now has a compliance deadline of June 15, 2004.

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)  
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)

As noted in our previous reports, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

OPD has made significant progress since the last reporting period. At the end of the third quarter reporting period, OPD has completed the first step (policy compliance) for fifteen of the eighteen Tasks that have become due. It has also achieved policy compliance for three Tasks ahead of schedule. A chart summarizing the status of OPD's compliance can be found on page fourteen of this Report. However, while OPD has initiated training for most of the new policies it has created, as discussed above, OPD has fallen seriously behind on its training obligations. OPD has not achieved training compliance for any of the Tasks requiring training.<sup>9</sup>

#### **A. Policy Compliance**

Of the three steps necessary to achieve compliance, policy compliance was the only area in which OPD made significant progress this quarter. OPD achieved policy compliance for two of the four Settlement Agreement Tasks that were due this period: Unity of Command (Task 19) and Command Staff Rotation (Task 23). In addition, OPD achieved policy compliance for six overdue Settlement Agreement Tasks: Span of Control for Supervisors (Task 20); Misconduct (Task 33); Use of Force Reports-Witness Identifications (Task 35); Internal Investigations-Retaliation Against Witnesses (Task 37); Personnel Arrested, Sued and/or Served with Civil or Administrative Process (Task 39); and Community Policing Plan (Task 47). The three additional Settlement Agreement Tasks for which OPD has achieved policy compliance ahead of schedule are: Refusal to Accept or Refer Citizen Complaints (Task 6); Oleoresin Capsicum Log and Checkout Procedures (Task 27); and Use of Camcorders (Task 32).

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<sup>9</sup> In order to obtain training compliance, OPD must be able to demonstrate that it has trained 95% of relevant personnel on each policy related to the Task.

When policies completed during the first two reporting periods are included, OPD has achieved policy compliance with a total of fifteen of the eighteen requirements now due and three requirements that have not yet become due. OPD remains out of policy compliance for three requirements now due: Supervisory Span of Control and Unity of Command (Task 17); Approval of Field-Arrest by Supervisor (Task 18); Promotional Consideration (Task 46). OPD has also published a policy bringing it into policy compliance with Tasks 21 and 44, due during the fourth reporting period.

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>
17	Supervisory Span of Control and Unity of Command	January 20, 2004	
18	Approval of Field-Arrest by Supervisor	January 20, 2004	
19	Unity of Command	January 20, 2004	✓*
20	Span of Control for Supervisors	August 14, 2003	✓*
22	OPD/DA Liaison Commander	April 15, 2003	✓
23	Command Staff Rotation	January 20, 2004	✓*
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	✓*
38	Citizens Signing Police Forms	August 25, 2003	✓

39	Personnel Arrested, Sued and/or Served with Civil or Administrative Process	August 25, 2003	✓*
46	Promotional Consideration	July 8, 2003	
47	Community Policing Plan	August 1, 2003	✓*
48	Departmental 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 still has not completed the second step of compliance, training, for any of the 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. As noted in the Areas of Concern section of this Report, OPD's training deficiencies include inadequate coordination between the Training Division, trainers, and individuals responsible for data entry; miscommunication regarding who is required to be trained on particular policies; and a failure to hold accountable those commanders who do not fulfill their training obligations.

### **C. Actual Practice Compliance**

As noted above, OPD must complete each of three steps (policy, training, and actual practice) to come into compliance with a Settlement Agreement requirement.

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 was not in compliance with this Task. OPD has not yet completed the "refresher training" the audit recommended or completed training on its recently revised policy for this Task. During the second reporting period, the IMT conducted an audit of OPD's actual practice compliance with Task 38, Citizens Signing Police Forms, and determined that OPD was not in compliance with this Task. Like Task 34, OPD has

not yet completed required training on Task 38. OPD commanders report improved compliance with Task 38 and OIG plans to audit compliance with this Task.

OPD's delay in providing the required training on these and the other Tasks has hampered the IMT's ability to monitor OPD's actual practices because monitoring generally is premature in the absence of adequate training. 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).

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 Third Reporting Period		Change Since Last Reporting Period
Number of Requirements Due	18*	+3
Requirements with Compliant Policies	15*	+8
Requirements with Compliant Training	0	0

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

### III. DETAILED COMPLIANCE REPORT<sup>10</sup>

In the interest of completeness, we discuss below the requirements for each section of the Settlement Agreement and provide a brief statement of OPD's progress thus far.

#### A. Internal Affairs Division (IAD) (Task 1–16; S.A. III)

Section III of the Settlement Agreement, Tasks 1–16, concerns OPD's Internal Affairs Division. The Settlement Agreement requires broad reform in the receipt and investigation of complaints of officer misconduct. This section also institutes mechanisms to ensure that commanders and first line supervisors are held accountable for misconduct by OPD officers under their command.

Because of multiple extensions requested by OPD and agreed to by Plaintiffs, none of these requirements have yet become due. As discussed in our Second Quarterly

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<sup>10</sup> The paraphrased reiterations of the Settlement Agreement provisions in no way alter the requirements of the Settlement Agreement.

Report, the policy covering many of these Tasks was due December 3, 2003. OPD has asked for and obtained a series of extensions postponing due dates until the Spring, Summer, and Fall of this year.

The IMT discussed its concerns about the timeliness of OPD's current system for investigating allegations of officer misconduct in its Second Quarterly Report. In response to our concerns, OPD took several steps, including accelerating development of an IAD manual and tracking the progress of cases more closely in both Internal Affairs and at the Division level.

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 will now become due during the fourth quarter reporting period (April 16, 2004, through July 15, 2004).

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. Previously, OPD was required to produce an IAD procedural manual by June 1, 2005. In its Second Quarterly Report, the IMT expressed serious concerns regarding the timeliness of OPD's internal affairs investigations and the lack of written guidance for conducting misconduct

investigations. In order to help improve its internal investigations process, OPD has committed to expediting production of the IAD procedural manual required by this Task. OPD has also assigned additional staff to aid in case tracking and investigation. The new deadline for production of the manual and revision of a number of policies and procedures related to IAD investigations is August 13, 2004.

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

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the parties, the compliance deadline for this Task has not yet occurred. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs. The IMT and Plaintiffs, however, raised significant concerns regarding the draft, including concerns related to its proposed timelines.

In response to these concerns, OPD requested and the Plaintiffs granted an extension for OPD to rework the draft to address a variety of issues. 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. 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 June 15, 2004, OPD must develop a policy regarding an informal complaint resolution process to be used by supervisors and IAD to resolve minor complaints not rising to the level of Class II misconduct. The Settlement Agreement sets forth certain criteria that must be included in this informal complaint resolution process.
- By October 1, 2004, OPD must implement this informal complaint resolution process.
- By June 15, 2004, OPD must develop a policy establishing a central control system for complaints and Departmental requests to open investigations. The Settlement Agreement sets forth certain criteria that must be included in this central control system.
- By October 1, 2004, OPD must implement this central control system.

## **b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the parties, the compliance deadline for this Task has not yet occurred. During the Second Quarter, OPD produced draft General Order M-3, *Complaints Against Departmental Personnel or Procedures*. The draft was intended to incorporate many of the Settlement Agreement requirements relating to internal affairs. The IMT and Plaintiffs, however, raised significant concerns regarding the draft.

In response to these concerns, OPD requested and the Plaintiffs granted an extension for OPD to rework the draft to make it consistent with the Settlement Agreement. 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 June 15, 2004, OPD must develop a policy to provide immediate access to a supervisor to all citizens seeking to file a complaint. The Settlement Agreement sets forth certain criteria to be followed if there is delay greater than three hours in providing access to a supervisor or if the complainant refuses to travel to or wait for a supervisor.
- By June 15, 2004, OPD must develop a policy to provide Oakland City Jail inmates the opportunity to file a complaint against OPD officers/employees. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By June 15, 2004, OPD must develop policies setting standards for IAD investigations and dispositions of citizen complaints, including that: OPD must consider all relevant evidence; make credibility determinations where feasible; attempt to resolve inconsistencies in witness statements; employ the "preponderance of evidence" standard; and permanently retain all notes related to the investigation. This provision also defines the five investigative dispositions (unfounded;

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

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

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the parties, the compliance deadlines for this Task have not yet occurred. OPD, however, has drafted and published *Manual of Rules* insert 398.76, incorporating one part of this Task (complainant access to a supervisor). OPD has also developed Jail Policy & Procedure 05.01. Among other issues, this policy sets forth procedures for providing inmates of the Oakland City Jail the ability to file complaints against OPD officers and employees. The IMT has determined that both policies comply with the Settlement Agreement. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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

**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. OPD has also started training its officers on this policy. The IMT commends OPD for being substantially ahead of schedule on this Task. In subsequent reports, the IMT will report whether training is completed on the policy and whether OPD's actual practices comply with the Settlement Agreement.

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

**a. Settlement Agreement Requirements**

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy strengthening its procedures for receiving citizen complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy, including that OPD: establish a staffed complaint hotline; make complaint forms, brochures and guidelines easily and widely available, including in OPD vehicles; translate those forms; and accept anonymous complaints.
- By October 1, 2004, OPD must implement the above referenced policy.
- By June 1, 2004, IAD must be located in a dedicated facility removed from the Police Administration Building.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement. As previously noted, OPD is already in compliance with the requirement that IAD offices be located off-site.

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

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

**a. Settlement Agreement Requirements**

- By June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy establishing a classification system for citizen

complaints. The Settlement Agreement calls for complaints to be divided into two categories (Class I and Class II) according to the severity of the offense.

- By October 1, 2004, OPD must implement this classification system.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that IAD, or the investigator assigned to an investigation, contact citizens who have made complaints as soon as possible, in order to determine the nature, scope and severity of the complaint, as well as to identify potential witnesses and/or evidence as quickly as possible.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 August 13, 2004, OPD must revise certain policies and procedures related to IAD investigations and create an IAD procedural manual for conducting complaint investigations. (This requirement applies to Tasks 1–16.)
- By August 13, 2004, OPD must train all personnel to ensure that they have received, understand, and comply with new and revised Departmental policies and procedures. (This requirement applies to Tasks 1–16.)

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. It 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.

Previously, OPD was required to produce an IAD procedural manual by June 1, 2005. In its Second Quarterly Report, the IMT expressed serious concerns regarding the timeliness of OPD’s internal affairs investigations and the lack of written guidance for conducting misconduct investigations. In order to help improve its internal investigations process, OPD has committed to expediting production of the IAD procedural manual required by this Task. The new deadline for production of the manual and revision of a number of policies and procedures related to IAD investigations is August 13, 2004.

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

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

**a. Settlement Agreement Requirements**

- By June 15, 2004, OPD must, based on contemporary

police standards and best practices, develop a policy requiring that complaint investigators:

- provide the member/employee with a brief synopsis of any complaint alleged against them, but not allow the member/employee to read the complaint itself or to review citizen or other witness statements prior to the member/employee's interview;
  - notify the immediate supervisor and commander of the subject of an investigation that a complaint against the subject has been filed; and
  - upon completion of the investigation and issuance of a final report, provide subject members/employees with access to the underlying data upon which an IAD report is based, including all tape-recorded interviews, transcripts and investigator's notes.
- By October 1, 2004, OPD must implement this policy.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that investigators (IAD and field) disclose relationships that might lead to a perception of bias regarding the subject(s) of any

investigation, including family relationships, outside business relationships, romantic relationships and close work or personal friendships. The Settlement Agreement sets forth certain criteria regarding when and how investigators and their supervisors must act on these disclosures.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 Pitchess discovery motion responses.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. 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 June 15, 2004, OPD must develop and, by October 1, 2004, implement, a policy requiring that it investigate allegations of *Manual of Rules* violations resulting from certain lawsuits and legal claims, treating

them in the same manner as other citizens' complaints. The Settlement Agreement sets forth certain criteria that must be included in this policy.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 June 15, 2004, OPD must, based on contemporary police standards and best practices, develop a policy that holds supervisors and commanders, as well as other managers in the chain of command, accountable for supporting the IAD process. Where an IAD investigation finds that a supervisor or manager should have reasonably determined that a member/employee committed a Class I offense, that supervisor or manager must be held accountable, through the Department's administrative discipline process, for failure to supervise, failure to review and/or failure to intervene.
- By October 1, 2004, OPD must implement this policy.

**b. Status of Compliance and Assessment**

Because of a series of extensions negotiated between the Parties, the compliance deadlines for this Task have not yet occurred. As noted above, OPD drafted General Order M-3, *Complaints Against Departmental Personnel or Procedures*. However, based upon significant concerns raised by the IMT and the Plaintiffs regarding the draft, OPD is reworking it to make it consistent with the Settlement Agreement.

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 Tasks, Span of Control for Supervisors (Task 20) and OPD/DA Liaison Commander (Task 22), were due during the first reporting period. During the third reporting period, four additional Tasks became due: Supervisory Span of Control and Unity of Command (Task 17);<sup>11</sup> Approval of Field-Arrest by Supervisor (Task 18); Unity of Command (Task 19); and Command Staff Rotation (Task 23).

OPD has achieved policy compliance for four of the six Tasks due in this area: Unity of Command (Task 19); Span of Control for Supervisors (Task 20); OPD/DA Liaison Commander (Task 22), and Command Staff Rotation (Task 23). OPD has also achieved policy compliance for Members', Employees' and Supervisors' Performance Reviews (Task 21) ahead of schedule. OPD has not, however, achieved training compliance for any of the Tasks.

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

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<sup>11</sup> As noted above, Supervisory Span of Control and Unity of Command (Task 17) has no separate requirements, but will be completed once OPD has completed Tasks 18, 19, 21 and 23.

Settlement Agreement sets forth certain criteria regarding supervisor review of field-arrests, including that, under ordinary circumstances, supervisors respond to the scenes of field arrests for felonies; narcotics-related possessory offenses; situations where there is an investigated use of force; and arrests for obstructing, resisting, or assaulting an officer.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. During the last reporting period OPD drafted a policy incorporating a portion of this Task, General Order M-18, *Arrest Approval and Report Review in the Field*. The IMT reviewed M-18 and determined that it did not comply with the Settlement Agreement and provided OPD with comments detailing the changes necessary for compliance. OPD subsequently revised M-18 and the IMT found that it complied with the Settlement Agreement. OPD, however, has not yet published M-18. Accordingly, OPD has not yet achieved policy compliance, nor has OPD conducted any training on the policy.

In addition to covering supervisory approval of arrests, Task 18 also requires OPD to develop standards for improving field supervision of officers. As discussed below, during this reporting period, OPD published unity of command and span of control policies that comply with the Settlement Agreement and meet this requirement. It has not, however, conducted sufficient training on these policies.

During the upcoming quarters, the IMT will determine whether OPD publishes M-18 as required; conducts appropriate training on the policies; and whether OPD's actual practices comply with this Settlement Agreement provision.

**3. Unity of Command (Task 19; S.A. IV.B.)**

**a. Settlement Agreement Requirements**

- By January 20, 2004, OPD must develop and implement a policy requiring that, with rare exceptions justified on a case-by-case basis, each OPD member or employee have a single, clearly identified supervisor or manager, working the same schedule and having the same days off as the individuals whom they supervise.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. In April 2004, OPD published the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; and BOI Policy 04-02, *Supervisory Span of Control*. The IMT reviewed each of these policies and determined that they comply with the Settlement Agreement. While OPD has achieved policy compliance for this Task, it has not yet achieved training compliance. OPD reports that it has trained approximately 74% of its officers on BFO Policy 03-02, but has not conducted any training on General Order A-3 or BOI Policy 04-02.

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

**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. In April 2004, OPD published the following policies: General Order A-3, *Department Organization*; BFO Policy 03-02, *Supervisory Span of Control*; BOI Policy 04-02, *Supervisory Span of Control*. The IMT reviewed each of these policies and determined that they comply with the Settlement Agreement. As noted above, while OPD has achieved policy compliance for this Task, it has not yet achieved training compliance. OPD reports that it has trained approximately 74% of its officers on BFO Policy 03-02, but has not conducted any training on General Order A-3 or BOI Policy 04-02.

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

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

**a. Settlement Agreement Requirements**

- By May 5, 2004, OPD must, based on contemporary police standards and best practices, develop and implement a member, employee and supervisor performance review policy. The Settlement Agreement sets forth certain criteria that must be included in this policy.
- By July 7, 2004, OPD must hold its supervisors and commanders/managers responsible for identifying patterns of improper behavior of their subordinates. Failure to identify patterns and instances of misconduct when the supervisors or commanders/managers knew or reasonably should have known of the misconduct shall constitute grounds for discipline.
- By July 7, 2004, Bureau of Field Operations sergeants and lieutenants must scrutinize arrests and uses of force that have been historically associated with police misconduct.

**b. Status of Compliance and Assessment**

Because of extensions negotiated between the Parties, this Task did not become due during the third quarter reporting period. OPD, however, has developed a policy incorporating this provision, General Order B-6, *Performance Appraisal*. The IMT has found this policy in compliance with the Settlement Agreement.

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.

**6. OPD/DA Liaison Commander (Task 22; S.A. IV.E.)**

**a. Settlement Agreement Requirements**

- By April 15, 2003, OPD must, based on contemporary police standards and best practices, develop and implement a Management-Level Liaison (MLL) to the courts, the District Attorney's Office and the Public Defender's Office. This unit or person is to ensure that cases that are lost or dropped due to performance problems or misconduct, or indicia thereof, are tracked.
- The MLL is required to meet and cooperate with the Monitor. The District Attorney and Public Defender offices may attend these meetings.

**b. Status of Compliance and Assessment**

As previously reported, OPD published General Order A-18, *Management Level Liaison*, which the IMT determined complies with the Settlement Agreement. Training on this policy, however, was not completed during this reporting period. OPD reports that it has trained approximately 86% of its officers on this policy.

OPD has appointed a seasoned commander to act as the Management-Level Liaison (MLL). As required by A-18, the MLL has contacted the District Attorney, Public Defender, and local courts to inform them of his role and to ask that they report to him cases that are lost or dropped due to performance problems, misconduct, or indicia thereof. Since April 2003, the MLL has been producing monthly memoranda detailing his activities and whether any relevant cases have been received. Until recently, however, the majority of the memoranda did not list any cases.

The IMT informed the MLL and OPD that, in the view of the IMT, the Settlement Agreement requires OPD to take affirmative steps to identify cases that require tracking. The IMT also met with the District Attorney's Office and the Office of the Public Defender to learn about their interactions with the MLL and to identify the data they maintain that may be of use to the MLL, including data regarding charging decisions and officer conduct.

Both the District Attorney and the Public Defender expressed their willingness to assist the MLL to identify and track cases as required by the Settlement Agreement and both offices have since provided information to the MLL in furtherance of this goal.

For example, the MLL recently began obtaining and reviewing daily lists from the District Attorney of in-custody cases that the District Attorney has decided not to prosecute and the reason for such decisions. As a result, the MLL's most recent memorandum serves as a valuable resource for OPD. In addition to identifying a case involving possible misconduct, the memorandum includes policy and training recommendations that, if implemented, will assist officers who are engaged in lawful, proactive policing to better perform their jobs.

The IMT applauds the MLL's initiative in obtaining and reviewing the in-custody charging decisions as one way of identifying cases that may involve performance problems or misconduct.<sup>12</sup> We also commend the MLL for making solid recommendations for improvement in his most recent memorandum. In addition, we applaud the District Attorney's Office and the Office of the Public Defender for recognizing their responsibilities as stakeholders to the Settlement Agreement and for providing the MLL with information in furtherance of the reforms. We encourage both offices to continue such efforts as they are essential to the success of the Settlement Agreement.

During the upcoming quarters, the IMT will determine whether OPD has completed appropriate training on A-18 and whether OPD tracks cases as required by the Settlement Agreement. In addition, the IMT will monitor OPD's handling of matters the MLL has already identified for tracking.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during this reporting period. OPD, however, published a command staff rotation policy well in advance of the deadline. OPD published the directive as a *Chief of Police Memorandum* in April 2003, and the IMT determined that it complies with the Settlement Agreement.

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<sup>12</sup> We also recommend that OPD consider the feasibility of conducting a similar analysis of the District Attorney's charging decisions for out-of-custody cases.

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.

None of these requirements have yet become due. OPD, however, has achieved compliance with Task 32, which requires 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:
  - all members/employees to notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force;
  - all members/employees at the scene to report all investigated uses of force on the appropriate form in every investigated use of force incident, unless otherwise directed by the investigating supervisor;
  - OPD personnel to document any use of force and/or the drawing and intentional pointing of a firearm at another person;
  - a supervisor to respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable;

- OPD to notify the Alameda County District Attorney's Office, the City Attorney's Office and Departmental investigators in certain use of force incidents; and
- OPD to enter data regarding use of force into OPD's Personnel Information Management System (PIMS).

**b. Status of Compliance and Assessment**

The compliance deadlines for this Task 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.

This quarter the IMT followed up on use of force report tracking to determine whether the tracking problems noted in our last report had been remedied. It appears that the Office of the Chief of Police (OCOP) is now forwarding use of force reports to IAD and the Training Division as required. However, because the OCOP waits until it has received ten or so use of force reports before forwarding them, IAD and the Training Division do not receive use of force reports at regular intervals and thus have difficulty assessing whether they in fact are timely receiving use of force reports. The IMT recommended to OCOP that it forward the reports at routine time intervals (e.g. once per week) rather than at ad hoc numerical intervals (e.g. when the OCOP receives ten or so use of force reports). In addition, Chief Word has requested that he be provided with all use of force reports from January 1 through April 15 so that he can personally compare this data set to the reports that Training and IAD have received to ensure that all use of force reports have in fact been forwarded to the appropriate OPD subunits. The IMT has requested that it be apprised of the results of this comparison.

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. However, during this reporting period, OPD revised, and on April 12, 2004, 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 has reviewed the revised policy and determined that it complies with the Settlement Agreement. OPD has begun training on the policy, but has not yet completed it. The IMT commends OPD for being ahead of schedule on this Task.

As noted in our previous reports, OPD states that it intends to incorporate the provisions of the witness identification Special Order into its new use of force policies. The Settlement Agreement requires that these policies be developed and implemented by July 20, 2004.

During the upcoming quarters, the IMT will review the draft policies and determine whether OPD has conducted appropriate training on the policies, and whether OPD’s actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. 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 July 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 have not yet occurred. OPD, however, published Special Order 8061, *Control of Oleoresin Capsicum*, well in advance of the due date. 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. In addition to publishing a compliant policy, OPD has started preparing monthly reports regarding policy adherence and OC canister distribution. Based upon the most recent report, four of sixteen officers who requested replacement canisters during March failed to comply with the procedures set forth in the new policy. OPD has not yet completed training on the new policy.

During the upcoming quarters, the IMT will determine whether OPD completes 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 is in the process of revising General Order M-4, *Coordination of Criminal Investigations* to incorporate the requirements of this Task. 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. 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 has reported that this Task will be addressed in two General Orders, M-3 and M-4, *Coordination of Criminal Investigations*. As noted above, OPD is in the process of revising M-4 and has received an extension for revising M-3. During the upcoming quarters, the IMT will determine whether OPD has developed the required policies, conducted appropriate training on the policies, and whether OPD's actual practices comply with this Settlement Agreement provision.

**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. The IMT is charged with assessing the timeliness and quality of Firearms Discharge Boards of Review. As noted in the Areas of Concern section of this report, there are a number of systemic deficiencies in OPD's Firearms Discharge Boards of Review, particularly related to their timeliness. Timely and high-quality shooting reviews may help prevent officer-involved shootings and are essential for risk management and for protecting the lives of officers and citizens. During the upcoming quarters, the IMT will continue to assess the timeliness and quality of Firearms Discharge Boards of Review and will report whether OPD's reviews of officer-involved shootings comply with the Settlement Agreement and best practices.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet occurred. 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. Moreover, as noted in the Areas of Concern section of this report, OPD is not currently complying with this provision. For instance, Internal Affairs investigators are not currently responding to officer-involved shootings where a person is struck. 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 achieved compliance with this Task by producing research reports regarding the use and cost-effectiveness of camcorders in patrol vehicles. OPD concluded that it is not able at the present time to install camcorders in Patrol vehicles due to budgetary constraints. On April 28, 2004, the City Council's Public Safety Committee unanimously endorsed a demonstration project that would place in-car cameras in several OPD patrol vehicles on a two to three month trial basis. The project is scheduled to occur this summer, after which OPD will make an assessment and report back to the Council.

The IMT commends OPD for being substantially ahead of schedule on this Task and the City and OPD for its continued efforts in this area.

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

Section VI of the Settlement Agreement, Tasks 33–39, requires OPD to change reporting procedures in a variety of areas in order to bolster officer accountability. The Settlement Agreement imposes new requirements for how misconduct, uses of force and detainee transports are reported. The Settlement Agreement makes it clear that retaliation for reporting misconduct cannot be tolerated, making dismissal the presumptive disciplinary penalty for even subtle retaliation. In addition, the Settlement Agreement spells out when an officer must report being arrested, sued, or otherwise involved in

litigation. This section of the Settlement Agreement also requires OPD to begin recording data about every individual and vehicle stopped by OPD officers, permitting tracking of trends in stops, discriminatory or otherwise.

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

While OPD has achieved policy compliance for each of the seven Tasks in this area, it has not achieved training compliance for any of the Tasks.

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

**a. Settlement Agreement Requirements**

- By August 25, 2003, OPD must require its personnel to report misconduct to their supervisor and/or IAD, including, but not limited to, uses of force that appear inappropriate and arrests that appear improper.
- The Settlement Agreement requires that OPD have a procedure for officers to report misconduct confidentially, and sets forth particular criteria for this confidential reporting process.
- The Settlement Agreement further requires that OPD assess corrective action and/or discipline for failure to report misconduct.

**b. Status of Compliance and Assessment**

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, however, has not yet been completed.

On April 13, 2004, OPD published revisions to MOR Section 370.18, *Arrests*, and MOR Section 370.27, *Use of Physical Force*. The IMT has reviewed the revisions and determined that they comply with the Settlement Agreement. OPD has not begun the required training on these policies.

During the upcoming quarters, the IMT will determine whether OPD has conducted appropriate training on these policies 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 began training within the timeline set by the Settlement Agreement.

OPD recently published General Order M-19, replacing Special Order 8012. M-19 requires that officers include their names on all stop data forms they complete. OPD will soon publish a technical guide, *Promoting Cooperative Strategies to Reduce Racial Profiling*. M-19 and the technical guide are important contributions not only to

Settlement Agreement compliance but to nationwide efforts to reduce unjustified racial profiling. OPD's technical guide is the culmination of months of work by a coalition of community/advocacy groups, corporations, the Oakland Police Officers Association and OPD.

The guide reports and analyzes the results of the coalition's community and departmental personnel surveys, as well as the results of OPD stop-data. This OPD-led coalition makes a series of recommendations for communities interested in combating racial profiling, including guidelines on collaborative and credible stop-data collection. This guide will likely become a significant resource used by communities interested in ending biased-based policing.

General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, is in many respects a model policy in structure and substance. It provides a clear definition of prohibited conduct; straightforwardly sets forth the responsibilities of various departmental subunits; and provides guidance in the form of examples of prohibited conduct. The policy requires, among other things, that officers advise individuals of their right to refuse a consent search; articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, pedestrian, bicycle, or vehicle stops, arrests, non-consensual searches and property seizures; and not take into account actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability to any extent or degree in carrying out law enforcement activities except when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

If adhered to in practice, this policy is likely to have a significant positive impact on police-community relations in Oakland.

During upcoming quarters, the IMT will determine whether OPD has published the revised policy and trained officers accordingly. We will also monitor whether OPD's actual practices comply with this Settlement Agreement provision.

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

**a. Settlement Agreement Requirements**

- By August 25, 2003, OPD officers must identify and document certain information about witnesses to uses of force, including other OPD officers, in every use of force report. The Settlement Agreement sets forth the particular information that must be included, and procedures OPD must follow in the event that there are

no known witnesses or where the author of the report is unable to obtain identifying information from witnesses.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. On April 12, 2004, OPD published Special Order 8066, *Use of Force-Witness Identification*. The IMT reviewed this Special Order and determined that, unlike the previously published version of the policy, it complies with the Settlement Agreement. OPD, however, has not completed training on the policy. 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.

During the upcoming quarters, the IMT will determine 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*. 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. While OPD has drafted policies reflecting the literal language of the Settlement Agreement, the IMT remains concerned about internal inconsistencies in the policies and the message that such inconsistencies send.

On November 23, 2003, OPD published Special Order 8092 consisting of two *Manual of Rules* revisions: MOR Section 398.73, *Retaliation Against Witnesses* and MOR Section 398.74, *Retaliation Against Witnesses, Accountability*. The IMT provided comments to OPD on the MOR revisions while they were in draft form, noting that the revisions did not comply with the Settlement Agreement because they did not make dismissal the presumptive disciplinary penalty for retaliation. The published version of MOR Section 398.73 now complies with the Settlement Agreement.

However, the published version of MOR Section 398.74, while tracking the language of the Settlement Agreement, remains problematic because it is inconsistent with MOR Section 398.73. MOR Section 398.74 purports to describe the standard of accountability OPD has established for supervisors who fail to hold their subordinates

responsible for retaliation. It is the IMT's understanding that OPD intends to hold supervisors as accountable for retaliation under their watch as it holds officers 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 appears to establish a lower level of accountability for supervisors than OPD has established for officers. In the view of the IMT, this result is counter to the reforms and sends the wrong message throughout OPD.

Training on these policies has not yet been completed. It is possible that through training and the new disciplinary matrix OPD will be able to resolve the apparent conflict between the policies. Accordingly, the IMT will be examining these areas closely.

During the upcoming reporting periods, the IMT will determine 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 still has not completed the required training. Accordingly, OPD is not yet in compliance with the training component of Task 38.

During an audit conducted during the second quarter reporting period, the IMT determined that OPD's actual practices in this area were not in compliance with the Settlement Agreement and made several recommendations to OPD to help achieve compliance. These recommendations included providing refresher training; explaining to

officers the intent and importance of this Settlement Agreement provision; exploring the use of a single, uniform method for obtaining citizen statements; and improving supervisory review of citizen statements. OPD has reported that compliance levels have improved and that it has scheduled another audit of this Task.

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

7. **Personnel Arrested, Sued and/or Served with Civil or Administrative Process** (Task 39; S.A. VI.G.)

a. **Settlement Agreement Requirements**

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

b. **Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. On April 13, 2004, OPD published Special Order 8064, *Reporting Civil Actions Served*. 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. Accordingly, OPD drafted Special Order 8064 as a stop-gap measure to cover this Task until a permanent policy can be drafted and implemented.

As discussed in our last report, on November 23, 2003, OPD published MOR Section 314.28, regarding when officers must report being arrested, sued, or served with civil or administrative process. The IMT has reviewed both policies and determined that

they comply with the Settlement Agreement. OPD, however, has not completed training on either policy.

During the upcoming reporting periods, the IMT will monitor the development of General Order B-4. 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**

As reported last quarter, the development of PIMS appears to be back on track. OPD is continuing its vendor selection process and has made further progress in developing the PIMS policy. OPD continues to work with graduate students from the University of California, Berkeley's School of Public Policy to provide background research. While this Task is not due until 2005, the IMT will continue to closely track interim progress.

**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; the supervision and evaluation of FTOs; the length of time that trainee officers spend in the program; and the methods by which FTOs assess and evaluate trainee officers in field training. The Settlement Agreement sets forth extensive requirements that must be part of this new Field Training Program.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task did not occur during this reporting period. Because there are currently no police academies scheduled, the new FTO program has not been fully implemented or audited. OPD, however, has held three focus group sessions for the members of the last Academy and provided the results to the Training Section and Bureau commanders. Additionally, OPD reports that, to the extent possible, it utilized 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 commends OPD for being ahead of schedule on this Task.

The IMT is currently reviewing 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 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 IMT

commends OPD because it has achieved policy compliance on this Task ahead of schedule.

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 7, 2004, OPD must write performance appraisals individually for each member/employee being evaluated. These performance appraisals must accurately reflect the quality of the member/employee's performance. The Settlement Agreement sets forth criteria for these performance appraisals, including documentation of complaints and patterns of conduct and accountability of PSA lieutenants for the quality of community contacts by their beat officers. The Settlement Agreement further designates the supervisor responsible for completing the performance appraisal and requires OPD to conduct regular audits of the performance appraisal system to ensure compliance with the Settlement Agreement.
  - b. **Status of Compliance and Assessment**

Because of extensions negotiated between the Parties, this Task has not yet become due. However, OPD already has developed a policy incorporating this provision, General Order B-6, *Performance Appraisal*, that complies with the Settlement Agreement. Additionally, during the last several months, OPD has been requiring all

supervisors and managers to complete performance appraisals for their subordinates. This is a practice that, to a large degree, had lapsed within OPD.

The Chief of Police recently ordered that all performance appraisals be completed by April 15, 2004, coinciding with the end of the third reporting period. At the end of the fourth quarter, the IMT will report whether OPD supervisors and commanders complied with the Chief's order and, if they did not, whether they were held accountable for non-compliance.

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

**b. Status of Compliance and Assessment**

The previous compliance deadline for this Task occurred during the first reporting period. OPD did not meet this deadline for either policy development or training. Based on a series of extensions negotiated between the parties, OPD is now required to develop a consistency of discipline policy and discipline matrix by June 15, 2004 and to complete training by July 1, 2004. In response to concerns raised by the IMT regarding OPD's current system for documenting and tracking discipline and corrective action, OPD requested technical assistance from the IMT. The IMT has engaged in extensive dialogue with OPD on this topic and offered a number of suggestions for improving its disciplinary system.

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:
  - (a) Commitment to community policing;
  - (b) Quality of citizen contacts;
  - (c) Number of citizen complaints;
  - (d) Instances of unnecessary use of force; and
  - (e) Support for Departmental integrity measures.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD, however, has not yet published a policy reflecting the requirements of this Settlement Agreement Task.

As we previously reported, OPD drafted a memorandum from the Office of the Chief of Police addressing these Settlement Agreement requirements. The IMT reviewed the memorandum and found that it was too vague to facilitate compliance with the Settlement Agreement. OPD subsequently decided not to publish the memorandum until the OPD policy defining Class I and Class II offenses is published in M-3, *Complaints*

*Against Departmental Personnel or Procedures.* General Order M-3 was initially due December 3, 2003, but OPD did not meet this deadline. As discussed above, based upon a series of extensions negotiated between the Parties, OPD is required to produce M-3 by June 15, 2004. OPD is unable to complete Task 46 until M-3 has been developed.

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 with the opportunity to directly hear community groups' concerns. This section also requires OPD to develop mechanisms to measure community policing activities so that officers are fully recognized for this work. The compliance deadline for the Community Policing section of the Settlement Agreement occurred during the first reporting period.

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

**a. Settlement Agreement Requirements**

- By August 1, 2003, OPD must develop and implement a plan to strengthen its commitment to local communities. The Settlement Agreement sets forth particular requirements the plan must include: OPD must host at least one community meeting per quarter in each Patrol Service Area; each patrol supervisor and officer assigned to a regular beat or geographic area of the City must attend a minimum of one community meeting per quarter in the Area to which he/she is regularly assigned; OPD must develop mechanisms to measure its community policing and problem solving activities; OPD must incorporate positive statistics on community policing and problem solving activities in "Crime-Stop" meetings, along with information on citizen complaints and use of force incidents; and OPD must arrange a meeting within sixty days unless not feasible with representatives of an organization active within Oakland, if the organization communicates a

concern regarding specific police personnel or practices.

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. During this reporting period OPD achieved policy compliance with this Task. On April 11, 2004, OPD published General Order B-7, *Requests for Meetings and Public Appearances*, and on April 15, 2004, it published 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 and determined they comply with the Settlement Agreement. OPD, however, has not yet completed the required training on these policies and thus has not yet achieved training compliance.

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 still is not yet in compliance with the training component of this Task because training has not yet been completed on this policy.

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.

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

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

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task occurred during the first reporting period. OPD obtained and remains in compliance with this Settlement Agreement Task. As the IMT has previously reported, OPD has incorporated this function into the Office of Inspector General (OIG), which has implemented a number of policies and procedures to facilitate the effective performance of its duties under the Settlement Agreement.

The IMT continues to be impressed with the work of the Compliance Unit/OIG. OIG’s diligent staff performed a number of important Tasks this reporting period, including: coordinating a Management Retreat; designing and initiating an assessment of OPD’s acceptance and understanding of the Settlement Agreement; and developing audit plans, criteria, and evaluation tools. OIG staff also researched police discipline policies; participated in several working group meetings; conducted weekly Settlement Agreement

meetings with the Chief; and continued to facilitate monthly meetings with the Parties and IMT.

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

**a. Settlement Agreement Requirements**

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

**b. Status of Compliance and Assessment**

The compliance deadline for this Task has not yet passed. OPD, however, 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, OIG staff have already begun auditing OPD's compliance with the Settlement Agreement's provisions and have completed additional professional audit training. Additionally, OIG has developed a series of audit plans, criteria, and evaluation tools along with a schedule for conducting audits. Currently, OIG is conducting an assessment of OPD's acceptance and understanding of the Settlement Agreement.

During upcoming quarters, the IMT will report on the nature and quality of OIG's audits.

**IV. CONCLUSION**

OPD has made significant progress in policy development since the entry of the Settlement Agreement. Its attainment of policy compliance with fifteen of the eighteen Tasks that have become due reflects substantial time, deliberation, and commitment on the part of members and employees throughout the department. To reap the benefits of

its efforts to date, OPD must work to ensure that its new policies and procedures become part of the fabric of the department and of each officer's daily police work. In order to achieve this goal, in addition to providing its officers with adequate training, supervision, and support, OPD must demonstrate a greater willingness than the IMT has seen to date to hold its officers and commanders accountable when they do not live up to the standards that OPD has set. Failure to do so will lead to a lack of credibility in the reform process and stymie OPD's ability to implement the new policies and procedures effectively.