

# Thirtieth Report *of the Independent Monitor for the Oakland Police Department*

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## Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in 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.<sup>1</sup> After 12 years of monitoring OPD's progress with the reforms, it is time for us to devote special attention to the most problematic component parts of the Tasks that are not yet in full compliance or have not been in compliance for at least one year.

To do this, per the Court Order, we have increased the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. We provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that are currently in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) Our assessments of compliance for Tasks 5 and 45 take into account the degree to which the City continues to implement the recommendations listed in the April 16, 2015 report on police discipline and arbitration by the Court-Appointed Investigator. In addition, per the Court's Order, we also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

In this report, we describe our recent assessments of Tasks 5 and 34. As noted previously, because we now report on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Below is the current compliance status of the Tasks listed in the May 21, 2015 Court Order.

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<sup>1</sup> United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Modifying Monitoring Plan, dated May 21, 2015.

<b>Compliance Status of Tasks Listed in the May 21, 2015 Court Order</b>		
<b>Task</b>	<b>Description</b>	<b>Compliance Status</b>
5	Complaint Procedures for IAD	As of the twenty-first reporting period (covering October through December 2014), in partial compliance.
20	Span of Control	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
26	Force Review Board (FRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
34	Vehicle Stops, Field Investigation, and Detentions	In partial compliance since the fourth reporting period (covering July through September 2010).
41	Use of Personnel Assessment System (PAS)	In compliance since the twentieth reporting period (covering July through September 2014). Now considered inactive. Not assessed in this report.
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance. Not assessed in this report.

### *Increasing Technical Assistance*

Per the May 21, 2015 Court Order, “The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court’s December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator’s April 16, 2015 report.” Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance. As in the past, 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 few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); Executive Force Review Board (Task 30); stop data (Task 34); risk management (Task 41); and several key Department policies and procedures. We are also closely following the Department’s adoption of Lexipol, the online policy platform and occasionally observe meetings of OPD’s Lexipol working group. To ensure continuing compliance with the NSA, the Monitoring Team and Plaintiffs’ attorneys will review and re-approve all policies related to all active and inactive Tasks.

### *Building Internal Capacity at OPD*

Per the May 21, 2015 Court Order, “The Monitor will also help Defendants institutionalize an internal system of monitoring by the Office of Inspector General or other City or Department entity, along with internal mechanisms for corrective action.”

As reported previously, we continue to work closely with the Office of Inspector General’s (OIG) lieutenant and his 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. With two new police auditors, added late last year, OIG has significantly expanded the unit’s staffing and, more importantly, signaled a commitment by the Department to self-reflection and analysis.

Each month, we review OIG’s progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department’s continued implementation of the NSA reforms. OIG continues to expand its auditing role within the Department and plans to assess more NSA-related subject areas that it has not reviewed in the past.

## *Focused Task Assessments*

### Task 5: Complaint Procedures for IAD

#### Requirements:

1. *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene. If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint. In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses. This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint. The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*
2. *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest. The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD. All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*
3. *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible. OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*
4. *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*
5. *OPD shall resolve each allegation in a complaint investigation using the “preponderance of the evidence” standard. Each allegation shall be resolved by making one of the following dispositions: Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure. The Department shall use the following criteria for determining the appropriate disposition:*
  - a. *Unfounded: The investigation disclosed sufficient evidence to determine*

*that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*

- b. Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*
  - c. Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*
  - d. Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*
  - e. Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*
  - f. To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:
    - 1) Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*
    - 2) Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*
    - 3) Subject not employed by OPD at the time of the incident; or*
    - 4) If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*
    - 5) Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*
    - 6) Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).**
  - g. Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*
- 6. The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*

- a. *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
  - b. *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
7. *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

**Relevant Policy:**

There are six Departmental policies that incorporate the requirements of Task 5: Department General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 22, 2013); Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents* (published April 6, 2007); Training Bulletin V-T.1, *Internal Investigation Procedure Manual* (published June 1, 2006); Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility* (published June 24, 2005); Special Order 8565, *Complaints Against Department Personnel* (published May 11, 2007); and IAD Policy & Procedures 05-02, *IAD Investigation Process* (published December 6, 2005). In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

**Commentary:**

We found OPD in Phase 2 compliance with Task 5 from the fourteenth through the eighteenth reporting periods. (In each of the prior reporting periods, we had found the Department in partial compliance with Task 5.) During the nineteenth reporting period, we placed Task 5 in deferred compliance based on a then-ongoing Court-Ordered investigation of the City's discipline and arbitration process. In our twenty-first report, noting that the investigation had been completed, we placed Task 5 in partial compliance. Although we found the Task 5 cases we reviewed at that time to be in compliance, we noted then that the Court had ordered the City to "work to eliminate the problems identified" in the investigator's report.

Task 5 consists of several subtasks, briefly described below. Based on OPD's compliance history with many of the subtasks, not all are being actively monitored at this time.

**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene. **Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay must be documented. **Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint. **Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander. **Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD.

To assess compliance with Task 5.1 through and including Task 5.5, we review the Daily Incident Logs (DILs) prepared by the Communications Division and forwarded to IAD each business day. The DIL form has been modified several times during our tenure to elicit "forced responses" that gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD's ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years now. Consequently, we no longer actively assess OPD's compliance with these subtasks, but we continue to receive daily both DILs and Daily Complaint Referral Logs (used to document when Information Business Cards (IBCs) are provided to citizens in lieu of a complaint forms). We spot-check these forms regularly to verify that the quality of their completion has not diminished.

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This subtask has not been actively monitored since December 2014, but for our twenty-eighth report, we specifically asked for and reviewed cases applicable to this requirement. That review verified continued compliance with Task 5.6 and related Task 5.12.

**Task 5.12** requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Under current policy, the Communications Division must record on the DILs complaints that are received and/or handled by on-duty supervisors, and the DILs is forwarded daily to IAD.

**Task 5.15** through **Task 5.19**, and **Task 5.21**, collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed 15 IAD cases that were approved in December 2015.

This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.<sup>2</sup>

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<sup>2</sup> Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

Together, **Tasks 5.15** and **Task 5.16** require that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements.

In all of the cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in reaching a proper conclusion. In four cases, follow-up interviews of the complainants were conducted in an attempt to seek clarification or resolve inconsistencies. This includes one case where the complainant contacted IAD multiple times with what he believed was additional relevant information.

Credibility assessments were made in eight of the 15 cases. Six of the remaining seven cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In the other case, IAD Intake administratively closed all of the allegations. No further investigation was warranted, also negating the need to assess the credibility of those involved. In six cases, complainants were deemed not credible. Three involved allegations of excessive force; two involved allegations of discourtesy, and one involved an allegation of failing to document a motor vehicle accident. In four of these cases, PDRD recordings refuted the allegations. In another, a witness countered the complainant's assertions, and in the remaining case – an allegation that an officer improperly towed a vehicle – there were no records of a towed vehicle owned by the complainant or any officer contact with the complainant.

In 11 of the cases we reviewed, OPD successfully resolved inconsistent statements. In nine of these cases, PDRD recordings were available and assisted in the determination. Three cases were resolved with at least one finding of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts. In the remaining case, IAD Intake administratively closed all of the allegations, negating the need for further investigative effort.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). OPD has a sustained history of 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 15 cases we reviewed.

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 50 allegations that received dispositions as follows: 16 exonerated; 24 unfounded; four not sustained; and six administratively closed. (None were sustained.)

We did not disagree with the findings – or the investigative steps to reach them – in any of the cases we reviewed for this report. This is an improvement over our last two reviews of Task 5, in which we found significant issues with one or two cases during each review.



**Task 5.20** requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed. A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. Traditionally, as part of our review of this Task, we also reviewed cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304. While we are no longer actively assessing this subtask, we note that filed and tolling cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and when available, we attend these meetings.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or her designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Six of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In five of these cases, the availability of PDRD video was the primary reason interviews were unnecessary.

We note that for this review, all cases comported with the requirements of Task 5. We are encouraged by this development, particularly in comparison to our more recent reviews. We have been encouraging OPD to pay particular attention to its case review processes, as some of the deficiencies noted in our recent reviews should have been caught with a thorough review of the finished cases. No such issues were discovered in this review.

## 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 published February 17, 2006, and most recently revised on December 21, 2015.

**Commentary:**

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.<sup>3</sup>

OPD is in compliance with this Task; however, due to the importance of these board reviews we continued to observe and assess board reviews conducted during our monthly site visits.

OPD conducted seven boards during calendar year 2015. Four of these incidents involving 10 individual uses of force were reviewed during the fourth quarter.

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<sup>3</sup> Level 2 Use of Force includes, 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.

The board conducted four reviews thus far in 2016, all of which were governed by the newly revised General Order cited above. The revised policy requires the board to examine “whether any involved Department members’ conduct or actions leading up to the use of force aggravated the situation or made a use of force more likely to occur...whether any involved Department members’ actions leading up to the use of force created circumstances that lead to, or contributed to, the use of force...and the enumeration of other available options that could or should have been considered.”

We observed the January review. As reported in our previous report, the board critically reviewed this event and noted a discrepancy, which had not been appropriately addressed by IAD and directed IAD to conduct additional follow-up to resolve the discrepancy. This issue was appropriately addressed during a follow-up review in February.

### 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 February 17, 2006, and most recently revised on December 21, 2015.

### **Commentary:**

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.<sup>4</sup> OPD is in compliance with this Task; however, due to the seriousness of these events, we continue to observe and assess EFRB activities during our monthly site visits.<sup>5</sup>

The board conducted four reviews during calendar year 2015. We concurred with the board findings in each case.

The Board conducted two reviews in February of this year, which were governed by the newly revised General Order cited above. The first, which we were present to observe, was a fatal officer-involved shooting. Both CID and IAD made comprehensive and detailed presentations of their individual investigations of this event. The board's response was probing and equally detailed. However, while generally approving of the investigations and findings, the board found the need for further information before finalizing its findings. A follow-up board will be convened to receive this information when available. We will observe the follow-up board and report on its findings in a future report.

## **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);*

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<sup>4</sup> Level I Use of Force events include: 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

The EFRB consists of three senior commanders as voting members. In addition, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office.

A Level 1 use of force may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD present the results of their respective investigations to an EFRB

<sup>5</sup> Compliance assessments include a review of the full case files and our regular observations of the boards.

- 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:**

As has been the case for the past several months, we continue to review and report on OPD’s progress with the requirements of this Task, which requires the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indications of bias-based policing or racial profiling. We recognize the progress OPD has made with the development of a process that provides for the collection of data for subsequent analysis. This has been accomplished without the benefit of developed models for reference and therefore essentially invented by capable OPD in-house staff. This process has and continues to include an ongoing assessment of its effectiveness and the identification of areas where improvement or adjustment may be warranted.

Two recently identified issues requiring adjustment involve the appropriate documentation of information relating to multiple person stops and the recovery of contraband or evidence. OPD has initiated corrective measures, which include training and revisions to the data entry form. Training is ongoing. A newly revised data entry form, which addresses the identified issues, is expected to be operational implemented in April of this year.

OPD’s collection of accurate data for more than two years has yielded sufficient datasets for a variety of analyses, including but not limited to the identification of statistical indicators of *possible* disparate treatment at the department, area, squad and individual officer levels. These indicators provide an opportunity for OPD to further examine activities to determine whether training or other intervention may be warranted at one or more of the various department levels.

OPD’s monthly Risk Management Meetings – during which OPD commanders are tasked with the identification of anomalies and/or variances in stop data between Citywide and their particular Area data – have proven beneficial. Probative and thoughtful discussions regarding

variances in stops and subsequent officer activities relating to population groups and among squads as well as among squad commanders have become the norm; however an increased focus on individual officers whose data is indicative or *possible* disparate treatment is warranted. Probation/parole stop outcomes – and especially high and/or in particular, low search recovery rates – also continue to be of particular interest. As previously reported, the focus on recovery rates, in particular, has proven fruitful as demonstrated by an ever-increasing search recovery rates illustrated below.

While it is clear that the stop data in and of itself, is not dispositive of disparate treatment among the population groups, it is also clear that the data may be an indicator of *possible* disparate treatment warranting further, careful analysis. Accordingly, the datasets illustrated below should be viewed as an identification of areas that may require further analysis.

### CITYWIDE STOPS

Tables One and Two illustrate Citywide vehicle and pedestrian stop data.

<b>TABLE ONE<sup>6</sup></b>						
<b>Vehicle Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Stops%</b>		<b>Searches<sup>7</sup></b>	<b>Recoveries</b>	<b>Arrests</b>
<b>Afr. American</b>	18,713	57%		24%	50%	9%
<b>Asian</b>	2,206	7%		8%	72%	3%
<b>Hispanic</b>	6,825	21%		14%	58%	6%
<b>White</b>	3,760	12%		4%	54%	4%
<b>Other</b>	1,059	3%		8%	47%	4%
<b>Total</b>	<b>32,563</b>	<b>100%</b>		<b>18%</b>	<b>52%</b>	<b>7%</b>

<b>TABLE TWO<sup>8</sup></b>						
<b>Pedestrian Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Stops%</b>		<b>Searches<sup>9</sup></b>	<b>Recoveries</b>	<b>Arrests</b>
<b>Afr. American</b>	4,363	68%		41%	44%	28%
<b>Asian</b>	309	5%		28%	52%	38%
<b>Hispanic</b>	973	15%		38%	47%	28%
<b>White</b>	650	10%		19%	50%	25%
<b>Other</b>	128	2%		22%	60%	24%
<b>Total</b>	<b>6,423</b>	<b>100%</b>		<b>37%</b>	<b>45%</b>	<b>28%</b>

<sup>6</sup> This dataset includes activity for the period of January 17, 2015 through January 22, 2016.

<sup>7</sup> Searches incident to arrest, weapons and inventory searches excluded.

<sup>8</sup> This dataset includes activity for the period of January 17, 2015 through January 22, 2016.

<sup>9</sup> Searches incident to arrest, weapons and inventory searches excluded.

As illustrated in the above tables, OPD officers stopped and interacted with a total of 38,986 individuals during the specified period of time. While this indicates that OPD officers had voluminous discretionary interactions with members of the public, it is tempered with the statistical fact that officers assigned field duties stop, on average, two individuals per working week.<sup>10</sup> Nevertheless, a careful review of the reasons for and the results of stops can provide indicators of whether or not bias may be a factor in a squad's performance or an officer's decision making. OPD is now positioned to conduct these analyses.

### MONTHLY REVIEW OF SELECTED AREA

During our February site visit, we once again attended the monthly Risk Management Meeting (RMM), during which stop data for the selected Area was reviewed. This was the third successive RMM during which the Area Commander had carefully reviewed the data and understood how the various Area crime control strategies affected or could affect it. The commander also noted and credited Area command staff for their continued efforts to improve officers' interaction with various population groups.

#### *Vehicle and Pedestrian Stops*

OPD officers assigned to the Area under review during the January RMM made 5,204 vehicle stops and 909 *pedestrian stops*, as illustrated in Tables Three and Four. For *vehicle stops*, the racial/ethnic percentages range from a high of 58% for African Americans, to a low of 2% for Other. Similarly for *pedestrian stops*, the percentages also range from a high of 67% for African Americans, to a low of 2% for Other. Citywide data indicates that 57% of the vehicle stops and 68% of the pedestrian stops involved African Americans.

<b>TABLE THREE<sup>11</sup></b>						
<b>Area Vehicle Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Stops%</b>		<b>Searches<sup>12</sup></b>	<b>Recoveries</b>	<b>Arrests</b>
<b>African American</b>	3,020	58%		22%	49%	8%
<b>Asian</b>	228	4%		6%	85%	2%
<b>Hispanic</b>	1,373	26%		10%	62%	5%
<b>White</b>	454	9%		5%	55%	8%
<b>Other</b>	129	2%		6%	75%	4%
<b>Total</b>	<b>5,204</b>	<b>100%</b>		<b>16%</b>	<b>52%</b>	<b>7%</b>

<sup>10</sup> This is the *average* based on the total number of stops divided by the number of weeks and the number of officers assigned field duties.

<sup>11</sup> This dataset includes activity for the period of January 17, 2015 through January 22, 2016.

<sup>12</sup> Searches incident to arrest, weapons and inventory searches excluded.

<b>TABLE FOUR<sup>13</sup></b>						
<b>Area Pedestrian Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Stops%</b>		<b>Searches<sup>14</sup></b>	<b>Recoveries</b>	<b>Arrests</b>
<b>African American</b>	611	67%		29%	43%	21%
<b>Asian</b>	29	3%		17%	33%	28%
<b>Hispanic</b>	158	17%		24%	54%	24%
<b>White</b>	91	10%		16%	56%	29%
<b>Other</b>	20	2%		12%	50%	15%
<b>Total</b>	<b>909</b>	<b>100%</b>		<b>26%</b>	<b>45%</b>	<b>22%</b>

*Searches-Recoveries*

Data for the Area reviewed for this report illustrated in the above tables indicate variances among the population groups for vehicle searches of 22% (African Americans) to 5% (White) and for pedestrian searches of 29% (African Americans) to 12% (Other) and overall recovery rates of 52% and 45% respectively. These recovery rates, though not as robust as those found in the previous Area reviewed, are favorable and consistent with Citywide recovery rates.<sup>15</sup>

*Squad Level Searches and Recoveries*

A comparative review of squad search/recovery data within the Area reviewed is also demonstrative of progress. The average vehicle-related search rate of 16% in this Area is relatively low with the highest rates represented in the CRT squad at 28% and two regular squads at 18%. The recovery rates for these three squads are 68%, 56%, and 46%. The average recovery rate for all squads is a remarkable 52%.

The percentage of pedestrian-related searches is generally higher than searches related to vehicle stops, given that these stops are often made on the basis of reasonable suspicion or probable cause; accordingly, pedestrian searches in this Area average 26%. The high search rates of 36% and 40% resulted in recoveries of 38% and 41% respectively.

These recovery rates are, once again, indicators that OPD’s focus on stops and searches – including supervision, training, and counseling – is proving beneficial.

<sup>13</sup> This dataset includes activity for the period of January 17, 2015 through January 22, 2016.

<sup>14</sup> Searches incident to arrest, weapons and inventory searches excluded.

<sup>15</sup> The recovery rates for vehicle and pedestrian searches were reported at 72% and 63% respectively for the Area reviewed in our last report



*Pat-Down (Frisks) Searches*

Tables Five and Six illustrate the pat-down searches conducted Citywide and within the Area under review for this report. Citywide recoveries are at 27% and 21%, respectively, for vehicle and pedestrian pat-downs. Area recoveries are at 28% and 15%, respectively, for vehicle and pedestrian pat-downs.

<b>TABLE FIVE – CITYWIDE<sup>16</sup></b>				
<b>Citywide</b>	<b>Pat-downs (frisks) Vehicle Stops</b>		<b>Pat-downs (frisks) Pedestrian Stops</b>	
<b>Race</b>	<b>Searches</b>	<b>Recoveries</b>	<b>Searches</b>	<b>Recoveries</b>
African American	754	25%	489	20%
Asian	23	39%	38	32%
Hispanic	229	28%	125	21%
White	55	29%	56	23%
Other	15	33%	12	42%
<b>Total</b>	<b>1,076</b>	<b>27%</b>	<b>720</b>	<b>21%</b>

<b>TABLE SIX– AREA<sup>17</sup></b>				
<b>Area</b>	<b>Pat-down (frisks) Vehicle Stops</b>		<b>Pat-downs (frisks) Pedestrian Stops</b>	
<b>Race</b>	<b>Searches</b>	<b>Recoveries</b>	<b>Searches</b>	<b>Recoveries</b>
African American	112	28%	73	16%
Asian	0	0%	2	0%
Hispanic	38	32%	16	3%
White	5	20%	8	0%
Other	0	0%	0	0%
<b>Total</b>	<b>155</b>	<b>28%</b>	<b>99</b>	<b>15%</b>

The standard for conducting pat-down searches differs from the probable cause standard required for other searches, as does the expectation or evidence/contraband discovery; instead, these searches are primarily based on officer safety. Accordingly, we view both the Citywide and Area data as positive.

<sup>16</sup> The dataset includes activity for the period of January 17, to December 11, 2015.

<sup>17</sup> Ibid.

Probation/Parole Searches/Recoveries

Tables Seven and Eight below illustrate the stops, searches and recovery rates involving individuals on probation/parole. The expectation for recoveries is lessened when conducting probation/parole searches due to there being no requirement that there be either reasonable suspicion or probable cause. OPD, however, advocates that officers have reason other than the individual's probation/parole status as a basis for a search whenever feasible, which may contribute to recovery rates of 38% and higher, both Citywide and within the Area reviewed, which is positive.

<b>TABLE SEVEN – CITYWIDE<sup>18</sup></b>				
<b>Citywide</b>	<b>Probation/Parole Vehicle Stops</b>		<b>Probation/Parole Pedestrian Stops</b>	
<b>Race</b>	<b>Searches</b>	<b>Recoveries</b>	<b>Searches</b>	<b>Recoveries</b>
African American	2,393	38%	793	38%
Asian	61	62%	23	57%
Hispanic	387	45%	148	46%
White	74	42%	43	42%
Other	30	37%	9	67%
<b>Total</b>	<b>2,945</b>	<b>39%</b>	<b>1,016</b>	<b>40%</b>

<b>TABLE EIGHT AREA<sup>19</sup></b>				
<b>Area</b>	<b>Probation/Parole Vehicle Stops</b>		<b>Probation/Parole Pedestrian Stops</b>	
<b>Race</b>	<b>Searches</b>	<b>Recoveries</b>	<b>Searches</b>	<b>Recoveries</b>
African American	372	34%	76	36%
Asian	7	71%	3	33%
Hispanic	70	54%	21	48%
White	9	56%	6	50%
Other	3	67%	1	0
<b>Total</b>	<b>461</b>	<b>39%</b>	<b>107</b>	<b>38%</b>

OPD continues to make progress with the collection of stop data and, its analysis; however, we will continue to monitor OPD's progress with the remaining issues until full compliance is achieved:

- Training and operational implementation of revised stop data forms to appropriately categorize pat-down search recoveries of both seized evidence and the return of items temporarily retained for safety purposes. OPD has revised its Stop Data Collection Form to reflect the return of seized items (in addition to other improvements, and expects that it will be operationally implemented within the next few months.

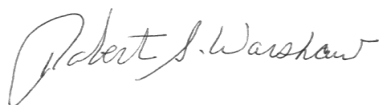
<sup>18</sup> The dataset includes activity for the period of January 17, to January 22, 2016.

<sup>19</sup> Ibid.

- Completion of training regarding search recovery documentation in cases of multiple person stops and/or vehicle searches with multiple occupants. The first phase of the training is currently in progress, and OPD will initiate the second phase of the training when it adopts the revised Stop Data Collection Form.
- The 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. We will be working over the next few months with OPD to improve its Risk Management Meetings to include these strategies.
- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and assure sustained intervention and/or prevention measures. (This objective is temporarily delayed awaiting the implementation of PRIME, which should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings.)
- Receipt and implementation of Dr. Eberhardt's forthcoming report and recommendations. It is expected that the report will be publicly released in April.

## Conclusion

The implementation of measures to prevent and/or identify disparate treatment of individuals with whom OPD officers interact is vitally important to the maintenance of positive police-community relationships. We will continue to monitor OPD's ongoing progress with this task.



Chief (Ret.) Robert S. Warshaw  
*Monitor*