

# Thirty-Fifth 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, the Court recognized that it was 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. In accordance with the Court Order, we began increasing the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities.

This is, as is now widely known, perhaps the most trying time in OPD's history. As a result of concerns about the measure of investigative effort undertaken by the Department in IAD case 15-0771, the Court issued an Order on March 23, 2016 indicating that "irregularities and potential violations of the NSA" occurred. The Order directed 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."

Just a few days ago, OPD's Internal Affairs Division completed and presented to the City Administrator the findings of its administrative investigation. Our Team worked closely with the IAD leadership during the course of the investigation, and a Monitoring Team member observed the very thorough final case presentation. We believe that the investigative team's determination and resolve comported with the spirit of the NSA. While there still remain some issues to be resolved regarding the sufficiency of resources devoted to the investigation until the matter was brought to the attention of the Court, we recognize the efforts of the City, OPD, and its leadership on this extensive investigation.

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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.

While the initial investigation is complete and several involved officers have been served with discipline, this matter is not yet over. Following the completion of the IAD investigation, my Team remains involved in several ways. In keeping with the Court Order and my charge as Monitor and Compliance Director, we continue to monitor the pending investigations that have stemmed from the original matter; and we continue to support and offer technical assistance to the IAD team investigating these cases, Assistant Chief Downing, the Executive Team, and City leadership. We will continue to monitor all of these developments and report on their outcomes in our future reports.

## This Report

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.

In accordance with the May 21, 2015 Court Order, 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.

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. The pending IAD investigation, referenced above, 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. 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); several Department policies and procedures; and the Department’s current audit of the recruitment and training of new officers. 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 the 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 and capacity.

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’s July report found OPD in violation of its own policy and training standards for officers assigned to CID.<sup>2</sup> The report found that only seven of 44 CID personnel attended the four investigative courses required of CID personnel within 18 months of assignment. In its report, OPD lists three barriers preventing compliance with its own policy – effective October 8, 2014: 1) availability of courses; 2) staffing issues, and 3) budgetary constraints. However, we noted that neither staffing nor budgetary constraints appeared to impede CID staff from attending an array of training courses. (There were 25 listed.) We commend OIG for identifying this

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<sup>2</sup> OPD General Order B-20.X.D, Departmental Training Program.

shortcoming; we recommended that OPD review and revise the training requirements and – except for the required 40-hour Basic Investigators Course – provide additional flexibility in the selection of approved skill-building courses within the specified timeframe. OPD agreed to so.

Given the importance of training, the above finding provided the impetus to again review OIG's March report, in which there was a similar finding relating to required training for members promoted to sergeant or lieutenant. In that audit, OIG found that OPD was meeting the training requirements of the Commission on Peace Officer Standards and Training (POST). However, the report found that OPD was not adhering to Departmental policy, which requires that: 1) lieutenants receive specified training within six months of being promoted to that rank; and 2) officers, prior to being promoted to sergeant, receive a specified 40 hours of training.<sup>3</sup> Again, we commend OIG for identifying this shortcoming; however, this shortcoming was clearly self-inflicted, given that OPD leadership made the decision to make several promotions knowing the magnitude of its non-compliance with what are presumably well-designed training policy requirements. OPD has assured us that it will expeditiously address the described training deficiencies, and review the related policy for possible adjustment.

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.

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<sup>3</sup> OPD Criminal Investigation Division Policy and Procedures Manual, Policy 13-05, effective October 8, 2014.

## *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:**

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. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD 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, we deemed Task 5 to be not in compliance.

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 reviewed 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 both the 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 and thirty-second reports, we specifically asked for and reviewed cases applicable to this requirement.

**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.

OPD remains in compliance with Tasks 5.6 and 5.12.

**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 June 2016.

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>4</sup>

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<sup>4</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 15 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 allowing OPD to reach a proper conclusion. In one case, the investigator conducted a follow-up interview of the involved officer to seek clarification or resolve inconsistencies; and in two cases, the complainants were re-interviewed.

OPD made credibility assessments in 13 of the 15 cases. The two remaining 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 two cases, complainants were deemed not credible. One case involved allegations of discrimination and improper demeanor, and the other involved a claim of theft of money. In both of these cases, PDRD recordings were in direct conflict with some of the complainants' assertions. In another case, a witness was deemed not credible. His version of events conflicted with the statements of other witnesses, including some who were his own family members.

In 12 of the cases we reviewed, OPD successfully resolved inconsistent statements. In eight 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.

**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 49 allegations that received dispositions as follows: 10 exonerated; 20 unfounded; seven not sustained; none sustained; and 11 administratively closed. One allegation was not investigated, nor did it receive a finding as described below.

We disagreed with the findings in two of the cases we reviewed. In the first, the complainant alleged that her car was improperly towed from private property. That, in fact, occurred, and the finding should have been sustained, rather than not sustained. The investigator invested an inordinate amount of energy trying to document why the officer did not "knowingly" tow the car from private property. That it was done *knowingly* was not the complaint. The complainant correctly alleged that her car should not have been towed, and she prevailed in a hearing where she was refunded the towing fees. Any honest mistakes that the officer made could have been considered as mitigating factors in determining an appropriate sanction for his error.

In the second, the complainant alleged that officers failed to check the rear of her residence in response to an intrusion alarm activation, and thus failed to discover and secure an open window. These allegations were unfounded, based on the investigator's conclusion that the officers were not expected by policy to climb a fence to check the secluded back yard of the residence. If that is accurate, then the correct finding should be exonerated – not unfounded. The acts complained of did occur, but were determined to be in accordance with policy.

In another case, OPD failed to investigate an allegation of possible misconduct. The female complainant alleged that a male officer performed a “rough search” that made her uncomfortable with the way she was touched. OPD failed to classify or investigate this allegation and come to a finding, and we only learned of it from listening to her interview by IAD. She mentioned her concerns twice during her phone call with the intake officer; yet he did not further explore them or document them.

**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. Two of the 15 cases we reviewed were resolved via summary finding, and both were appropriately approved for such closure. In one of these cases, the availability of PDRD video was the primary reason interviews were unnecessary.

OPD remains in non-compliant status with Task 5, both because of our review of these sample cases, and pending satisfactory progress with the provisions of the March 23, 2016 Court Order.

## 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>5</sup>

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<sup>5</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

OPD has been in compliance with Task 26 since the nineteenth reporting period; however, when the Department conducts FRBs during our scheduled site visits, we attend, observe, and assess the proceedings. No boards were scheduled during our August site visit.

OPD has conducted 11 Force Review Boards during 2016. All boards were conducted in compliance with the requirements of this Task.

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.

### **Commentary:**

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.<sup>6</sup>

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(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.

<sup>6</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

OPD has been in compliance with Task 30 since the nineteenth reporting period; however, we continue to observe and assess EFRB activities conducted during our monthly site visits.

OPD conducted six FRBs during current year 2016. We observed the board hearing conducted in August. This event occurred following the receipt of several calls regarding sideshow activity. Multiple officers responded to monitor these activities and address subsequent violations, including the issuance of citations and confiscation of motorcycles. Concluding their activities, the officers gathered for a debriefing, during which a lone male individual was observed approaching their location. As the individual approached, one of the officers observed him display a handgun and immediately ordered him to drop it; however, the individual continued approaching and upon pointing the firearm at the officers, they responded with lethal force.<sup>7</sup> Officers performed Cardio Pulmonary Resuscitation on the subject; however, he was later pronounced deceased at the scene.

The Criminal Investigation Division and the IAD Force Investigation Section each presented their detailed investigations, which demonstrated ever-increasing proficiency at such investigations and once again, the seriousness with which such cases are investigated. The board also was inquisitive, questioning, and thorough with its review; and largely concurred that the investigation was thorough and complete. OPD remains in compliance with this Task.

## Task 34: Vehicle Stops, Field Investigation, and Detentions

### **Requirements:**

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*
  - a. *Time, date and location;*
  - b. *Identification of the initiating member or employee commencing after the first year of data collection;*
  - c. *Reason for stop;*
  - d. *Apparent race or ethnicity, and gender of individual(s) stopped;*
  - e. *Outcome of stop (arrest, no arrest);*
  - f. *Whether a search was conducted, and outcome of search;*

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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>7</sup> The "firearm" was subsequently found to be a replica pistol.



resulted in a delay with the anticipated operational implementation. Presently, the date for implementation of the updated forms has not been established.

OPD has provided continued training regarding the stop data process, which has been beneficial; however, the accuracy of the collected data depends, in large part, on the commitment to do so by supervisors. We have emphasized – and continue to emphasize – the importance of assessing and ensuring supervisory accountability for the review of officers’ data. Supervisors have absolute responsibility to ensure that each stop is lawful, each search is lawful, and that recovery data excludes temporarily held items that are neither evidence nor contraband. The accuracy and value of stop data is largely in their hands.

The more important issue remaining is the identification and addressing of indicators of possible disparate treatment among the various population groups – i.e., bias-based policing or racial profiling. This was identified as problematic over 13 years ago at the inception of the NSA; OPD now has over three years of reliable data as a basis for identifying indicators of its presence. Despite this, however, OPD has not developed a protocol or process for evaluating indicators and intervention or corrective measures where appropriate, whether it is at one or more of the area, squad, or individual officer levels.

In addition, in June, OPD received the report prepared by the Stanford University team, which includes a comprehensive analysis of 28,119 stop data forms. This analysis “uncovered evidence that OPD officers treat people of difference races differently,” but also “found little evidence that disparate treatment arose from explicit racism or purposeful discrimination.” It also included 50 recommendations relevant to this Task, many of which OPD has partially or fully implemented. We await the finalization of an appropriate implementation plan/schedule regarding the recommendations not yet implemented.

As is the case with the collection of accurate stop data, the importance of supervisors regarding the identification and prevention of disparate treatment amongst the identified population groups is essential in this process. Supervisors must carefully review individual officer data to specifically identify significant variances from the norm relative to stops, searches, and other actions involving the various population groups; and implement intervention strategies to address identified variances, as may be required. In addition, OPD must objectively assess the effectiveness of officers’ supervisors who have responsibility to train, guide, mentor, and correct officers’ performance. The process of conducting daily reviews of stops involving recoveries initiated by OIG is a step to strengthen supervisory accountability and this concern. During our August site visit, we attended the monthly Risk Management Meeting during which OPD again conducted its review of various risk management components for one of its five Area commands in rotation. The review included in-depth review of activities relating to stop data, including the identification of anomalies and/or variances in stop data between Citywide and their particular Area data.

The Area Commander and staff presented their assessment of the various data elements. This was the eighth successive RMM during which the Area Commander and command staff comprehensively described Area activities, crime control strategies, and individual squad activities. In addition, the command staff identified efforts to address proactive interactions with the Hispanic community, which is encouraging and may be a precursor to more in-depth discussions of data disparities among the identified population groups discussed above.

The tables illustrated in the following section illustrate stop data results for the Area discussed during the August RMM.

### STOP DATA REVIEWS

As is our practice, we are including several tables to illustrate various stop data. Again, we 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 and – where warranted – intervention.

### CITYWIDE STOPS

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

<b>Table One</b>			
<b>Vehicle Stop Summary<sup>8</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>9</sup></b>	<b>Recoveries<sup>10</sup></b>
<b>African American</b>	58%	29%	40%
<b>Asian</b>	6%	9%	30%
<b>Hispanic</b>	21%	14%	47%
<b>White</b>	11%	5%	41%
<b>Other</b>	4%	6%	42%
<b>Total</b>	<b>100%</b>	<b>21%</b>	<b>41%</b>
	<b>14,893</b>	<b>3,146</b>	<b>1,282</b>

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<sup>8</sup>This dataset includes activity for the period December 19, 2015 through June 17, 2016.

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

<sup>10</sup> Subject to further verification.

<b>Table Two</b>			
<b>Pedestrian Stop Summary<sup>11</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>12</sup></b>	<b>Recoveries<sup>13</sup></b>
<b>African American</b>	70%	51%	39%
<b>Asian</b>	3%	30%	42%
<b>Hispanic</b>	14%	34%	51%
<b>White</b>	11%	20%	56%
<b>Other</b>	2%	38%	50%
<b>Total</b>	<b>100%</b> <b>1,861</b>	<b>44%</b> <b>822</b>	<b>41%</b> <b>339</b>

As illustrated in the above tables, OPD officers stopped and interacted with a total of 16,754 individuals during the specified period of time or on average 92 per day. One in five of the stops resulted in a search, with an average recovery rate of 41%

#### MONTHLY REVIEW OF SELECTED AREA

##### *Vehicle and Pedestrian Stops*

Officers assigned to the Area under review during the August RMM stopped and interacted with a total of 2,295 individuals during the specified period of time – or, on average, 13 per day – as illustrated in Tables Three and Four. One in five of the stops resulted in a search, with an average recovery rate of 45%. African Americans were stopped and searched at the highest rates. See Tables Three and Four below.

<sup>11</sup> This dataset includes activity for the period December 19, 2015 through June 17, 2016.

<sup>12</sup> Incident to arrest, weapons, inventory searches and related stops excluded.

<sup>13</sup> Subject to further verification.

<b>Table Three<sup>14</sup></b>			
<b>Area Vehicle Stop Summary</b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>15</sup></b>	<b>Recoveries</b>
<b>African American</b>	53%	26%	44%
<b>Asian</b>	4%	9%	50%
<b>Hispanic</b>	32%	11%	51%
<b>White</b>	7%	12%	41%
<b>Other</b>	3%	4%	33%
<b>Total</b>	<b>100%</b> <b>2,051</b>	<b>19%</b> <b>382</b>	<b>45%</b> <b>172</b>

<b>Table Four<sup>16</sup></b>			
<b>Area Pedestrian Stop Summary</b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>17</sup></b>	<b>Recoveries</b>
<b>African American</b>	63%	42%	46%
<b>Asian</b>	5%	46%	50%
<b>Hispanic</b>	23%	20%	36%
<b>White</b>	7%	35%	50%
<b>Other</b>	2%	60%	0%
<b>Total</b>	<b>100%</b> <b>244</b>	<b>37%</b> <b>91</b>	<b>44%</b> <b>40</b>

*Pat-Down (Frisks) Searches*

Table Five illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches. This data is provided for informational purposes.

<sup>14</sup> This dataset includes activity for the period December 19, 2015 through June 17, 2016.

<sup>15</sup> Incident to arrest, weapons, and inventory searches excluded.

<sup>16</sup> This dataset includes activity for the period December 19, 2015 through June 17, 2016.

<sup>17</sup> Incident to arrest, weapons, and inventory searches excluded.

<b>Table Five</b>				
<b>Citywide Stops</b>				
<b>Percentage of Stops Resulting in Weapons or Probation/Parole Searches</b>				
<b>Race/Ethnicity</b>	<b>Vehicle Stop Pat-downs (frisks)</b>	<b>Pedestrian Stop Pat-downs (frisks)</b>	<b>Vehicle Stop Probation/Parole Searches</b>	<b>Pedestrian Stop Probation/Parole Searches</b>
<b>African American</b>	11%	16%	41%	33%
<b>Asian</b>	8%	8%	24%	16%
<b>Hispanic</b>	18%	26%	23%	18%
<b>White</b>	17%	22%	29%	11%
<b>Other</b>	18%	25%	27%	25%
<b>Total</b>	<b>12%</b>	<b>17%</b>	<b>37%</b>	<b>28%</b>

As we have noted previously, OPD has developed a process for 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. It should do so. Thoughtful analysis of presently available data will enable OPD to identify the likely presence or absence of disparate treatment of one of more population groups, which will advance the goal of enhancing its relationship with all segments of the community. The recent publication of the Stanford University report provides further guidance on ways to comply with both the letter and spirit of this Task.

In the meanwhile, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD’s progress on them until full compliance is achieved.

- Implementation of the revised Stop Data Forms, to include appropriate training to ensure that officers accurately document their search recoveries. OPD originally projected implementation of the revised Stop Data Forms for June; however, additional revisions have delayed implementation. OIG reported the initiation of a program of daily inspections of stop/search/recovery data that will focus on strengthening supervisory accountability in these areas. The results of this process have not yet been reported.
- 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 reportedly complete; OPD will initiate the second phase of the training when it adopts the revised Stop Data Form. Supervisory accountability for assuring the collection and recording of accurate search recovery data remains as issue.
- 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. OIG is focusing on careful reviews and follow-up of Area data as presented at the

monthly RMM meetings. These reviews are designed to strengthen the entire stop data process. We continue to work with the Department on 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.) However, the OIG review of stop/search/recovery data described above is a limited, but proactive, step.
- Development of a plan for the implementation of the recommendations contained in the recently received Stanford University report. The report researched and prepared by Dr. Eberhardt and her colleagues, “Strategies for Change – Research Initiatives and Recommendations to Improve Police-Community Relations,” analyzed 28,119 Stop Data Forms and found evidence that OPD officers treat people of different races differently – but also found little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, the research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment. The report includes 50 recommendations, many of which OPD has partially or fully implemented. The City and OPD have represented full commitment to implement all 50. We look forward to the implementation plan to do so, and we will continue to work with the Department on these strategies.

## Conclusion

The City’s nationwide hiring search for a new, permanent police chief is underway. Currently, Acting Assistant Chief David Downing is OPD’s highest-ranking official; and he reports directly to City Administrator Sabrina Landreth, whose stewardship of the Department has been a fine example of leadership and determination. Mayor Schaaf’s sustained interest in matters relevant to the Department and the recently concluded investigation are to be commended.

In its search for a new police chief, the City has designed a process that will invite Oakland’s diverse community to offer input on the selection of the new chief via several public meetings and online surveys. The City avows that it will use these insights to “give the new Chief of Police a roadmap of how the community expects the Police Department to move forward under new leadership.”



Chief (Ret.) Robert S. Warshaw

*Monitor*