

# Thirty-First 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 13 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, and those for whom factors currently make compliance determination uncertain.

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 have been in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) 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.

Our assessment of compliance for Task 45 takes 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; as discussed below, our assessment of compliance for Task 5 reflects current uncertainties associated with an ongoing Internal Affairs investigation. The Court issued an Order on March 23, 2016 indicating that “irregularities and potential violations of the NSA” occurred in IAD investigation 15-0771. The Order directs the Monitor/Compliance Director to take action to “to ensure that this case and any related matters are properly and timely investigated, and that all appropriate follow-up actions are taken.” As the Order states, “This case raises most serious concerns that may well impact Defendants’ ability to demonstrate their commitment to accountability and sustainability – both of which are key to ending court oversight.

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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.

In this report, we describe our recent assessments of Tasks 2, 34, and 45; and we note the issues currently preventing a continuing finding of compliance with Task 5. 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.

<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), this Task was in partial compliance. A pending IA investigation now requires that this Task be found not in 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.

### *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 police auditors added late last year, OIG expanded the unit’s staffing. More importantly, this change signaled a commitment by the Department to self-reflection and analysis.

OIG continues to expand its auditing role within the Department. Earlier this week, we met with OIG to discuss and review its auditing plans for the next several months; over that time period, OIG plans to assess more NSA-related subject areas that it has not reviewed in the past.

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. Earlier this week, OIG produced its monthly progress report, which details the results of its most recent reviews. This progress report, like the others OIG produced, will be released publicly, via the Department's website. This most recent report focused on three areas: (1) review of *Pitchess* discovery motions; (2) Continued Professional Training for OPD dispatchers; and (3) a review of criminal investigations involving Department personnel. As with its other reports, in each of the areas where OIG identified problems, the report included recommendations to Department units to resolve them.

We look forward to reviewing future OIG progress reports, and continuing to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of NSA reforms.

## *Focused Task Assessments*

### Task 2: Timeliness Standards and Compliance with IAD Investigations

#### **Requirements:**

*Fairness to complainants, members/employees and the public requires that internal investigations be completed in a timely fashion.*

- 1. On or before December 1, 2003, OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.*
- 2. Compliance with these timeliness standards shall be regularly monitored by IAD command and the Department's command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timeliness standards.*

(Negotiated Settlement Agreement III. B.)

#### **Relevant Policy:**

OPD published Departmental General Order M-03, *Complaints Against Department Personnel and Procedures*, which incorporates the requirements of Task 2, on December 6, 2005. General Order M-03 was revised most recently on August 22, 2013.

#### **Commentary:**

OPD has been in Phase 2 compliance with Task 2 since the thirteenth reporting period. We have not reviewed this Task since the Court's Order of May 21, 2015 modified the monitoring plan.

Task 2 requires that internal investigations (IAD and Division Level) – including review, approval, findings, and discipline – be completed in accordance with the timeliness standards developed by OPD. To assess this requirement, we reviewed a list of all internal investigations resulting in formal findings (unfounded, sustained, exonerated, or not sustained) that were approved during the first three months of 2016, and calculated the number of days between the complaint date and the approval date for each case. We excluded from the dataset cases that were administratively closed, those that involved on-duty traffic accidents or service complaints, and those that did not involve Manual of Rules (MOR) violations. We segregated the remaining cases into Class I or Class II categories. If a case involved at least one alleged Class I violation, we classified it as Class I.

Departmental policy requires that at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days to be considered timely.<sup>2</sup> Of the 25 Class I cases we reviewed, 23, or 92%, were in compliance with established timelines. Also, 15 of the Class I cases were completed in between 170 and 179 days, and two cases was completed in exactly 180 days. Of the 70 Class II cases we reviewed, 68, or 97%, were in compliance with established timelines. Forty-two of the Class II cases were completed in between 170 and 179 days; two cases were completed in exactly 180 days. Of the 41 sustained findings that we reviewed, 95% were in compliance with established discipline timelines.<sup>3</sup>

Task 2 also requires that IAD and OPD command staff regularly monitor compliance with these timeliness standards. The primary responsibility for monitoring compliance with timeliness standards rests with IAD, which generates weekly reports listing the Department's open investigations and critical deadlines for investigations retained in IAD and those handled at the division level. The reports are distributed to IAD command staff and the respective Bureau Deputy Chiefs.

In addition to the reports, the IAD Commander discusses pending deadlines for key open investigations during IAD's weekly meetings with the Chief; the deadlines are also reflected in written agendas for these meetings. A Monitoring Team representative periodically attends and observes these weekly meetings. IAD also occasionally, as needed, emails individual reminders on cases approaching due dates to investigators and their supervisors; we regularly see this documentation in investigation files.

Finally, Task 2 requires that if IAD experiences an unusual proliferation of cases and/or workload, IAD staffing be increased to maintain timeliness standards. According to OPD, IAD has received approximately the same number of complaints to date in 2016 (282) as in 2015 (287); and it appears that staffing levels have, on the whole, remained constant. However, during recent meetings with IAD personnel, they presented the division as insufficiently staffed. As part of the ongoing IA investigation (15-0771) referenced in the March 23, 2016 Court Order, discussed below, the Monitor/Compliance Director ordered that several additional investigators be loaned to IAD. We will continue to monitor this situation closely as this investigation continues.

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<sup>2</sup> OPD classifies misconduct as either "Class I" or "Class II." Per DGO M-03, Class I offenses "are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution." Class II offenses include "all minor misconduct offenses."

<sup>3</sup> We reviewed 17 cases involving sustained findings; several cases involved more than one sustained finding.

## 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:**

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. As discussed above, on March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in an ongoing Internal Affairs investigation, 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. In light of the Court Order, it is no longer appropriate to recognize partial compliance with this Task. Task 5 is, therefore, not in compliance.

## 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>4</sup>

OPD is in compliance with this Task; to ensure continued compliance, we attend, observe, and assess the conduct of these boards when OPD schedules them during our monthly visits. There were none conducted during our March visit. We await clarification from OPD regarding the specific number of boards conducted during the first quarter of 2016. Therefore, the existing compliance determination is maintained pending subsequent review of additional Force Review Boards.

OPD remains in compliance with this Task.

## 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.

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<sup>4</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.

**Commentary:**

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

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 presentations of their investigations of this event. The board's members followed with questions and discussion, and made several inquiries regarding compliance with policies, training, tactics, and related issues. However, in order to address all requirements of the above cited General Order, the board noted that it required additional information. Upon receipt of the requested information, the board concluded its review and report, wherein it found the force within OPD policy and in which it also made additional recommendations regarding additional administrative concerns. These were subsequently forwarded to the Chief for review and approval.

The board conducted one review during our March site visit. This review involved an in-custody death. The board received presentations of the investigations from both CID and IAD, both of which were consistent with requirements of revised General Order K-4.1. The board determined that OPD officers used no force.

OPD remains in continued compliance with this Task, but in light of the recently revised procedures to be used during the EFRBs, we shall continue to closely scrutinize these deliberations.

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<sup>5</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

## 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:**

This Task requires the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling. We continue to recognize OPD for its development of a process that provides for the collection and analysis of stop data. OPD has also continuously reviewed the process so as to identify areas where improvement or adjustment may be warranted and from time to time, has identified problematic areas, which have necessitated changes in processes, forms, and policies and training.

We also continuously and closely review the stop data process as well as the data produced. Our review of data in August 2015 found a significant increase in the overall recovery rate of squads in the Area under review; similarly, we noted increases in the September and October 2015 data. While we and OPD initially viewed these three successive strong recovery rate numbers as positive, we determined that, given the magnitude of the increased recovery rates, the data required further examination so as to ensure accuracy. To do so, both we and OPD expanded our assessments to include not only squads with *low* recovery rates, but also squads with *high* recovery rates.

OIG approached this issue by conducting a detailed “Analysis of Search Rates and Search Recovery Rates” and found, similar to our prior findings, the searches to be lawful. OIG also found some inconsistency with the recording of stop, search, and recovery data; and a need to clarify and/or strengthen the policy definition and/or instruction on the process for documenting recoveries in varying circumstances. Such examples include: 1) the recording of the recovery of an item found during a pat-down search that is temporarily held for officer safety purposes, but returned to the person; or 2) the recording of evidence and/or person from whom the evidence in recovered in cases of multiple person stops and/or vehicle searches with multiple occupants.

Our concurrent review of data relative to pat-down searches/recoveries verified the lack of clarity relating to the documentation of recoveries during pat-downs. For example, nearly 50% of the pat-down searches reviewed in the dataset – all of which reportedly resulted in recoveries – instead resulted in no permanent recovery/seizure of evidence or contraband.

OPD initiated corrective measures to address these issues, which include officer training and revisions to the data entry form. The training is ongoing and a revised data entry form, which addresses the identified issues, has been developed. OPD represents that this form will be ready for beta-testing in May and operational implementation in June of this year. However, while the data indicates that increases in recovery rates have occurred, it is *the degree of the increase* that remains in question, and in particular, *the degree of increase within the various population groups*. Furthermore, it should be noted that overall recovery rates will be difficult to interpret – but that attention should be paid to differences in searches and recovery rates across racial and ethnic groups, rather than overall rates.

Aside from this concern, we nevertheless find OPD’s collection of information for more than two years has yielded sufficient data 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 these levels.

Thus far, the primary focus has been on squad data; however, we continue to suggest additional focus on individual officer data in cases where the data significantly varies from the norm for stops, searches and other actions involving the various population groups. The recent annual draw, wherein officers were provided an opportunity to move to new squad assignments, presents an opportunity for supervisors to conduct a fresh review of newly assigned officers’ stop data and address any areas of concern.

At OPD’s monthly Risk Management Meetings, OPD commanders are tasked with the identification of anomalies and/or variances in stop data between Citywide and their particular Area data. These meetings provide an opportunity to address issues of concern regarding racial profiling and *possible* disparate treatment among population groups. These issues should receive additional attention during these meetings.

Probation/parole stop outcomes and search recovery rates continue to be of particular interest. We previously reported our focus on recovery rates proved fruitful based on ever-increasing search recovery rates; however, as discussed above, concerns with the accuracy of the reported rates, which, for example, include as recoveries, items that are neither contraband or evidence but items temporarily held for safety or other purposes and returned to the owner at the conclusion of the interaction.

We include a number of tables to illustrate various stop data; however, do so with the admonition that the stop data in and of itself, is not dispositive of disparate treatment among the population groups; instead, it is an indicator of *possible* disparate treatment warranting further, careful analysis.

CITYWIDE STOPS

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

TABLE ONE <sup>6</sup>						
Vehicle Stop Summary						
Race/Ethnicity	Stops		Searches <sup>7</sup>		Arrests	
<b>Afr. American</b>	10,097	56%	2,339	26%	859	9%
<b>Asian</b>	1,265	7%	108	9%	27	2%
<b>Hispanic</b>	4,048	22%	474	13%	236	6%
<b>White</b>	1,987	11%	90	5%	90	5%
<b>Other</b>	622	3%	46	8%	30	5%
<b>Total</b>	<b>18,019</b>	<b>100%</b>	<b>3,057</b>	<b>18%</b>	<b>1,242</b>	<b>7%</b>

<sup>6</sup> This dataset includes activity for the period August 26, 2015 through February 26, 2016.

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

TABLE TWO <sup>8</sup>						
Pedestrian Stop Summary						
Race/Ethnicity	Stops		Searches <sup>9</sup>		Arrests	
<b>Afr. American</b>	2,179	68%	639	44%	658	30%
<b>Asian</b>	155	5%	21	32%	69	45%
<b>Hispanic</b>	503	16%	130	37%	128	25%
<b>White</b>	295	9%	40	21%	81	27
<b>Other</b>	66	2%	15	31%	11	17%
<b>Total</b>	<b>3,198</b>	<b>100%</b>	<b>845</b>	<b>40%</b>	<b>947</b>	<b>30%</b>

As illustrated in the above tables, OPD officers stopped and interacted with a total of 21,217 individuals during the specified period of time or on average 115 per day. One in five of the stops resulted in a search. Recovery data by race/ethnicity is not illustrated due to concerns regarding accuracy previously discussed; however the *overall reported* recovery rate for motor vehicle stops *averages* 54%; and for pedestrian stops, 49%.

#### MONTHLY REVIEW OF SELECTED AREA

During our March site visit, we attended the monthly Risk Management Meeting (RMM), at which OPD officials reviewed stop data for the selected Area. This was the fourth successive RMM during which the Area Commander had carefully reviewed the data; however, in response to a direct question, the commander minimized its value due to its lack of timeliness; instead reporting primary reliance on the day-to-day supervision of officers' activities and direct interaction with them. The commander's descriptions of Area activities, crime control strategies and responses to questions demonstrated the achievement of positive results – including implementing appropriate corrective measures – from the described interaction. Following the meeting, OPD reported that the timeliness issue would be resolved in the near future with the operational implementation of a program that will provide commanders instant access to this data.

#### *Vehicle and Pedestrian Stops*

Officers assigned to the Area under review during the March RMM stopped and interacted with a total of 4,140 individuals during the specified period of time – or, on average, 23 per day – as illustrated in Tables Three and Four. One in four of the stops resulted in a search. African Americans were stopped and searched at the highest rates. See Tables Three and Four below.

<sup>8</sup> This dataset includes activity for the period August 26, 2015 through February 26, 2016.

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



<b>TABLE THREE<sup>10</sup></b>						
<b>Area Vehicle Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>		<b>Searches<sup>11</sup></b>		<b>Arrests</b>	
<b>Afr. American</b>	2,234	65%	677	35%	224	10%
<b>Asian</b>	124	4%	15	13%	8	6%
<b>Hispanic</b>	869	25%	128	17%	79	9%
<b>White</b>	148	4%	18	14%	17	11%
<b>Other</b>	80	2%	8	11%	6	8%
<b>Total</b>	<b>3,455</b>	<b>100%</b>	<b>846</b>	<b>28%</b>	<b>334</b>	<b>10%</b>

<b>TABLE FOUR<sup>12</sup></b>						
<b>Pedestrian Stop Summary</b>						
<b>Race/Ethnicity</b>	<b>Stops</b>		<b>Searches<sup>13</sup></b>		<b>Arrests</b>	
<b>Afr. American</b>	528	77%	196	55%	158	30%
<b>Asian</b>	14	2%	0	0%	6	43%
<b>Hispanic</b>	98	14%	23	32%	24	24%
<b>White</b>	32	5%	8	36%	14	44%
<b>Other</b>	13	2%	6	86%	5	38%
<b>Total</b>	<b>685</b>	<b>100%</b>	<b>233</b>	<b>51%</b>	<b>207</b>	<b>30%</b>

*Pat-Down (Frisks) Searches*

Tables Five illustrates the pat-down searches conducted Citywide and within the Area under review for this report. This data is provided for informational purposes.

<sup>10</sup> This dataset includes activity for the period August 26, 2015 through February 26, 2016.

<sup>11</sup> Incident to arrest, weapons, and inventory searches excluded.

<sup>12</sup> This dataset includes activity for the period August 26, 2015 through February 26, 2016.

<sup>13</sup> Incident to arrest, weapons, and inventory searches excluded.

<b>TABLE FIVE – CITYWIDE<sup>14</sup></b>		
<b>Citywide</b>	<b>Vehicle Stop Pat-downs (frisks)</b>	<b>Pedestrian Stop Pat-downs (frisks)</b>
<b>Race</b>	<b>Searches</b>	<b>Searches</b>
African American	378	224
Asian	15	23
Hispanic	123	52
White	26	25
Other	6	12
<b>Total</b>	<b>548</b>	<b>336</b>

<b>TABLE SIX – CITYWIDE<sup>15</sup></b>		
<b>Citywide</b>	<b>Probation/Parole Vehicle Stops</b>	<b>Probation/Parole Pedestrian Stops</b>
<b>Race</b>	<b>Searches</b>	<b>Searches</b>
African American	1,322	428
Asian	39	14
Hispanic	195	76
White	50	14
Other	18	4
<b>Total</b>	<b>1,624</b>	<b>536</b>

<sup>14</sup> The dataset includes activity for the period of August 26, 2015 to February 26, 2016.

<sup>15</sup> The dataset includes activity for the period of August 26, 2015 to February 26, 2016.

<b>TABLE SEVEN - AREA<sup>16</sup></b>		
<b>Area</b>	<b>Probation/Parole Vehicle Stops</b>	<b>Probation/Parole Pedestrian Stops</b>
<b>Race</b>	<b>Searches</b>	<b>Searches</b>
African American	431	147
Asian	7	0
Hispanic	66	13
White	10	1
Other	5	2
<b>Total</b>	<b>519</b>	<b>163</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 represents that the operational implementation of this form in will occur within the next few months;
- 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 within the month.

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<sup>16</sup> Ibid.

## 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).

### **Commentary:**

The NSA 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 queried the IAD database to identify all of the cases with at least one sustained finding that were approved from January 1-31, 2016. This query yielded eight cases, each containing at least one sustained finding. 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 in effect until a new Discipline Matrix was approved on March 14, 2014. This new matrix applies to violations after that date.

We reviewed all eight cases with sustained findings that were decided during January 2016. One case involved an allegation of improper demeanor and insubordination, stemming from an argument between two supervisors. Another case involved an officer's failure to take a traffic accident report. In this case, a Field Training Officer was sustained for his trainee's failure to complete the report in response to a call for service. The remaining six cases involved avoidable collisions while operating Department vehicles.

In two cases, the discipline determinations were pending. In one case – a case involving a preventable collision – no discipline was imposed because of extenuating circumstances. The officer driving the vehicle was backing away from the scene of an active shooter as his passenger officer opened his door. The door struck a parked vehicle. In the remaining five cases, the discipline imposed in each case fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed.

During the period of January 1, through January 31, 2015, only one Skelly hearing was held for one IAD cases involving one employee with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly report, and found that it had adequate justification for the results documented. The sustained finding was for a preventable collision, and the Chief of Police concurred with the three-day suspension recommended by the Skelly officer. It was the officer's third avoidable collision.

In his initial report, the Court-Appointed Investigator recommended, "The Department should revamp its Skelly hearing process. Skelly officers should receive training on conducting thorough IA investigations to ensure that their decisions cannot be effectively challenged at the arbitration stage for having been based on insufficient investigation. They should also be trained and given guidelines on writing detailed Skelly reports."<sup>17</sup> We have previously documented that the Deputy Chief responsible for conducting Skelly hearings in which a penalty of greater than 5 days may be imposed has received this training. We requested documentation that remaining Department employees who also may be tasked to serve as Skelly officers were also trained. OPD provided documentation that 33 employees consisting of civilian supervisors, lieutenants, and captains received this training over two days in January. The training was four hours in duration, and the aforementioned Deputy Chief conducted the training along with OCA personnel.

In January 2016, the Court expressed concern that the City had not yet taken steps "sufficient to satisfy the recommendation that the City establish sustainable accountability procedures that will outlive this litigation" and re-engaged the Court-Appointed Investigator to examine the City's progress on the recommendations contained in his initial report. He filed his second report on March 16, 2016. Below we will briefly discuss his findings relative to Task 45.

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<sup>17</sup> Report of the Court-Appointed Investigator, page 41, April 16, 2015.

The Court-Appointed Investigator noted that OPD and OCA have begun to work as a team on police discipline cases. Attorneys from the Labor and Employment Unit of OCA are now involved in discipline cases from their initiation to their conclusion. As we reported above, the enhanced Skelly training was developed and delivered to potential Skelly officers. He further noted that the issues identified in his first report associated with the hiring of outside attorneys have not recurred. OCA has made it a priority to hire outside counsel earlier in the process, and has based its selections on the outside counsel's experience with police discipline matters and on the strength of prior performance.

His second report, like his first report, contained several recommendations. Those specific to Task 45 are identified below.

- The Department should establish a process to seek from IAD, Skelly officers, supervisors, attorneys, or others recommendations to improve Department policies, trainings, and police discipline process.
- The Department should instruct SMEs that testifying as to the substance of training they administer is required to serve as an SME. OPD should also ensure that its databases track all forms of officer training, whether as a result of academy, supervisor request, or discipline, in a centralized and easily searchable location.
- The Department should consider comparable discipline in all cases, should document that process where appropriate, and should be prepared to present evidence at arbitration regarding its consideration of comparable discipline. Additionally, should an officer grieve his or her discipline to Step 3, Employee Relations (ER) should conduct its own analysis of whether the imposed discipline is consistent with past discipline in similar cases, and include that determination in its Step 3 response.

OPD remains in partial compliance with Task 45.

## Conclusion

Several critical issues are discussed in this report, none the least of these being an Order from the Court to examine the Department's handling of a specific Internal Affairs case.

We recognize the efforts that OPD is making to collect and understand data. These are significant. At the same time, we must also note that OPD needs to remain focused on the critical issues that brought the data-related Tasks to the NSA in the first place. It is a problem illustrated by the stop data presented above. Although, as expected, OPD collects data on race and ethnicity, the Department's analysis rarely focuses on those issues and does not make inferences or draw conclusions. OPD needs to carefully review the collection and presentation of the data in an effort to maximize its value for the discussion of these issues. OPD also needs to conduct a more extensive review of these issues in the context of its Risk Management Meetings.

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

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