

Fifty-Second Report *of the Independent Monitor for the Oakland Police Department*

Introduction

This is our fifty-second 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 William H. Orrick. 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 March 2018; and describes our recent assessments of NSA Tasks 5, 34, and 41. As we have noted previously, following the Court's Order of May 21, 2015, in our monthly reports, we 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 several months, we have provided technical assistance to OPD officials in the areas of IAD investigation quality (Task 5); stop data and related issues (Task 34); risk management and the ongoing maintenance issues of the Performance Reporting Information Metrics Environment (PRIME) system (Task 41); and several Department policies and procedures, including policies related to PRIME, officer discipline, handcuffing, and the use of electronic control weapons.

As noted 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 are reviewing revisions of all NSA-related policies.

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. We review OIG's now-quarterly progress reports, which are a valuable resource and assist us in assessing compliance with NSA requirements.

OIG's most recent report (October-December 2017) contained information on OIG's recent audits of four areas: 1) Critical Observations Regarding Hiring and Training Practices: Follow-up; 2) Accuracy of Handcuff and Search Data; 3) Review of Stop Data Intelligence-Led Stop Audit; and 4) Audit of Community Policing Problem-Solving Project Database. OIG is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

Of particular interest to the Monitoring Team were OIG's findings that only six of the 11 recommendations made in December 2016 relating to hiring and training have been fully addressed. The report notes that organizational changes and technical, database issues have slowed the Department's progress implementing the remaining five recommendations. We will further review these issues with OIG during our April site visit.

Focused Task Assessments

Task 5: Complaint Procedures for IAD

Requirements:

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

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

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

(Negotiated Settlement Agreement III. E.)

Relevant Policy:

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

Commentary:

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD investigation 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. 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. OPD remains in compliance with Tasks 5.1 through and including Task 5.5.

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 December 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

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 four of the 15 cases we reviewed. In two of the cases, the complainants were interviewed twice. In another case, a witness was re-interviewed; and in the fourth case, the subject officer was re-interviewed to obtain clarifying information.

OPD made credibility assessments for all involved parties in 10 of the 15 cases. The five remaining cases were approved for summary finding; and per policy, investigators are not required to assess the credibility of the involved officers and civilians in these instances.

In four cases, the complainants were deemed not credible. We agreed with these assessments in three of the four cases, where the complainants' assertions were clearly refuted by video evidence. In one case, the complainant was deemed not credible based on past refuted statements unrelated to the current case. We do not believe that the complainant should have been found not credible in the case under review. Additionally, we noted three instances in which complainants were deemed credible, despite the fact that their allegations were contradicted by video evidence. While there may be some hesitancy to deem parties not credible, it should be done when it is warranted. Failure to do so is not in compliance with these subtasks.

In 13 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In 10 of the cases, PDRD recordings were available and assisted in the determination. In another case, audio recordings were available. Two cases resulted in at least one finding of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document that all investigative notes are contained within a particular file by completing an Investigative Notes Declaration Form. 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.

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.

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 62 allegations that received dispositions as follows: five exonerated; 46 unfounded; two not sustained; and nine administratively closed. There were no sustained findings.

We did not agree with the findings in one case we reviewed. It was the case referenced above in which we disagreed with the complainant's not credible determination. The complainant alleged that an officer stated something during an unrecorded phone call, and the officer denied making the statement. The finding for this allegation should have been not sustained.

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 a Monitoring Team member often attends 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. Five of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In all of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary.

OPD remains not in compliance with Task 5 based on the provisions of the March 23, 2016 Court Order.

Task 26: Force Review Board (FRB)

Requirements:

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

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

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

Commentary:

Force Review Boards, consisting of three command-level staff, carefully examine the deployment and application investigation of Level 2 uses of force.² OPD achieved compliance with this Task during the nineteenth reporting period; however, given the serious nature of officers' use of force, we continue to monitor and periodically report on compliance with this Task, including attendance at FRBs when conducted during our site visits.

The FRB requirements focus on the final review stages of officers' use of force. The boards are one of several vital components comprising OPD's effort to limit officers' use of force – which also include training, first-line supervision, and investigations of these events. Due in part to these efforts, which have progressively improved, OPD experienced a 75% decline in use of force incidents during the period 2012-2017.

The most recent full year comparative dataset (2016-17) reports officers' use of force decreased by 36% during that period; however, this is primarily reflected in a significant decrease of Level 4 uses of force, which is the least serious and not subjected to the board process and review. Level 2 force remains static for the same period, but at a notably low level of 24 uses of force. This trend continues in the 2018 force data, with Level 2 uses of force at 4. This data is clearly noteworthy in and of itself; however, use of force is an area requiring continued vigilance, which these boards largely provide.

This data must also be considered in conjunction with Task 34, wherein there is an ongoing OPD effort to reduce the police "footprint" on the community and therefore residually within the African American community. Clearly, the significant reductions in the use of force has, in part, done so; however, OPD is continuing its focus on this area of concern.

This strategy *may* also result in a reduction in arrests – therefore, mitigating positive movement of arrest/use of force ratio, which is considered a defining metric. We will be examining related arrest data to determine whether this is the case.

² According to OPD, 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 conducted 19 Force Review Boards during 2017; and two thus far in 2018, the most recent during our March site visit. This event occurred as officers contacted and attempted to arrest an individual known to them to be wanted on an outstanding parole violation warrant. When officers approached the individual in question, who was seated in his vehicle, he immediately attempted to escape, which resulted in a brief struggle, the deployment of an Electronic Control Weapon (ECW), a foot pursuit; and eventually an additional encounter during which an officer deploying a palm strike, and then was able to secure and arrest the subject.

The board approached the inquiry in a thorough manner and found the force – both the ECW deployment and the palm strike – to be compliant with policy. Several investigative and training issues were also raised for further action as required and with which we agree; however, we were concerned with the level of participation by subject matter experts (SME).

SMEs by policy and practice provide boards with information regarding the specifics of officer training relating to the issue(s) under review; however, they are not authorized to opine on the particulars involved in case at hand. The March board varied from this practice by engaging in unduly long conversations with and allowing the SME to offer opinion on the case under review. We are advised OPD is addressing this concern.

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 on February 17, 2006, and revised on December 21, 2015.

Commentary:

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, are convened as required and consistent with policy. The EFRB conducts thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths – which include presentations of the investigations and findings by both the Criminal Investigation Division (CID) and the Internal Affairs Division (IAD).

OPD achieved compliance with this Task during the nineteenth reporting period; however, given the seriousness of any use of force – particularly an officer involved shooting or an in-custody death – we continue to monitor and report on this Task and have observed continued progress. Consistent with our commentary in Task 26 above, the overall use of force by OPD officers has significantly decreased. Officer-involved shooting events alone averaged nine each year during the period 2000-2002; however, these events are now rare. For example, OPD recorded no officer-involved shooting events in 2016, one in 2017, and one in March 2018.

The 2017 event was subjected to a thorough and professionally conducted EFRB during our December 2017 site visit. We concurred with the EFRB’s findings that the uses of force in question were compliant with legal and policy requirements.

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:

OPD collects and stores data described in Task 34.1 (a.-g.). As of April 2013, we have found the available data to be sufficiently detailed, accurate, and voluminous for OPD to determine the lawful basis for the stops and further to identify indicators of disparate treatment. OPD also continues to assess and revise its data collection and analyses processes to ensure the data's accuracy and is working to develop effective processes to address data indicators of disparate treatment among the identified population groups.

OPD's monthly Risk Management Meetings (RMMs), during which command staff review and discuss data from one of the City's five geographic Areas, has been integral to this effort. However, focusing on one Area each month did not provide sufficient opportunity to initiate and ensure sustained intervention and/or prevention measures to address data indicators of possible bias. In response, OPD recently modified the monthly RMM format to include the review of stop data from three Areas at each meeting, thus reducing the rotation to three months, which allows it to more effectively address these concerns.

We observed the modified format during our March site visit during which each Area Commander was provided time to explain his/her Area's data, outline Area challenges, and describe initiatives and directives regarding crime control and other strategies. Aside from the benefit of learning the challenges of other Areas, commanders and staff were able to review comparative data, noting both similarities and variances. This prompted inquiry regarding these variances – the often-asked question of Commanders was what the variance could be attributed to. The Chief expects Area Commanders to know the answers to these questions.

This modified format is further enhanced with the implementation of newly designed illustrative tables. These tables set forth comparative data, which provide indicators of possible disparate treatment of bias and therefore allow for further inquiry and resolution. The new meeting format and the revised illustrative tables are positive development, and we grant considerable effort in becoming familiar with format or charting the objective of the meeting consumed the attention of RMM participants during this first meeting; therefore, we reserve judgment regarding its efficacy. We also note the concerns.

First, OPD must respond to one lieutenant's observations, certainly shared by others, that "getting to know the data is a challenge." Clearly, data must be presented in a format that is understandable and of operational value to field supervisors and staff. Specific to the presentations during this RMM, we noted the search recovery rate in one Area of 12% was left without sufficient inquiry, resolution, or follow-up. Also, the data presented encompassed a three-month period, which appears in some cases to result in an insufficient volume of stops – and/or subsequent actions, upon which to make reasoned judgments. For example, a recovery rate of 0% in a case where there were five searches in three-months is not a strong indicator upon which to base proactive measures. And finally, we recognize that the review of stop data is but one piece of the RMM; however, by placing it first on the agenda with a time limit may preclude appropriate, in-depth reviews of data indicative of disparate treatment, which of course, is a principal objective.

Along with the progress cited above, OPD continues its engagement with Dr. Jennifer Eberhardt and her Stanford University associates in various consulting and advisory capacities. An early Stanford Study, which we have previously discussed, outlined handcuffing disparities. Following these findings, OPD revised its handcuffing policy and subsequently conducted a review of handcuffing rates. This review for the period November 2016-August 2017 found the overall handcuffing rate had fallen; specifically, the rate for handcuffing African Americans had fallen from 30% to 24%; and for whites, from 12% to 10%. A recent OIG report made additional findings regarding handcuffing; the report noted an error rate in documenting whether an individual was handcuffed – but not searched – during a stop. While the report noted that these instances are rare, 33% were not correctly documented. Instances where searches without handcuffing were conducted and stops where neither searches or handcuffing occurred had a high rate of correct documentation.

In recognition of the likelihood, based on crime data, of a racial imbalance among the population groups and its consequential effect on overall stop data, OPD attempts to further address data disparities by placing considerable emphasis on intelligence-led policing and a precision-based policing model. An "intelligence-led" stop is a stop in which officers possess knowledge that can be linked to an articulable source of criminal intelligence, which then leads to the initiation of a stop. "Precision-based policing" is the design, communication, and evaluation of strategies and tactics that serve to solve public safety problems and reduce crime while simultaneously reducing the "footprint" the Department has on the community. This is an effort to limit unproductive – and sometimes disparate – stops. The implementation of these operational initiatives has required considerable training of supervisors and officers; however, it is a worthwhile effort to reduce the likelihood of unnecessary police interactions with community members and to improve those interactions that are necessary.

Presently, intelligence-led stops constitute approximately 30% of all stops. We continue to recommend that OPD conduct ongoing data analyses to provide data regarding stops classified as intelligence-led for comparison purposes and the identification of indicators of bias and/or disparate treatment among the population groups.

When combining the intelligence-led initiative with the precision-based policing model, the policing footprint within the community has been reduced; recent reported data indicating a decrease of 21%, during the period of December 2016-November 2017. As previously reported, this has resulted in a decrease of 1,161 African Americans stops during the period.

OPD incorporated the adoption of the 50 Eberhardt recommendations as a component of its compliance with Task 34. Currently, OPD reports compliance with 28 of the recommendations. The Department reports that it is committed to the full implementation of the recommendations to the degree possible, which involves “triaging” to prioritize those closest to or aligned with NSA requirements. We concur with this approach. OPD regularly confers with Dr. Eberhardt on compliance issues in its effort to achieve full operational compliance.

OPD continues to make progress with Task 34. Our periodic review of stop data reports has found that the introduction of the intelligence-based stop and precision-based policing model has decreased the footprint of stops across racial lines.

As previously and continuously reported, our review of searches has found a high degree of reasonable suspicion or probable cause depending on the type of search. In addition, the search recovery rates, which serve as the test to determine the validity of the search, had increased from below 10% to often exceeding 50%; however we note recent data appears to mitigate this success in 2017 wherein the *overall* recovery of contraband or evidence stands at 6.1 percent.

As outlined above, the format of the monthly RMM has been revised to include newly configured illustrative tables of data to better depict data disparities and allow for in-depth analysis to ascertain whether the data disparities are or are not based on racial motivation. Nevertheless, the need to closely examine the stop data for disparities indicative of bias and/or disparate treatment – within the Area under review, within squads, or by individual officers remains. The suggested review or deep-dive into the data may explain and/or resolve data disparities or find the basis for squad or individual officer intervention. This is an essential step in the resolution of indicators of bias or disparate treatment. Clearly, OPD is mindful of this requirement; however, to date we have not been provided with any documentation that this is occurring.

We acknowledge OPD’s decision to include the adoption of the 50 Stanford report recommendations intended to change the Department’s culture and strengthen ties with the communities it serves part of its compliance effort. As indicated above, 28 of the 50 recommendations are now complete. We will regularly report on the status and progress with the adoption of the remaining recommendations.

While OPD continues to advance its efforts to comply with requirements of this Task; we have previously reported that the below-described specific issues remain incomplete; accordingly, we provide the following assessment, and will continue to monitor OPD’s progress on these issues until the Department achieves full compliance.

Further, we will look for a clear and unambiguous commitment to the provisions of this Task as a means to ensure that the protocols that have been undertaken will be institutionalized and remain an integral, sustainable practice.

- 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;
- Further enhancement of the revised Risk Management Meeting process, including adjustments to illustrative charts and tables to more effectively identify indicators of bias and/or disparate treatment. Adjustments described above have been made to illustrative charts and the RMM format to comply with this requirement. We will continue to assess the effectiveness of these adjustments during forthcoming site visits;
- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. The City anticipates that this will be achieved with implementation of PRIME 2.0, though at this time it is unclear when that version of the risk management system will be established;
- Assessment and determination whether the present rotating review of stop data was sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. OPD has achieved this requirement with a revised process providing for monthly review of three Areas, thus reducing the intervals between assessments from six to three months. This requirement is complete.
- Implementation of the applicable 50 recommendations contained in the 2016 Stanford University report. This requirement has been incorporated as an objective by OPD. We will continue to report on the progress of implementation.

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:

Tasks 40 and 41 address the question of managing risk. Taken together, these Tasks require the collection and analysis of data regarding officer performance; the identification of risk-related behavior; and, where appropriate, intervention to ameliorate potential problems. The Tasks lay out the skeletal structure for this process, and the procedures for the regular review of the process itself.

The Department has advanced beyond minimal requirements in this area. It has implemented regular Risk Management Meetings that provide an opportunity for sharing information and expectations across the Department. The Department has also focused its attention on a key area with regard to risk, that being pedestrian and vehicle stops

For the most part, the risk-related activity noted above responds to the spirit and letter of Task 40. Task 41 extends and expands upon Task 40 by requiring a process that focuses attention on individual officer; and when needed, establishes remedial processes to address individual behavior. In that sense, the NSA requires moving beyond analysis of summary data to action intended to change individual behavior. We consider this by focusing on the way in which Task 40 serves as a catalyst for action designed to address the risk-related behavior of individual officers.

In our most recent report, we noted the progress that the Department was making toward the reengineering of PRIME – including the effort to fix major software problems that plague the current system and the plan for additional data including that from the personnel database, training data, body-worn camera video, and stop data. We also noted the City's steps toward identifying a new contractor for the PRIME reconstruction; the selection process is still underway. The City also plans for two permanent information technology (IT) positions to be housed at OPD to manage PRIME, as well as a project manager, and a data scientist to analyze the vast information that is being collected.

In anticipation of moving forward with the reengineering, City IT reported that the current edition of PRIME is now in a holding position. This was described generally as an effort to maintain a minimally required capacity without dedicating additional resources prior to the major reformulation. Under this approach, ensuring minimal system capabilities has remained a challenge and it continues to be necessary to periodically disable PRIME to address problems as they are being discovered. This was necessary during our site visit in order to fix data problems.

With regard to the reengineering plan as noted in our earlier report, a vendor has been recommended and negotiation of contract details and requirements is underway. Additionally, progress seems to be being made on the search for a project manager. There is less certainty on the progress on the two IT positions that were expected to assist in managing PRIME. It was also reported that once contracts are in place, the revisions to PRIME are likely to require approximately one year to complete.

A longstanding concern of the Monitoring Team has been that technical problems with PRIME might continue to overshadow the need for work on how the system will be used to meet the NSA goals for managing risk. To ensure that progress is made on both fronts it may be necessary to have parallel working groups: one continuing to address the software and data issues; and one focused on the use of the system. The second group would consider a wide range of issues closely related to the work of the PAS Administration Unit. These would include the risk assessment process, decision-making, and the nature of monitoring and intervention. It could also address Department-wide training on risk management as well as training for members of the PAS Administration Unit. The working group could also develop processes for monitoring and evaluating the risk management system itself. That could establish goals and monitoring procedures that would reduce the dependence on serendipitous discovery of data problems to ensure accuracy.

The function of managing the risk management process had received considerable attention under the Personnel Assessment System (PAS) database that preceded the development of PRIME. Daily audits were conducted, which provided a systematic approach to the discovery and correction of data errors. The design of the current edition of PRIME has made such audits more difficult and the discovery and correction of errors has been more time-consuming since the transition.

With plans for the further development for the risk management system moving forward, it may now be an appropriate time to return to focus on the use of this process. This can involve focusing on such issues as the number of officers in monitoring and supervision and what that entails, as well as how effective it is at reducing risk. There has already been discussion of the value of those two apparently different statuses, as well as the use of management referrals and the tracking of decisions regarding risk-related behavior as those decisions are reviewed up the chain of command.

Conclusion

The focus on assessing and changing individual behavior is an important part of the Department's monthly Risk Management Meetings. With regard to stop data, the Department must increasingly focus its analysis to extend to the squad and individual officer level. That supports a substantial role for the PAS administrator in the overall risk management process and at the monthly Risk Management Meetings.

As the redo of PRIME moves forward, there is value for the Monitoring Team and the Department to once again tracking the information relevant to the risk management process. That tracking has largely been suspended due to the PRIME data problems. Returning to data tracking will provide a means of verifying data for accuracy and provide one approach to assessing the risk management process. In preparation for the PRIME revival, the Department should return to quarterly reporting of the data for all data requirements noted in Task 40, including norming use of force and complaint data by arrests. The Department should also reinstate reporting on the tracking of reviews to include the number and reason for the reviews and the findings for each step as reviews move up the chain of command.

It is good to see the Department focusing attention on risk management as it is prescribed in the NSA. The technical development of the database appears to be on track to returning to its correct course, and there have been improvements in the monthly Risk Management Meetings. The opportunity to move forward is clear – and that opportunity can be realized through a return to core risk management elements: the collection and reporting of necessary data; the review of risk-related behavior; intervention when needed; and the evaluation of progress.



Chief (Ret.) Robert S. Warshaw
Monitor