

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

Introduction

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

This report covers our site visit of April 2017. During this visit, the Department and its vendor continued their ongoing efforts to implement PRIME (Performance Reporting Information Metrics Environment), which on May 8, 2017 replaced PAS (Personnel Assessment System) as the Department's risk management system. We have been carefully tracking and monitoring the development of PRIME over the last few years, and we will discuss the earliest days of its implementation in our next monthly report.

In this report, we describe our recent assessments of NSA Tasks 5, 20, 34, and 41. As we have noted previously, in accordance with the Court's Order of May 21, 2015, we now devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Increasing Technical Assistance

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

Within the last 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 is scheduled to replace PAS (Task 41); several Department policies and procedures, including policies on the new PRIME system, handcuffing, span of control, and the use of electronic control weapons; and the Department's follow-up to its recent audit of the recruitment, training, and tracking of new officers.

As mentioned previously, we are also closely following the Department's progress with its review and revision of all policies and procedures. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys have begun reviewing all revised policies related to all active and inactive Tasks.

Building Internal Capacity at OPD

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. 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 is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

OIG's April report examined: (1) OPD's discipline recommendations process "to ensure discipline is imposed in a manner that is fair and consistent"; and (2) how the Department manages confidential informants and documentation of informants, as a follow-up review to OIG's last compliance review on this subject.

In its first review, OIG found that in the cases it reviewed, discipline fell within the Discipline Matrix or the Chief or her designee provided "sufficient written justification" for any departures outside of the Matrix. However, OIG also found that in seven of the 10 sustained cases it reviewed, the investigators did not include a "clearly articulated and well-reasoned assessment of supervisorial accountability"; and that OPD did not consistently follow up on recommendations for training or changes in policy resulting from completed IAD investigations.

We look forward to discussing these findings and recommendations with OIG during our upcoming site visits, and continuing to assist OIG as it further develops its capacity to monitor the Department's continued implementation of NSA reforms.

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.)

Requirements:

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. The Court Order was a serious development in the Department's progress toward full 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. 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, though we have reviewed cases applicable to this requirement in several recent reports.

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 February 2017.

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.¹

¹ Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

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

In all of the cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the majority of cases, video and/or audio recordings proved to be a significant factor in allowing OPD to reach a proper conclusion.

Investigators conducted follow-up interviews to seek clarification or resolve inconsistencies in two of the 15 cases we reviewed. In each case, the complainant was interviewed twice.

OPD made credibility assessments for all involved parties in seven of the 15 cases. The eight 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 four cases (including one handled as a summary finding), complainants and/or witnesses were deemed not credible. In three of these cases, PDRD recordings refuted some of the assertions being made by those involved. In one case, despite the presence of PDRD footage, we disagree with the not credible determination for the complainant. During an audit conducted by OIG of closed IAD cases, they also identified that the credibility determination in this case was not supported by the facts.

In 14 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In 12 of the cases, PDRD recordings were available and assisted in the determination. In another case, recordings of calls made to Communications allowed for a definitive finding. One case resulted in a 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 63 allegations that received dispositions as follows: 10 exonerated; 44 unfounded; one not sustained; and six administratively closed. While we concurred with the investigative conclusions in these cases, there appears to be some confusion in the application of exonerated and unfounded findings, depending on how the allegations are written. We will discuss specific examples with OPD during our next site visit.

In two cases, OPD did not reach findings when it was required by policy to do so. In one, a sergeant reviewing a Field Contact Report noted that officers used force and failed to properly report it. The investigation revealed that the force was justified, but the failure to report the use of force was improperly handled as a training issue. This reporting issue was one of the initial allegations identified by the sergeant and cannot be handled as an unrelated violation discovered during the course of the investigation. It is what led to the investigation.

In the other case, OPD handled a failure to properly refer a complaint as a “discovered violation,” and addressed it with counseling. Department General Order M-03 provides that “Supervisors, commanders, and managers who discover Class II misconduct during the normal course of supervision, that does not indicate a pattern of misconduct, may address the Class II misconduct through non-disciplinary corrective action by a supervisor/manager.” However, handling an allegation of failing to accept or refer a complaint in this manner is prohibited by inactive Task 6, which states that, “Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen’s complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD *shall be grounds for discipline* for any OPD member or employee.” (Italics added.) Task 6 requires that if such an allegation is sustained, the discipline process shall be invoked. It does not allow for an informal alternative. Additionally, the documentation offered to prove that the officer was counseled does not reflect the fact pattern in this case – and may, in fact, indicate that the officer was counseled for similar behavior in another case.

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 her 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 his 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. Eight of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In seven of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary.

However, in one case involving an excessive force allegation that was not approved for a summary finding, it appears that a subject officer was not interviewed. He was a trainee officer at the time of occurrence, but there are several references to his involvement in the pursuit and apprehension of a suspect in the Report of Internal Investigation. There is no documentation that he was ever interviewed. We recently discussed this case with OIG, which reviewed this case as part of its auditing responsibility and identified other deficiencies (such as the credibility assessment mentioned above). IAD reviewed the case in response to the OIG audit and again failed to identify this deficiency.

OPD remains not in compliance with Task 5, both because of the results of this review and the provisions of the March 23, 2016 Court Order.

Task 20: Span of Control

Requirements:

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

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

(Negotiated Settlement Agreement IV. C.)

Relevant Policy:

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

Commentary:

To assess these requirements for this report, we reviewed spreadsheets prepared by the Department for the months of January, February, and March 2017 that, by date, note which type of sergeant supervised each applicable squad – a primary sergeant, relief sergeant, acting sergeant, other sergeant (one working overtime), or none. (The Department refers to unsupervised squads as “open.”) Using Telestaff, the Department’s electronic scheduling system, we also spot-checked this data to verify its accuracy. We calculated per squad the compliance percentages for this subtask during this reporting period. Each of the 47 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

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

Task 26: Force Review Board (FRB)

Requirements:

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

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*

5. *Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
6. *Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
7. *Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
8. *Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
9. *Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

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

Commentary:

Force Review Boards are convened to reviewing the investigations of Level 2 uses of force.² OPD has been in compliance with this Task since the nineteenth reporting period.

OPD has thus far conducted six FRBs and one rehearing in 2017. OPD did not conduct any FRBs during our April site visit; however, OPD scheduled two for later in April.

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

OPD's uses of force have continually decreased. Recent data indicates a total of 103 to date in 2017, as compared with 124 for the same period – a decrease of 17%.³ This decrease the Department's continued attention to – and progress with – the evaluation of these events, and where necessary, supervisory intervention, including the provision of training.

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 to review Level 1 uses of force.⁴

³ City of Oakland Memorandum, 181st Bi-Weekly Compliance Update, April 12, 2017.

⁴ 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

OPD conducted eight Executive Force Review Boards in 2016; none have been conducted thus far in the current year.

OPD remains in compliance with this Task.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

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

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

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

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

Commentary:

We have repeatedly reported on the progress OPD has made with the collection and compilation of stop data. OPD, without the benefit of external exemplars, built its data collection and analysis process using the resources of its staff. For more than three years, the data and the database have been sufficiently reliable for the conducting a variety of analyses. Collected data are depicted in illustrative graphs and presented for review by administrative and command staff, generally at monthly Risk Management Meetings. This illustrated data points to anomalies requiring in-depth administrative and/or command review to ascertain the presence or absence of disparate treatment or bias among the identified population groups and whether intervention is warranted.

These reviews have generally linked identified racial data anomalies with crime control strategies and the experience levels of officers; however, these reviews have also resulted in notable changes – i.e. a significant increase in the search recovery rates. Nevertheless, OPD continues to refine the collection and analyses process to assure relevance to the objective of identifying and/or preventing disparate treatment or bias. The more recent focus has been on a revision of the Stop Data Collection Form to specifically identify stops predicated on intelligence – that is, what OPD refers to as an “intelligence-led” stop. This focus is important given the probability of these stops resulting in numerical data disparities among the populations groups; therefore, requiring the ability to analyze the stops based on intelligence – separately from, as well as part of, the whole database.

Following revision of the data collection form, OPD developed specific training on its use, including a specific definition of what constituted an “intelligence-led” stop.⁵ After an implementation period of approximately three months, OPD then conducted a performance review and found that officers identified 26% of stops as “intelligence-led.” The review also verified the validity of the stops, yet it determined that some did not specifically relate to intelligence – but rather resulted from officers’ misinterpretations of required factors warranting the intelligence-led designation. For example, 32% of the stops marked as “intelligence-led” were for “Recent Crime Trends and Patterns” and an analysis of a random sample of these stops found 27% of the data forms contained sufficient “intelligence-led” basis for the stop; however, the “intelligence-led basis was questionable in 20% and another 53% did not meet the “intelligence-led” criteria.

OPD is responding to these findings with additional and ongoing training to address these issues and to assure that all stops, “intelligence-led” or otherwise, are legally based and that the notion of “intelligence-led” does not become a general or a “catch-all” basis for stops.

⁵ OPD defines intelligence-led stops; “officers possess knowledge, which can be linked to an articulable source, leading to the initiation of a stop. The Intelligence-Led factor (source) may be very specific, such as a named person, or information about a recent crime trend or pattern tied to a specific location or area. An officer’s knowledge and intent at the time the stop is initiated is important in determining whether the stop is Intelligence-Led or an enforcement stop”

As noted above, OPD has made progress with the collection of stop data, which is continuously being reviewed to identify areas where improvement can or should be made. The somewhat cumbersome, time-consuming, analytical process in place is of considerable concern. The present process hampers the ability of OPD to provide access to relevant, stop data analytics in a timely manner. As mentioned in our previous report, we were previously assured that a stop data analytical component, which would mitigate this concern was included in the proposed PRIME data system; however, it now appears this component will be included in some later version of PRIME – not yet developed, funded, or planned.

Despite technological challenges, the present system does allow for the development of illustrative datasets and tables to assist with the identification of stop data disparities requiring detailed examination and/or analyses. These analyses have been and continue to be conducted prior to, during, or following OPD's regularly scheduled Risk Management Meetings (RMMs); however, have become overly complicated and somewhat lacking in focused attention on the identification of the basis for data disparities – i.e., determining the basis for a squad with a high search rate having a low recovery rate and the population group or groups affected. This has not gone unnoticed and OPD is collaborating with the Stanford University team on a revision of the illustrations and the process. We are encouraged by the progress as represented by OPD and Stanford during our April site visit and will continue to work with OPD in support of this effort.

We also continue to closely follow OPD's implementation of the Stanford University research team's 50 recommended actions that the Department should take to change its culture and strengthen ties with the communities it serves. The implementation plan, recently reviewed with us, indicates that 30 recommendations had been implemented or are currently in progress. The remaining 20 are scheduled to be in progress or completed by July 2017. We meet with OPD and the Stanford University team during each of our site visits to discuss progress with this implementation.

STOP DATA REVIEWS

Customarily, we include a series of tables illustrating the data reviewed during the regular monthly Area Risk Management Meeting; however, rather than the customary RMM in April, we met with OPD and Stanford to review an enhanced approach to data review as noted above.

OPD has made commendable progress with the development of a credible process for the collection, retention, and analysis of stop data so as to identify, address, and resolve indicators of bias-based policing or racial profiling. Enhancement of the stop data form to address intelligence led stops and the proposed refinement the manner in which stop data is illustrated for review purposed during Risk Management and other meetings is illustrative of further progress with the issues relating to disparate treatment or racial bias, which remain an essential ingredient to building trust and enhancing its relationship with all segments of the Oakland community.

The publication of last year's Stanford University report also provides further guidance on ways to comply with both the letter and spirit of this Task.

The below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until the Department achieves full compliance with the following:

- 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: The analysis of data prior to, during, and following Risk Management Meetings is an ongoing endeavor to ensure a strong stop data process. The more recent collaborative efforts with Stanford University staff to improve the RMM process is designed to improve the process and better facilitate strategies to identify indicators of racial bias or disparate treatment among the various population groups, as well as the development of appropriate intervention processes.
- Assessing and addressing whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. This is an ongoing concern temporarily delayed awaiting the implementation of PRIME, which would expedite the gathering and presentation of data for review during the Area Risk Management Meetings. In January, we learned that is not the case; there is presently no definitive plan to address this concern; however, the collaborative efforts with Stanford staff, described above, is expected to improve the process in a limited way.
- Complete implementation of the 50 recommendations contained in the Stanford University report. OPD represents that 28 recommendations have been implemented or are currently in progress; the remaining are scheduled to be in progress or completed by July 2017. We will continue to work with the Department on these strategies, including at our upcoming site visit.

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

Requirements:

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

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically*

maintained by the City Information Technology Department.

2. *The Department shall retain all PAS data for at least five (5) years.*
3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
4. *PAS, the PAS data, and reports are confidential and not public information.*
5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by*

their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).

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

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

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses,*

and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.

10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective*

measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.

16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

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

Commentary:

The compliance status of Task 41 remains unchanged at this time. As noted above, the Department began using the new PRIME system on May 8. We will discuss the implementation more fully in our next report.

During our April site visit, we noted that as the “go-live” date approached, the Department conducted extensive training on the new system. The Department used three waves of training, including a train-the-trainer process for database managers and other “super-users,” more standard classroom training sessions for supervisors and command staff, and online training via the PowerDMS system for officers and other staff.

Also during our April site visit, Department personnel informed us that it expected that a small number of problems, including some potentially significant concerns, would not be resolved by the implementation date. This was reported as a normal condition since the resolution of one “bug” frequently leads to the discovery of others. While the Department and City are developing technical plans for the next iteration of PRIME, no specific schedule or budget is currently in place. The next rendition is expected to include support for collection and storage of training data, body-worn camera data, and stop data.

Along with its work on PRIME, OPD has continued to work on a wide range of data-related issues. A significant one has been the collection and analysis of stop data. An important study of this issue as well as ongoing consultation in this area has been done with Stanford University. This has been a fruitful partnership that has resulted in increasing Departmental capacity with data as well as development of a working group to address stop data-related issues.

Recently the working group has wrestled with the issue of intelligence-led stops by officers. (We discussed this above, in Task 34.) Tracking this has been difficult and confusing since clear definitions of intelligence-led had yet to be formulated. The underlying issue was whether identifying stops as intelligence-led might, in some cases, mistakenly substitute for the need to report the basis for reasonable suspicion or probable cause. This could conflict with concerns related to procedural justice. The issue was not totally resolved at the time of our April site visit; however, it is clear that the designation of a formal working group is of great benefit for recognizing and addressing the complexity of the issues. The working group model, in which appropriate OPD staff and commanders can consult with outside experts would appear to be a potentially useful approach across other areas including addressing the most effective ways of using risk-related data and for applying the risk management process.

One specific area especially suited to the use of a formal working group can be seen in the Department’s initiative to evaluate and revise its regular internal risk management presentations and meetings. This revision involves extensive consideration of data-related issues, particularly efforts to maximize the explanatory power of data and its use in decision-making. This is an area in which close consultation with the Stanford University team has been – and continues to be – very helpful. The Department has used a significant assortment of tables and charts to guide discussion in the risk management meetings. The data presentations can be challenging and the review of them, especially efforts to deepen understanding, is crucially important.

Close collaboration between the Department and the Stanford University team on the design and interpretation of data presentations is critical. Strengthening capacity in this area is especially important since a wide group of officers and other staff can be expected to participate, including making presentations, in these meetings. It would be very useful to have trained data staff within the Department to help in this effort, and it will be imperative that sworn staff at all levels understand and appreciate the value of the graphs and tables that continue to be used to describe Department activity.

Conclusion

As noted above, during our April site visit, OPD and its vendor continued to work on meeting their deadlines in the development of PRIME (Performance Reporting Information Metrics Environment), the Department's new risk management system; the system "went live" on May 8. However, even while PRIME was slated to come online, there was no doubt that there would be technical challenges in the transition from PAS to PRIME – after all, that would be reasonably expected in any large software installation. However, as OPD addresses any ongoing technical issues, it will be the ability of the Department to identify and resolve the substantive issues related to risk management that will be the most challenging. The Department's concentrated efforts to understand and manage data, and its work with Stanford University, will serve it well moving forward – particularly, if the interest and skills related to this approach to identifying and resolving problems is spread throughout the organization.

We note that Chief Kirkpatrick has gotten off to an energetic start and is providing the leadership and vision that is needed to advance the agency and its relationship with the communities it serves.



Chief (Ret.) Robert S. Warshaw
Monitor