

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

Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California.¹ After 12 years of monitoring OPD's progress with the reforms, it is time for us to devote special attention to the most problematic component parts of the seven Tasks (5, 20, 26, 30, 34, 41, and 45) that are not yet in full compliance or have not been in compliance for at least one year.

To do this, per the Court Order, we are increasing the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. We will also provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We are also providing particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that are currently in partial compliance. (As of our most recent quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) As we move forward, part of our assessment of compliance for Tasks 5 and 45 will take into account the degree to which the City is adopting the recommendations listed in the recent (April 16, 2015) report on police discipline by the Court-Appointed Investigator – and the City's own commitments. In addition, per the Court's Order, we will also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

In this report, we will describe our recent assessments of Tasks 5, 20, 26, 30, 34, and 41. Because we are now reporting on a monthly (as opposed to quarterly) basis, we will not assess and discuss each Task in each report; however, we will select several requirements to examine, and we will report upon the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Below is the current compliance status of the Tasks listed in the May 21, 2015 Court Order.

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

Compliance Status of Tasks Listed in the May 21, 2015 Court Order		
Task	Description	Compliance Status
5	Complaint Procedures for IAD	As of the twenty-first reporting period (covering October through December 2014), in partial compliance. Not assessed in this report.
20	Span of Control	In compliance since the nineteenth reporting period (covering April through June 2014).
26	Force Review Board (FRB)	In compliance since the nineteenth reporting period (covering April through June 2014).
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014).
34	Vehicle Stops, Field Investigation, and Detentions	In partial compliance since the fourth reporting period (covering July through September 2010).
41	Use of Personnel Assessment System (PAS)	In compliance since the twentieth reporting period (covering July through September 2014).
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance. Not assessed in this report.

Increasing Technical Assistance

Per the May 21, 2015 Court Order, “The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court’s December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator’s April 16, 2015 report.”

Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance. As in the past, we continue to 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 those areas identified by the Department. For instance, within the last few months, we have provided technical assistance to Department officials in the areas of stop data (Task 34); risk management (Task 41); consistency of supervision (Task 20); and revisions to several Department policies and procedures, including how IAD processes service complaints.

Building Internal Capacity at OPD

Per the May 21, 2015 Court Order, “The Monitor will also help Defendants institutionalize an internal system of monitoring by the Office of Inspector General or other City or Department entity, along with internal mechanisms for corrective action.”

The City Council recently approved two additional police auditor positions for OIG in its two-year budget. In a recent biweekly report, the Chief commented, “The hiring process for these positions has already begun and we believe these positions will help ensure that OIG has the capacity to continue a robust auditing schedule once the Monitor has left at the conclusion of the NSA.”

In the meantime, we have been encouraged by our interactions with the newly assigned lieutenant of OIG. Over the years, we have found that the quality of the audits produced by OIG and its external consultants has been uneven, and we are not always certain that – or how – the Department follows up on the recommendations listed in the audit reports. OIG’s new lieutenant and his staff appear to understand that for the NSA reforms to be sustainable, OIG must demonstrate its capacity to conduct comprehensive audits, and also appoint and train appropriate personnel throughout the Department to conduct mini-audits or reviews on NSA-related and other procedures. We are working closely with OIG to determine areas that it should audit or review – and approaches to these audits that are not cumbersome so as to ensure sustainability. We believe it important that audits or reviews should be conducted for the purpose of adding value to OPD administrative and/or operational components. We have also initiated discussions with Department officials on the Department’s participation in the publication of monitoring status reports, with an eventual transition to a Department-issued status report.

Focused Task Assessments

Task 20: Span of Control for Supervisors

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:

In January 2015, following discussions with our Team, the Department developed and implemented an alternate relief sergeant system. Although the new plan reduced the number of relief sergeants assigned to Patrol, OPD maintained that it would not affect compliance with the requirements related to consistency of supervision and span of control. We monitored these developments closely, keeping in close communication with appropriate Department officials on the changes; and we recently reviewed Task 20 with an altered methodology that appropriately accommodates these changes.

For our assessment, we reviewed spreadsheets prepared by the Department for the month of May 2015 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 43 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.

We are encouraged that OPD continues to be in compliance with these important requirements. Even more importantly, 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 October 16, 2014.

Commentary:

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.² OPD has been in full compliance with the requirements of this NSA Task for three reporting periods, first found in compliance in our nineteenth report (covering the period of April through June 2014) and continues to be in compliance.

OPD regularly provides the full investigative reports of all applicable events for our review. Our review of the case files has found the investigations to be thorough, and the Force Review Board schedule to be timely.

The FRB consists of three senior commanders and is chaired by a commander of captain rank or higher, often a Deputy Chief. In addition, the board is attended by the Training Section Commander to respond to any training issues that may arise, and a representative of the City Attorney's Office to observe and respond to legal issues. In cases where the Internal Affairs Division (IAD) investigated the event, an IAD representative also attends. Audio and video capability is provided given the high probability that audio and/or video evidence will play a significant role during the presentation of the case. OPD also, where possible within required timelines, schedules the FRB meetings during our site visits so as to allow our observations of the FRB review. The investigating sergeant generally presents the case to the board following a briefing of procedures and expectations by the chair. The chair, however, may require the presence of involved and/or other personnel.

We have noted the overall FRB process – including the actual force reviews – have continuously improved, most remarkably, during the past two years. The conduct of the Boards is professional, but also inquisitive, probing, and unrelenting in its quest for facts and information necessary for making its determination as to whether a use of force was justified. In addition to determining whether the force used was justified, the boards evaluate the event to determine whether there are tactical or training issues to be addressed and/or officers' activities that may serve as examples of excellence. Of particular note has been the performance of the sergeants when making their presentations to the board. Their knowledge of the cases being presented – including strengths, weaknesses, tactical and safety – is demonstrative of the seriousness they and the Department attach to an officers' use of force.

OPD conducted one FRB in June. We will include our assessment of the review in our August report.

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

Task 30: Executive Force Review Board (EFRB)

Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
2. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was published February 17, 2006 and most recently revised on October 16, 2014.

Commentary:

Executive Force Review Boards (EFRB) are convened for the purpose of reviewing Level 1 use of force events.³ OPD has been in full compliance with the requirements of this Task for three reporting periods, first found in compliance in our nineteenth report (covering the period of April through June 2014) and continues to be in compliance.

As in the case of Level 2 force events, OPD regularly provides the full investigative reports of all applicable events for our review. Also, as in the case of Level 2 force events, our review of the case files has found the investigations to be thorough and the Executive Review Board schedule to be timely.

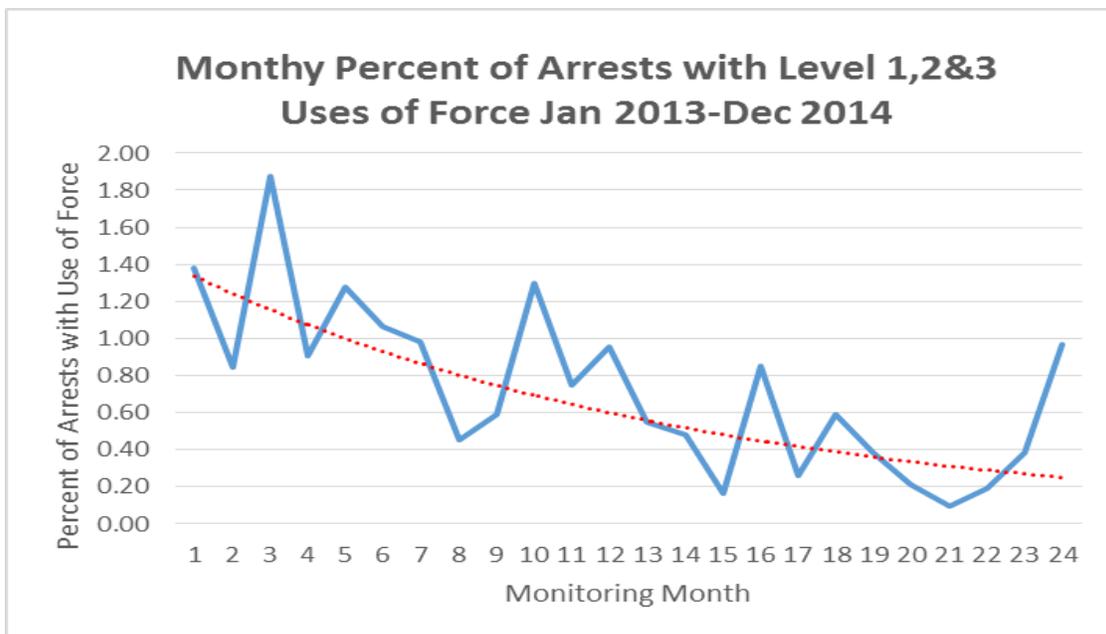
The EFRB consists of three senior commanders and is chaired by a Deputy Chief. As in the case of the procedure for the FRB, the Board is attended by the Training Section Commander and a representative of the City Attorney's Office. Audio and video capability is provided as well.

³ Level I Use of Force events include, 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

The OPD schedules the EFRB meetings at times allowing for our presence.

In a departure from the procedure from that described for the FRB due to the seriousness of these events, respective investigations conducted by both CID and IA Force Investigations staff are presented for Board review. Following procedural briefings by the EFRB chair, CID presents the criminal case investigation and its recommendations, after which CID personnel are excused. The Force Investigator(s) then presents the administrative case in detail, to include diagramming, audio and visual representations of the case, its findings and recommendations with regards to whether the force was justified and whether the conduct of officers during the event was consistent with OPD policies and procedures.

Also as with the FRB investigations and presentations, we have noted continued improvement in the investigations and presentations. The conduct of the boards – in many cases populated by the same command officers who participate in the FRBs – is no less inquisitive in their quest for facts and information upon which they make their findings. In addition, the presenters – in particular, the Force Investigators, who have all received extensive specialized force investigative training – are detailed and thorough. All investigators, homicide and force alike, demonstrate their knowledge of the cases presented and professional police procedure, which is demonstrative of OPD’s commitment to addressing the serious issue of force. Though not dispositive as to the value of force boards, the accompanying tables (below), which illustrate a decline in use of force events, are demonstrative of progress in this area.



2014	Jan	Feb	Mar	Apr	May	Totals
Level 1	0	0	0	0	0	0
Level 2	0	1	0	4	1	6
Level 3	3	5	1	5	2	16
Level 4	69	39	37	44	45	234
Department Totals	72	45	38	53	48	256

2015	Jan	Feb	Mar	Apr	May	Jun
Level 1	0	2	0	0	0	2
Level 2	2	0	1	0	1	4
Level 3	3	3	7	2	6	21
Level 4	40	41	48	37	40	206
Department Totals	45	46	56	39	47	233

For the purposes of this report, we observed the EFRB held in May. The investigations of the event, which involved officers' response to a report of a suicidal individual and the use of force (electronic control weapon) during their attempts to prevent the suicide, were complicated, detailed, and thorough – and supportive of findings that the force was justified. The board review of both investigations was also detailed and thorough, and supportive of its finding that the force used was justified. In addition, the board also made training and IPAS entry recommendations, all of which have been completed.

We observed the EFRB held in July; we will discuss this in our August report.

We recognize the reductions in the use of force by OPD at all levels; and in particular, the more serious Level 1 uses of force. The fatal OIS that occurred last month (June 2015) was the first in about two years; however, the event is a clear reminder that the use of deadly force is always of great concern within a community and must always be of great concern within any police department. The OPD Force Review Boards serve as the processes in which such cases are to be carefully reviewed.

The reviews of the recent OIS reflected the well-established pattern of this process. But, even with the declines in use of force noted above, the loss of life itself should always cause a police department to critically consider its own processes and search for ways to safely avoid the use of deadly force when possible. In addition, recent public scrutiny and concern regarding police officers' use of force suggest a need to change and/or strengthen the review process. We believe that, with the advancements this Department has made, the review of this recent OIS event and any subsequent uses of deadly force should be recognized as an opportunity to look beyond the customary questions of policy compliance and legal justification. The review of the use of deadly force in particular should include consideration of whether the use of that level of force

might have been avoidable – even when the application of that force is consistent with Departmental policy. Taking seriously the question of whether deadly force could have been avoided is recognition of the value of all human life and it is a way for the Department to not only *reflect* that principle but also to *practice* it. The loss of life itself demands this higher level of questioning.

Accordingly, we recommend that OPD expand its both its Force and Executive Force Board Review processes, to include a review of whether the use of deadly force may have been avoided, and to identify tactics, strategies, and opportunities as events unfolded that may have supported such an outcome. The EFRB should enumerate other available options that *could* or *should* have been considered. It should continuously search for what may be learned from these episodes, and it should ensure that such lessons are widely shared across the Department and enumerated in training recommendations. As previously indicated, we commend OPD for its attention to and review of officers’ use of force, which has undoubtedly led to the reductions in the use of force previously described; however, we suggest the addition of the above-described component to its review process not only strengthens the process, but moreover addresses the lingering question of whether the force, even though legally justified and within policy, was the only and/or best option.

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:

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:

During our quarterly reviews of information to assess compliance with this Task, we first reviewed random samples of stops and matched them with corresponding, required completed Stop Data Forms. The samples included Computer Aided Dispatch (CAD) entries, Field Contact Cards, and traffic citations (>350). We found the required forms completed in all cases.

We next reviewed the forms to determine whether they were accurately and fully completed as required with the following information, 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction). During this review, we gave special attention to the *reason* for the stop (No. 5) – essentially the fundamental justification for the interaction between the officer and the person stopped. Our review of this data for our last quarterly report found sufficient valid justification for each stop reviewed.

While we have determined OPD to be in compliance with the above, we turned our focus to the analyses of the data for the purposes of identifying whether there are indications of racial disparity. To do so, at our request, OPD schedules and conducts its Risk Management Meetings during our monthly visits.⁴ In advance of the meeting, we are provided with the Area material, including stop data, scheduled for discussion. For comparison purposes, the stop data presented includes the data for the full City as well as for the particular Area under discussion.

In an effort to examine and determine whether there are indicators of possible racial or ethnic disparity, we may vary our focus from time to time – i.e., the ratio of searches or the search recovery rates among the population groups. We look at the overall OPD data, then at the data for the Area under review, as well as for each of the squads within the Area.

During our May site visit, we reviewed the pedestrian and motor vehicle search recovery rate for the selected Area. The data indicated the average pedestrian search recovery rate at 22% for all squads, ranging from a high of 39% to a low of 3%; and the average motor vehicle search recovery rate at 30%, ranging from a high of 51% to a low of 9%.⁵ The Area Commander suggested the reason for the low recovery rate (3% and 9%) rested in part with the limited experience level of squad members in both cases; this issue was assigned to the Area

⁴ Risk Management Meetings are conducted monthly for the purpose of reviewing various data (including stop data) to identify performance/risk indicators requiring intervention or worthy of commendation. Each month, data from one of the five districts is reviewed by OPD command staff with the Area Commander. Any identified issues are assigned the Area Commander for resolution in the form of deliverables.

⁵ The reported recovery rate of 3% was later found to be in error, it was actually 10%.

Commander for further review. That review found a number of officers with low levels of experience and/or in field training. OPD is currently developing training materials to clarify and strengthen its search procedures and will specifically take measures to reinforce these procedures in its Field Training program.

During our June site visit, we again reviewed the pedestrian and motor vehicle search recover rate for the selected Area. The data indicated search recovery rates for pedestrian and motor vehicle searches at 30% and 35%, respectively, and better than the overall OPD rates of 25% and 32%; however, we noted one squad with a recovery rate at 9% for pedestrian stops, which we selected for further review.

The reviewed data indicated that the squad made 115 stops of which officers searched 47 (41%). The searches resulted in four recoveries (4%). The justification provided for the searches indicated: weapons, 25; probation/parole, 16; and other reasons, six. The four recoveries resulted from: weapons searches, one; probation/parole searches, one; and other reasons, two.

The data indicated this squad searched 47 people from the following population groups: African American, 39; Hispanic, eight; and White, six. Weapons searches were conducted on the following population groups: African American, 20; Hispanic, one, and white, four. Contraband (non-firearm) was recovered from one of the 25 weapons searches. Probation/parole searches were conducted on the following population groups: African American, nine; Hispanic, five; and white, two. Contraband was recovered from one of the 16 probation/parole searches. The OPD is reviewing this data to determine whether there is a need for further training or intervention.

We have a continuing concern with the number of probation/parole stops, particularly within the squads we find with low recovery rates, but at the same time clearly recognize the legality of these searches.

Probation/parole searches present unique enforcement ability for California police officers. These searches assist officers with determining whether probationers and parolees are continuing to engage in past illegal conduct – i.e., continuing to possess drugs, weapons, stolen property, and/or other contraband. Courts, including the California Supreme Court, recognize its enforcement value, i.e., as stated *In re Tyrell J.*, “[A] probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the [probationer] tempted to return to his antisocial ways.”⁶ Similarly, police officers also recognize the value of these searches and attribute in part, the lack of contraband recovery as evidence of the deterrent value of such searches.

Of importance, however, is the impact the indiscriminate employment of such a strategy has on the community – and in particular, on the population groups affected. This can be detrimental to overall community relations, and to community cooperation with crime control strategies. This is an area ripe for the employment of the tenets of procedural justice; OPD must take steps to

⁶ (1994) 8 Cal.4th 68, 87. ALSO SEE *People v. Mason* (1971) 5 Cal.3d 759, 763 [“With knowledge he may be subject to a search by law enforcement officers at any time, the probationers will be less inclined to have narcotics or dangerous drugs in his possession.”]; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S.*, (1992) 4 Cal.App.4th 1000, 1002, fn.1 [“Being on probation with a consent search term is akin to sitting under the Sword of Damocles.”]; *People v. Turner* (1976).

ensure to the degree possible, that the process is not only *legal*, but also seen as *legitimate* in the eyes of those involved.

Despite our concern with the above data, we are encouraged by the progress the OPD has made with the collection of stop data. It has collected data considered valid for more than 18 months and has issued public reports. The below tables include data presented during the July monthly Risk Management Meeting and are representative of data sufficient for analyses to identify whether there are indications of disparate treatment within or between population groups requiring more in-depth reviews and the development of intervention strategies.

Vehicle Stops	Percent of STOPS by Race and Reason for Stop					Total
	African American	Asian	Hispanic	White	Other	
Consensual Encounter	2% (240)	0% (6)	1% (42)	1% (28)	1% (8)	1.2% (324)
Reasonable Suspicion	3% (397)	1% (22)	2% (101)	1% (38)	2% (18)	2.1% (576)
Probable Cause	6% (963)	3% (53)	4% (229)	3% (2)	4% (35)	5.1% (1404)
Traffic Violation	89% (13653)	96% (1884)	93% (5169)	95% (124)	93% (872)	91% (25027)
Probation/Parole	1% (126)	0% (4)	0% (26)	0% (3)	0% (2)	.58% (161)
Total	100% 15379	100% 1969	100% 5567	100% 3642	100% 935	100% 27492

Vehicle Stops, Searches and Recoveries by Race			
	Stops	Searches	Recovery
African American	55.9% 15379	74.4% 3363	69.9% 1082
Asian	7.2% 1969	1.4% 85	2.8% 43
Hispanic	20.2% 5567	18.9% 855	20.2% 343
White	13.2% 3642	3.3% 150	2.2% 53
Other	3.4% 935	1.5% 67	1.7% 26
Total	100% 27492	100% 4520	100% 1547

In summary:

- 1 out of every 5 African Americans stopped was searched.
- 1 out of every 3 African American searched resulted in recovery.
- 1 out of every 13.1 African Americans stopped is arrested (felony or misdemeanor).

- 1 out of every 24 whites stopped was searched.
 - 1 out of every 3 whites searched resulted in recovery.
 - 1 out of every 32.8 whites stopped is arrested (felony or misdemeanor).
-
- 1 out of every 23 Asians stopped was searched.
 - 1 out of every 2 Asians searched resulted in recovery.
 - 1 out of every 41 Asians stopped is arrested (felony or misdemeanor).
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- 1 out of every 5.5 Hispanics stopped was searched.
 - 1 out of 2.5 Hispanics searched resulted in recovery.
 - 1 out of every 19.4 Hispanics stopped is arrested (felony or misdemeanor).
-
- 1 out of every 14 “other” stopped was searched.
 - 1 out of every 2.6 “other” searched resulted in recovery.
 - 1 out of every 25 “others” stopped is arrested (felony or misdemeanor).
-
- For all stops, 1 out of every 6 people stopped were searched.
 - For all stops, 1 out of every 3 people searched resulted in recovery.
 - 1 out of every 16.2 people stopped is arrested (felony or misdemeanor).

Though OPD comprehensively records, collects, and presents its stop data, there is a need for more emphasis on its *analysis*. The purpose of the data collection is to provide the information necessary for examination to determine whether there racial profiling or disparate treatment of individuals encountered by police officers. OPD must strengthen and or place more focus on such analyses.

Finally, we applaud OPD for its continued engagement with Dr. Jennifer Eberhardt of Stamford University. Dr. Eberhardt is collecting data and studying in an effort to understand whether, or the degree to which, bias may affect the interactions between the police and members of the public; and to develop appropriate training or intervention strategies. This is forward-thinking and will undoubtedly be beneficial to OPD and the Oakland community.

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. Based on the existing policy, we again find OPD in continued Phase 1 compliance with this Task.

Commentary:

Task 41 addresses the use of the risk management data and processes for the identification and remediation of risk behaviors. To consider this, we received a regular briefing on the status of the system and reviewed data on both the required risk indicators and the review process. The Department continues to manage this process well. We also conducted a focus group with sergeants in which we discussed the current and developing risk management systems. The sergeants were supportive of the aims of the overall system, and also made specific recommendations regarding expectations about the usability of the new system. In striking contrast to past practice, there was also consensus among the group on the view that the concept and practice of risk management is now widely accepted and regarded as useful for first-line supervisors.

Our meetings included discussion of progress on the development and implementation of the new risk management system, which has become known as IPAS2. Meetings with key OPD participants in the planning process indicated sound progress. In particular, we focused on the nature of reports that will be generated by the system.

The IT Department is managing the project with technical assistance from vendor and subject matter expertise from OPD. The project is described as 40% complete, on budget, and on schedule. In the most recent all-Parties' meeting and in a written summary of the project, the City IT representative described the progress being made and enumerated timelines for completion of certain project milestones. For example, the Monitoring Team recently observed a demonstration by Microsoft (the system's developer) that showed select OPD personnel various electronic forms within the new system. We also attended a meeting designed to receive feedback from commanders on specific aspects of the system. The next significant review of progress is schedule for late September.

In earlier reports, we noted progress in the use of risk management principles and operations in the Department. The regional (by Area) risk management review meetings have been an important element in that progress. Our observation of the most recent of these meeting, however, has raised concerns of the sustainability of the progress that has been made. There were specific issues which raise concerns over entropy in the process, or the gradual decline in quality, that may come when a process becomes routine. The first concern is that preparation for the meeting was insufficient to assure quality analysis of risk issues. Questions sometimes lacked specificity and answers sometimes were speculative and unfocused. It appeared that the presenting commander had not been sufficiently instructed on the purpose of the meeting or the process of data analysis; OPD must address this deficiency in order to assure these meetings effectively address risk concerns. The value of these meetings lies in the details with which patterns are identified and explained and which guide remedial efforts. To accomplish these goals requires commitment, and preparation to assure the meeting is valuable for the participants.

Our concern is with the content of this particular meeting – but also with the larger potential problem of sustainability of sound, data-based decision-making over time. The Risk Management Meeting formed an odd juxtaposition with the quality and consistency of the work on the next generation of the risk management system.

Conclusion

The Department has made an admirable commitment to the use of data in its management processes and decision-making. This is clear in its use of risk management data; in planning; in its collection and use of stop data and even in its reporting of data, on a wide range of activities. The Department should be recognized as a strong leader in the field for its collection and use of data. The data-based approach is so extensive that it has highlighted the need to develop greater expertise in the processes of collection, display, and use of data and to crime analysis. There is a growing need for technical expertise and resources dedicated to these important management goals.

In the area of force and review of force, the Department has continued – via the Force and Executive Force Review Board process – to improve its review of force incidents for the purposes of determining justification. However, we recommend that the Department expand its reviews – particularly those involving deadly force – to include findings on whether or not the force was not only consistent with legal requirements and within OPD-prescribed policies, but also whether the force was the only or best option.

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

Chief (Ret.) Robert S. Warshaw
Monitor