

Thirty-Eighth Report *of the Independent Monitor for the Oakland Police Department*

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.¹ 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.

As directed by the Court on March 23, 2016, in my role as both Monitor and Compliance Director, my Team and I became involved in overseeing the investigation of IAD case 15-0771 "to ensure that this case and any related matters are properly and timely investigated, and that all appropriate follow-up actions are taken." The Court issued the Order as a result of concerns about the measure of investigative effort undertaken by the Department in the case, indicating that "irregularities and potential violations of the NSA" occurred. The Order continues, "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." As reported previously, OPD wrapped up its initial investigation in September; and as a result, several involved officers were served with discipline, and some were charged with criminal conduct. Yet this matter is not yet over, and my Team remains involved in several ways. We continue to monitor the pending investigations that 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.

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

This Report

In this report, we describe our recent assessments of Tasks 34 and 45. 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 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.

Compliance Status of Tasks Listed in the May 21, 2015 Court Order		
Task	Description	Compliance Status
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. Not assessed in this report.
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); stop data (Task 34); risk management and the development of the new PRIME system, which will replace PAS within the coming year (Task 41); several Department policies and procedures, including policies on handcuffing and the use of electronic control weapons; and the Department’s ongoing audit of the recruitment and training of new officers. We are also closely following the Department’s adoption of Lexipol, the online policy platform. 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. OPD recently provided us with the first Lexipol-formatted policy for our review and approval.

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 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.

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 November report examined: 1) police officers’ activation of their Portable Digital Recording Devices (PDRDs); and 2) Level 3 and 4 uses of force. The first audit sought to evaluate whether OPD officers activated their PDRDs “prior to conducting a criminal investigation of a citizen’s action(s) that results in a warning, a citation, a detention, or an arrest;” and whether officers deactivated their PDRDs “at the conclusion of the encounter.” OIG found that 94% of officers activated their PDRDs appropriately, and that 6% did not activate their PDRDs until after the encounters were already underway. OIG also found that 98% of

officers *deactivated* their PDRDs appropriately, as described above. OIG reviewed additional PDRD footage and other documentation for the officers who did not activate their PDRDs in a timely manner, and determined that the late activations were aberrant.

In the second audit, OIG examined whether OPD was meeting the required use of force timelines, completing use of force investigations and assessing them for compliance appropriately, properly documenting training recommendations that resulted from the investigations, forwarding allegations of misconduct identified in the investigations to IAD; and whether officers activated their PDRDs on-scene as required. Among its findings, OIG wrote, “Seemingly, the time provided in policy to complete a thorough use of force investigation is insufficient. Also, the current policy does not mandate a limit to the number of extensions allowed for each case. There were as many as seven extensions approved for one case reviewed which, in this auditor’s opinion, is excessive.” OIG recommended that OPD reevaluate its policy accordingly.

We look forward to discussing these findings and recommendations with OIG during our upcoming site visit, 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.

We will also continue to work with OIG to ensure that the recommendations it offers in its monthly reports are followed up on appropriately and sufficiently. In several recent reports, OIG detailed the findings of its in-depth evaluations and audits, which identified several shortcomings within various components of OPD. These included, for example, OPD’s failure to comply with training requirements set forth in policy for dispatchers, supervisors, and criminal investigators; and the timely and thorough completion and processing of performance evaluations. Although we commend OIG for these audits/reviews, we have expressed concerns regarding the lack of sufficient, documented corrective action among Department officials in response to OIG’s reports. We would like to see OIG improve the way it tracks and documents whether corrective action is or is not taken following the issuance of its reports.

Focused Task Assessments

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.²

OPD has been in compliance with Task 26 since the nineteenth reporting period; however, we continue to attend, observe, and assess FRBs when during scheduled our monthly site visits.

OPD conducted 13 Force Review Boards in 2016; the most recent FRB was conducted during our November site visit. In this incident, officers responded to a disturbance and were confronted with an individual who exhibited abnormal, confrontational, and assaultive behavior. After an attempt to verbally engage the subject, a struggle ensued, during which the officer was intentionally struck in the face. Repeated attempts to physically subdue the subject were met with significant resistance and refusal to comply with officers; officers then resorted to multiple uses of force, including the Electronic Control Weapon and baton to overcome the subject's resistance. The board carefully reviewed each application of force, and found each in compliance with OPD policy. In addition, the board carefully reviewed officers' actions and force used during the initial struggle, as well as an officer's statements in relationship to viewing the recorded video.

The FRB was detailed and thorough.

OPD remains in compliance with this Task.

² 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.

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.³

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

OPD conducted seven EFRBs during current year 2016; none were conducted in November. The Department reports that it has not had an officer-involved shooting in over one year.

OPD remains in compliance with this Task.

³ 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:

In 2013, we found the OPD data collection and retrieval process sufficiently robust to collect and retain 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 as required by this Task. However, we and OPD continually evaluate processes and procedures in an effort to strengthen them and to ensure that the data is accurately collected so as to identify indicators of bias-based policing or racial profiling.

The most recent initiative to improve the data collection process has been a modification of the Stop Data Form so as to more clearly identify reasons for stops, as well as to enhance supervisory and search recovery analytics. Of particular importance is the capturing data on the new form relating to officers' supervisor(s) and any intelligence-based stop. Recognizing the possibility of an overuse of "intelligence" as one of the legitimate reasons for a stop, OPD developed specific guidance to officers for making and recording such stops. These enhancements to the data collection form were developed in coordination with Dr. Jennifer Eberhardt and her Stanford University-based research team. OPD began using the revised form in October.

As we have noted previously, OPD reviews various stop data as part of its monthly Risk Management Meetings (RMMs). These meetings are conducted for the purpose of reviewing various risk data from one of the five Patrol Areas. The designated Area Commander is present to provide information and answers to personnel activity within the designated Area for a specified time period. The review of Area stop data generally includes discussions regarding anomalies and/or variances in stop data between citywide and Area data and among Area squads; and an examination of stops, searches, search recovery rates, and other related data.

These reviews and discussions have proven valuable and fruitful; in particular, the scrutiny of search data has resulted in a significant increase in the overall search recovery rates. In addition, follow-up reviews of data discussed at the RMM are required from the Area Commander as "deliverables." For example, the Area under review for this report was last reviewed in May, during which the Commander was assigned specific deliverables, which were completed and forwarded to the Acting Assistant Chief of Police in July and further referenced during the recent November RMM.

The Commander's report on deliverables provided a detailed review of various officers' activities, which generally found the stops and searches to be lawful, within OPD policy, and oftentimes the result of intelligence-directed crime control strategy. The analysis found that officers in the Area searched less and had a higher recovery rate than officers in other OPD Areas, and further analyses of individual officers' searches found recovery rates reaching 63%. We note this trend has continued as illustrated in the tables below.

Our attendance at the November RMM found that OPD officials are continuing efforts to increase the operational value of these meetings. The meeting began with a discussion of "deliverables" from this Area's prior meeting, as discussed above. Yet the Area Commander, who said that he had only received the data one day prior to the RMM, found it challenging to engage in an in-depth discussion of the data; however, the meeting reviewed Area activities outlining his and his command staff's engagement with – and direction to – officers not only regarding stops, but also in crime control and community engagement.

The analyses (deliverables) described above represent progress. However, we continue to suggest that as part of the RMM – in addition to providing the various data tables for review and, later, analysis – that OPD conduct to the degree possible, an immediate focused analysis (drill-down) of selected squad or squads dataset(s) that appear to reflect disparities among population groups. We have noted the data consistently includes indicators of *possible* disparate treatment among the various population groups – i.e., bias-based policing or racial profiling. We also

suggest that OPD develop a protocol or process for evaluating these indicators, conducting an intervention strategy or taking corrective measures where appropriate – whether at one or more of the Area, squad, or individual officer levels.

These recommendations are based upon a fundamental need to identify and address any possible disparate treatment; and while not on any specified present concern, are concurrent with the Stanford research team that found “little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, our research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment.”

The Stanford team reports recommended 50 actions that OPD should take to change the Department’s culture and strengthen ties with the communities it serves.⁴ OPD is developing an implementation plan to address these recommendations. We expected that this plan would be provided as part of our November site visit; however, we now look forward to receiving it during our upcoming site visit.

STOP DATA REVIEWS

We attended the October RMM. The stop data presented for review and discussion indicated OPD officers stopped and interacted with a total of 22,427 individuals during the specified time period or on average 83 per day.⁵ Within the Area under review, OPD officers stopped and interacted with a total of 2,707 – or on average, 10 per day.

Tables One and Two illustrate citywide stop data and for comparison; Tables Three and Four contain data from the Area under review.⁶

As is our practice, we are including additional tables for illustration purposes with the following caution: Neither the number or percentage of stops among the population is dispositive of disparate treatment. Our repeated review of stops has found the stops legitimately based on traffic safety or reasonable suspicion and probable cause oftentimes related to specific, focused OPD crime control strategies. Any determination of the presence or absence of disparate treatment among population groups requires more in-depth analysis. This is an ongoing OPD activity, which we are closely monitoring.

⁴ Hetey, R.C., Monin, B., Maitreyi, A., and Eberhardt, J.L. (2016). Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013-2014. Stanford University, SPARQ: Social Psychological Answers to Real-World Questions; Eberhardt, J.L. (2016) Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif., Stanford University, SPARQ: Social Psychological Answers to Real-World Questions.

⁵ This dataset includes activity for the period January 1, through September 30, 2016.

⁶ Searches incident to arrest, inventory searches and other weapons recoveries excluded.

Table One			
Citywide Vehicle Stop Summary⁷			
Race/Ethnicity	Stops	Searches⁸	Recoveries
African American	59%	29%	30%
Asian	5%	9%	28%
Hispanic	23%	18%	34%
White	10%	7%	31%
Other	3%	8%	12%
Total	100%	23%	30%
	18,967	4,313	1,300

Table Two			
Citywide Pedestrian Stop Summary⁹			
Race/Ethnicity	Stops	Searches¹⁰	Recoveries
African American	68%	44%	31%
Asian	5%	18%	24%
Hispanic	15%	32%	25%
White	10%	23%	33%
Other	2%	34%	25%
Total	100%	38%	30%
	3,460	1,328	403

⁷This dataset includes activity for the period January 1, 2016 through September 30, 2016.

⁸Incident to arrest, weapons, inventory searches and other weapons recoveries excluded.

⁹This dataset includes activity for the period January 1, 2016 through September 30, 2016.

¹⁰ Incident to arrest, weapons, inventory searches and other weapons recoveries excluded.

Table Three¹¹			
Area Vehicle Stop Summary			
Race/Ethnicity	Stops	Searches¹²	Recoveries
African American	61%	19%	41%
Asian	6%	3%	25%
Hispanic	11%	9%	39%
White	17%	4%	25%
Other	4%	7%	43%
Total	100%2,225	14% 313	40% 125

Table Four¹³			
Area Pedestrian Stop Summary			
Race/Ethnicity	Stops	Searches¹⁴	Recoveries
African American	70%	41%	40%
Asian	2%	38%	0%
Hispanic	10%	24%	17%
White	16%	21%	19%
Other	2%	17%	50%
Total	100% 785	36% 172	35% 61

Pat-Down (Frisks) Searches

Table Five illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches.

¹¹ This dataset includes activity for the period January 1, 2016 through September 30, 2016.

¹² Incident to arrest, inventory searches and other weapons recoveries excluded.

¹³ This dataset includes activity for the period January 1, 2016 through September 30, 2016.

¹⁴ Incident to arrest, inventory searches and other weapons recoveries excluded.

Table Five				
Citywide Stops				
Percentage of Stops Resulting in Weapons or Probation/Parole Searches				
Race/Ethnicity	Vehicle Stop Pat-downs (frisks)	Pedestrian Stop Pat-downs (frisks)	Vehicle Stop Probation/Parole Searches	Pedestrian Stop Probation/Parole Searches
African American	11%	16%	40%	17%
Asian	7%	12%	22%	6%
Hispanic	17%	21%	25%	12%
White	16%	21%	31%	11%
Other	16%	20%	39%	16%
Total	13%	17%	36%	15%

OPD has designed and 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. A thoughtful, in-depth analysis of the data – so as to identify either the absence or presence of racial bias and of disparate treatment among the various population groups – is and will be an ongoing requirement. Such analyses will assist with building trust and enhancing its relationship with all segments of the Oakland community. As we have previously noted, the 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 these issues until OPD achieves full compliance.

- 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 reviews and follow-up of Area data as presented at the monthly RMMs. These reviews are designed to strengthen the entire stop data process. We continue to work with the Department on these strategies to include focused reviews of data where there are indicators of racial bias or disparate treatment among the various population groups.
- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and ensure 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, analyzed 28,119 Stop Data Forms and found 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. 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.

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 August 1 through September 30, 2016. This query yielded 22 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 22 cases with sustained findings that were approved during August and September 2016. Three cases involved allegations of improper demeanor. In two cases, the employees failed to accept or refer a complaint. In three other cases, at least one of the allegations included a lack of truthfulness. Three other cases involved off-duty conduct. Several others stemmed from general performance of duty issues such as failing to take a report or failure to properly investigate an incident. Nine cases originated from motor vehicle accidents that were ultimately determined to be avoidable. The case involving inappropriate contact with a minor that garnered a great deal of public and media attention was also included in the cases we reviewed.

In each case, the discipline fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed. Termination was recommended in three cases. In three cases, the involved employees retired or resigned before discipline was administered.

During the period of August 1 through September 30, 2016, OPD held four Skelly hearings for three IAD cases involving sworn employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly reports, and found that they contained adequate justification for the results documented. In one case, the officer was sustained for conduct towards others, and the proposed three-day suspension was reduced to a written reprimand, with the concurrence of the Assistant Chief of Police. In another case, which involved allegations of failing to properly document a traffic stop and failure to activate a PDRD,

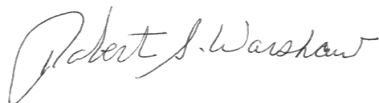
the proposed five-day suspension was upheld, with the concurrence of the Assistant Chief of Police. In two other hearings stemming from the same case in which an improper search was alleged, the findings for both involved officers were changed from sustained to exonerated, and therefore no discipline was imposed. Again, the Assistant Chief of Police concurred with these determinations. All reports were well-written and followed the established format. We also reviewed the training records provided and confirmed that all Skelly Hearing Officers received the approved Skelly Officer training in January of this year. No new Skelly officers were trained during the two-month period under review.

OPD remains in partial compliance with Task 45.

Conclusion

During our last site visit, we learned about some personnel changes in two key units, IAD and the PAS Administration Unit. In IAD, it appears that the changes will be temporary, and we intend to work closely with new and interim leadership to ensure a smooth transition and prevent any backsliding. In PAS, as we mentioned in our last report, the planned and announced retirement of a key civilian staff person – who has facilitated the risk management process at OPD since its inception under the NSA; and who is heavily involved in the development of PRIME, the new system – is rapidly approaching. Even under ordinary circumstances, her retirement would require extensive preparation to ensure a smooth transition. While new staff are being trained to meet the responsibilities, we are concerned about the transition at this especially crucial time.

These are only some of the challenges that a new Chief will face at OPD.



Chief (Ret.) Robert S. Warshaw
Monitor