

Fifty-Third Report *of the Independent Monitor for the Oakland Police Department*

Introduction

This is our fifty-third status report on the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California under the direction of Judge William H. Orrick. I was appointed in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003.

This report covers our site visit of April 2018; and describes our recent assessments of NSA Tasks 20, 34, 41, and 45. As we have noted previously, following the Court's Order of May 21, 2015, in our monthly reports, we devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Increasing Technical Assistance

Each month, our Team conducts visits to Oakland that include both compliance assessments and technical assistance. During our visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department.

Within the last several months, we have provided technical assistance to OPD officials in the areas of IAD investigation quality (Task 5); stop data and related issues (Task 34); risk management and the ongoing maintenance issues of the Performance Reporting Information Metrics Environment (PRIME) system (Task 41); and several Department policies and procedures, including policies related to PRIME, officer discipline, handcuffing, and the use of electronic control weapons.

As noted previously, we are also closely following the Department's progress with its review and revision of all policies and procedures. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys are reviewing revisions of all NSA-related policies.

Building Internal Capacity at OPD

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. We review OIG's now-quarterly progress reports, which are a valuable resource and assist us in assessing compliance with NSA requirements.

Focused Task Assessments

Task 20: Span of Control

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
- 3. If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
- 4. If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Relevant Policy:

Three Departmental policies incorporate the requirements of Task 20: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Departmental General Order D-13.1, *Assignment to Acting Sergeant of Police*, issued on May 14, 2014. (The publication of DGO D-13.1 cancelled Special Order 8435, which previously governed the selection process of acting sergeants.)

Commentary:

To assess these requirements for this report, we reviewed spreadsheets prepared by the Department for the months of January, February, and March 2018 that, by date, note which type of sergeant supervised each applicable squad – a primary sergeant, relief sergeant, acting sergeant, other sergeant (one working overtime), or none. (The Department refers to unsupervised squads as “open.”) We calculated per squad the compliance percentages for this

subtask during this reporting period. Each of the 52 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

OPD continues to be in compliance with these important requirements. We are encouraged that the Department has institutionalized the sound practices of tracking how each squad is supervised each day; planning, when possible, for expected absences; and thoughtfully considering how to fill in for personnel who are absent unexpectedly.

Task 26: Force Review Board (FRB)

Requirements:

OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was originally published on February 17, 2006, and revised on December 21, 2015.

Commentary:

OPD Force Review Boards are a vital component of OPD's ongoing effort to limit officers' use of force. These boards, consisting of three command-level staff, carefully examine the deployment and application investigation of Level 2 uses of force.¹ OPD achieved compliance with this Task during the nineteenth reporting period; however, we continue to review and report on the compliance status of this Task due to the serious nature of officers' use of force.

OPD conducted 19 Force Review Boards during 2017; two thus far in 2018; OPD held the most recent during our March site visit. (We reviewed it in our last status report.)

OPD force data for the period 2012-2017 indicates a positive trend – use of force incidents for that period decreasing by 75%. Recent 2018 data demonstrates a continuation of this trend. This decrease; however, is represented primarily within the Level 4 category, which decreased from 225 to 119 (47%) uses of force.² Level 2 force also decreased - from 10 to eight. However, Level 1 force increased from one to four – to clarify, this data represents the discharge of weapons by four officers during one event.

OPD's progress is commendable; however, the significant reduction of Level 4 force has prompted our further verification via a review of specified categories of arrest and use of force reports. The results of our review will be included in a future report.

OPD remains in compliance with this Task.

¹ According to OPD, Level 2 uses of force include: "1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person."

² OPD Level 4 uses of force include: "1) The intentional pointing of a firearm at a person. 2) A Weaponless Defense Technique is applied to a Vulnerable Area, excluding strikes (e.g. Hair grab, pressure to mastoid or jaw line; and shoulder muscle grab). 3) An on-duty firearm discharge to dispatch an injured animal; or 4) A weaponless Defense Technique Control Hold is applied: a. Escort (elbow); b. Twist lock; c. Arm-bar; or d. Bent-wrist. 5) A canine deployment in which a suspect is located by the canine but no bite occurs.

Task 30: Executive Force Review Board (EFRB)

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was published on February 17, 2006, and revised on December 21, 2015.

Commentary:

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, are convened as required and consistent with policy. The EFRB conducts thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths – which include presentations of the investigations and findings by both the Criminal Investigation Division (CID) and the Internal Affairs Division (IAD).

OPD achieved compliance with this Task during the nineteenth reporting period; however, given the seriousness of any use of force – particularly an officer involved shooting or an in-custody death – we continue to monitor and report on this Task and have observed continued progress. Consistent with our commentary in Task 26 above, the overall use of force by officers has significantly decreased from an average of nine each year. More recently, these events have been infrequent – i.e., OPD recorded no officer-involved shooting events in 2016, one in 2017, and one in March 2018. The March 2018 event involved the discharge of weapons by four officers and is presently under investigation.

OPD remains in compliance with this Task.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
 - a. *Time, date and location;*
 - b. *Identification of the initiating member or employee commencing after the first year of data collection;*
 - c. *Reason for stop;*
 - d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
 - e. *Outcome of stop (arrest, no arrest);*
 - f. *Whether a search was conducted, and outcome of search;*
 - g. *Offense categories (felony, misdemeanor or infraction).*
2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*
3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to “Promoting Cooperative Strategies to Prevent Racial Profiling.”*

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

Department policies relevant to Task 34 include: General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*; Report Writing Manual (RWM) Inserts R-2, N-1, and N-2; Special Order 9042, *New Procedures Regarding Stop Data Collection* (published June 2010); and Special Order 9101, *Revised Stop Data Collection Procedures* (published November 2012).

Commentary:

OPD collects and stores data described in Task 34.1 (a.-g.). The data has been sufficiently detailed, accurate, and voluminous for OPD to determine the lawful basis for the stops and further to identify indicators of disparate treatment since April 2013. OPD has, however, continued to revise collection and analyses processes in order to better assess and address indicators of disparate treatment among the identified population groups.

The monthly Risk Management Meetings (RMMs), which we have described in previous reports, have become integral to the process and a catalyst for changes in operational initiatives and improvements. We observe these meetings during our monthly site visits.

The RMMs include the presentation of a series of comparative data tables depicting stops, searches, recoveries, and related activities for described population groups (African American, Asian, Hispanic, White, and Other). This allows for the identification of a variance in OPD discretionary stops among the groups – i.e., any variance in searches made and search recovery rates. The tables also allow for a comparison of the stop activities among the police squads and individual officers. Over time, these examinations have resulted in notable improvements in the data collection, police officers' activities, and the review process itself – i.e., accurate recording of and an increase in search recovery rates; and most recently, a change in format that provides for a review of an Area's stop data on a bimonthly schedule. However, we continue to have concerns with the process, which we note below.

The April RMM, which was the second meeting using a modified format during which Area Commanders were provided time to explain his/her Area's data, outline Area challenges, and describe initiatives and directives regarding crime control and other strategies. Each Area commander exhibited a thorough understanding of his/her Area demographics, crime issues, and specific community interests; and in addition, presented their individualized, specific crime control and community interactive strategies.

This modified format included discussions of data illustrated in newly designed tables. These tables set forth comparative data, which provide indicators of positive activities; however, the tables possibly indicate disparate treatment or bias. For example, two Areas had data indicating relatively equal search recovery rates among the population groups, and sound decision-making by officers. Despite this, three high performing squads recorded search recovery rates of 14% and 8%, and several individual officers had recovery rates of 0%. At the meeting, personnel appropriately assigned the low search recovery rates and other indicators were for follow-up.

The new meeting format is a positive development, on the whole; however, we continue to assess the value of the revised tables, as well as the absence of the illustrative tables regarding stop activities relating to probation/parole stops and searches; and weapons searches (frisks). These omissions limit fact-based, focused discussion of these issues, which may prove to be detrimental.

OPD states that the goal of the Risk Management Meeting review of stop data is “to reduce the risk of negative disparate impact on the community by enhancing precision policing, understanding racial disparities and evaluating strategy, policy and individual performance.” To that end, OPD initiated an intelligence-led, precision-based policing model designed to reduce the number of stops made by officers. This reduces the “footprint” of policing in the community, and is therefore intended to improve police-community relations. Nevertheless, the continued robust assessment of the stop data must continue to identify indicators of disparate treatment within the reduced database. Moreover, OPD must strengthen its response to identified indicators of disparate treatment.

The Department's lack of a consistent intervention strategy to address identified data disparities, abnormalities, and/or possible bias at the Area, squad, and individual officer levels remains an issue. Generalized reviews of the data with findings that the stops were "consistent with expectations or policy" provide insufficient explanation of causation within a squad or by an individual officer. We directly addressed this shortcoming with OPD staff during our April site visit; OPD provided assurances that this concern will be addressed as part of its ongoing efforts to improve police effectiveness via its review of data at RMMs and ongoing operational initiatives.

OPD continues its relationship with Stanford University and the decision to include the implementation of the 50 recommendations made by Dr. Eberhardt's staff in the 2016 study. To date, OPD has fully implemented 37 of the 50 recommendations; the remainder are in various stages of progress.

OPD continues to make progress with Task 34. The introduction of the intelligence-based stop and precision-based policing model has focused OPD activities and decreased the footprint of stops across racial lines. Searches are based on a high degree of reasonable suspicion or probable cause, depending on the type of search. Search recovery rates, which serve as the test to determine the validity of the search, had increased from below 10% to often exceeding 50%; however, the legalization of marijuana has contributed to a reduction of this rate.

The revised RMM format providing for bimonthly reviews will result in a more timely review of stop data for indicators of disparate treatment, and allow for in-depth analysis to ascertain whether the data disparities are or are not based on racial motivation. The need to closely examine stop data and address disparities indicative of bias and/or disparate treatment – within the Area under review, within squads, or by individual officers remains at issue. However, OPD has provided assurances this will be addressed.

While OPD continues to advance its efforts to comply with requirements of this Task; we have previously reported that the below-described specific issues remain incomplete; accordingly, we provide the following assessment, and will continue to monitor OPD's progress on these issues until the Department achieves full compliance.

Further, we will look for a clear and unambiguous commitment to the provisions of this Task to ensure that the protocols that have been undertaken will be institutionalized and remain an integral, sustainable practice.

- Implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels;
- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. The City anticipates that this will be achieved with implementation of PRIME 2.0, though at this time it is unclear when that version of the risk management system will be established;
- Implementation of the applicable 50 recommendations contained in the 2016 Stanford University report. This requirement has been incorporated as an objective by OPD. We will continue to report on the progress of implementation.

Task 41: Use of Personnel Assessment System (PAS) and Risk Management

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole.

The policy shall include the following elements:

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
2. *The Department shall retain all PAS data for at least five (5) years.*
3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
4. *PAS, the PAS data, and reports are confidential and not public information.*
5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*

7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings

involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013. Since our last report, the Department has begun to address General Order D-17 as part of Department's ongoing policy review and revision program. The revised version of the relevant policy is currently under review.

Commentary:

During our April site visit, we observed the Department's Risk Management Meeting, which reflected the new protocol in which several Areas and/or specialized units are reviewed. In this case, the meeting covered the Ceasefire unit and Areas 4 and 5. We noted the continued refinement of the data presentation, the improving underlying analysis, and the preparation by the Area Commanders.

The data presentation and discussion at the meeting covered stop data (Task 34) and key Task 40 data categories including use of force and complaints, although the meeting's emphasis was on the review of stop data. The force and complaint data show considerable variation across the Areas and Ceasefire, and across squads and individual officers within the Areas. One factor limiting analysis of these is the short time period covered by the meeting data. The three-month period makes it difficult to focus on trends and patterns. Whether the data show improvement or not is difficult or impossible to understand given the short timeframe. For the most part, the analysis must be retrospective and cannot be driven by some particular goal. That means that comparisons over time or across units and individuals can be important drivers of decision-making. Continuous tracking and review of data on complaints and uses of force, and the other data requirements noted in Task 40, is critical to understanding and managing risk under the NSA.

As we noted in our previous report, difficulties in the transition from PAS to PRIME made it temporarily necessary to shift focus from analysis of information to the technical aspects of building the database. The period of this transition has taken longer than expected and is continuing. A full understanding of compliance with Tasks 40 and 41 and the steps required as PRIME advances will benefit from a close review of the NSA Tasks and a return to the data collection, analysis, and reporting that preceded the development of the new database. The process of addressing these data will also provide insight and direction for the PRIME rebuild that is being initiated. We expect to review these data during our next site visit.

Along with a return to more focused review of risk-related data, it will also be valuable to reexamine the detailed requirements of Task 41. Those include semiannual meetings between the Department and the Monitor to assess the risk management process. The analysis of the data noted above will also be useful for that process. Meeting preparation should also involve a comprehensive examination of the PAS review process from the selection of candidates for review, to the material compiled for review, and to the consistency of decisions up the chain of command regarding monitoring and supervision. A review of supervisors' reports on the progress of officers under monitoring or supervision should also be included.

The requirements in Task 40 for the collection of data are substantial and are matched by requirements in Task 41 regarding the analysis and use of that data. The prescribed use of the data, in turn, sets expectations for the role of the PAS Administration Unit and its leadership, as well as, more generally, for the Department. At the present time, the PAS Administration Unit has limited responsibility for data analysis outside of what is needed to guide the PAS review process. That restricted role and its limited expectations are reflected in the Risk Management Meeting process where the PAS Administration Unit is rarely consulted. Fulfilling the requirements of Task 41 and advancing progress on risk assessment and risk management may be better served if those responsibilities were more closely linked to the management of the PAS Administration Unit where access to data and greater capacity for analysis should reside.

The process of risk assessment suggests a broad assessment and analysis process may be useful. For example, the ongoing reductions in uses of force, suggest that there is a need to understand the underlying causes of current levels, including the appropriateness of documentation. Such analyses are a critical part of assessing and managing risk, and they increase the value of the data being collected.

Beyond even that, however, it is clear that OPD is advancing quickly in its collection of data relevant to critical Departmental functions. Those data can now provide valuable insight. To maximize the benefits of these developments, it is appropriate to concentrate on how best to integrate analysis into daily operations.

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

- 1. The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
- 2. The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
- 3. All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*

4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Relevant Policy:

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 24, 2013); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (published July 17, 2008); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published March 14, 2014). Several of these policies are currently being revised.

Commentary:

Task 45.2 requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we reviewed the 24 cases that contained at least one sustained finding that were approved in December 2017, and January and February 2018. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

The NSA also requires that discipline be imposed in a manner that is fair and consistent. To this end, the Department developed a Discipline Matrix, which was adopted on September 2, 2010 and was in effect until a new Discipline Matrix was approved on March 14, 2014. This subsequent Matrix applies to violations after that date.

As noted above, we reviewed all 24 cases with sustained findings that were approved between December 1, 2017 and February 28, 2018. Six cases involved the failure to accept or refer complaints. One case involved the failure to care for Department property, while another dealt with damage to a citizen's property. Two cases stemmed from allegations of failing to take a report or the failure to complete a proper investigation. In another case, improper demeanor was sustained. Two cases involved the failure to properly exercise supervisory duties. In one of these cases, demotion was recommended. Three other cases involved various performance of duty allegations, and eight cases involved preventable motor vehicle accidents.

In each case, unless otherwise documented in writing, the proposed discipline fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed.

During December 2017, and January and February 2018, OPD held three *Skelly* hearings for IAD cases involving employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the *Skelly* reports, and found that they contained adequate justification for the results documented. One case involved a demeanor allegation. The proposed three-day suspension was reduced to two days, with the concurrence of the Chief. The remaining two cases stemmed from the DUI arrests of employees – one a sworn officer and one a civilian employee. The sworn officer failed to show for his hearing, and after being contacted, he waived his right to the hearing and accepted the proposed penalty of a 15-day suspension. The civilian employee’s proposed 10-day suspension was upheld, again with the concurrence of the Chief. The reports were generally well-written and followed the established format.

We reviewed the training records that OPD provided, and confirmed that all *Skelly* hearing officers received the approved *Skelly* Officer Training in January 2016. Additionally, all active *Skelly* officers received refresher training on April 26, 2017. No additional training was provided during this reporting period, although the Department intends to offer additional *Skelly* training to all command staff after it completes promotions in June.

OPD received one arbitration decision during the period under review. The arbitrator upheld the proposed termination of the officer, stemming from an incident in December, 2015. Based on the documentation, it appeared that the City prepared and presented its case in an exemplary manner.

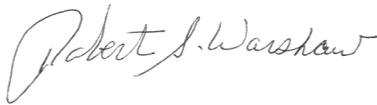
OPD remains in partial compliance with Task 45.

Conclusion

During our April site visit, there was little news of progress on the reengineering of PRIME in the wake of all of the problems that have been described in our earlier reports. Progress will, of course, come with the start of work under the new contract for the reengineering of the system. PRIME had been described as in a holding pattern, in which only necessary repairs would be made. However, protracted delays due to contractual problems, that are beyond the Department's control, continue unabated at the time of drafting this report. The Department has expressed great hope for resolving these issues since the alternative in case of failure to resolve the issues would require a return to the drawing board. In the meantime, the Department has decided to at least move forward with some advances since completion of reengineering remains at least one year away.

This does not mean, though, that all progress has stalled, particularly in areas where there is some degree of local agency control. The Department and the City Information Technology Department are moving forward with work on component parts of what will become PRIME 2.0. Most recently, progress has been made on the purchase of new Body-Worn Camera equipment and storage, which will support the inclusion of video in PRIME. Likewise, work on the OPD personnel database, now known as the OPD Human Resource Management System, is progressing. The remaining components for the new version of Prime, the risk management dashboards, and the incorporation of training data are moving along also, albeit, more slowly than desired.

We will continue to monitor these developments closely.

A handwritten signature in cursive script that reads "Robert S. Warshaw".

Chief (Ret.) Robert S. Warshaw
Monitor