

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

Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California.¹ After 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 Tasks 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 have increased the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. We provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that are currently in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) Our assessments of compliance for Tasks 5 and 45 take into account the degree to which the City continues to implement the recommendations listed in the April 16, 2015 report on police discipline and arbitration by the Court-Appointed Investigator. In addition, per the Court's Order, we also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

In this report, we describe our recent assessments of Tasks 5, 20, and 34. As noted previously, because we now report on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

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

Increasing Technical Assistance

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

Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance. As in the past, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or those areas identified by the Department. Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); Executive Force Review Board (Task 30); stop data (Task 34); risk management (Task 41); and several key Department policies and procedures. We are also closely following the Department’s adoption of Lexipol, the online policy platform. To ensure continuing compliance with the NSA, the Monitoring Team and Plaintiffs’ attorneys will review and re-approve all policies related to all active and inactive Tasks.

Building Internal Capacity at OPD

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

As reported previously, we continue to work closely with the Office of Inspector General’s (OIG) lieutenant and his staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. A few months ago, OIG hired two new police auditors, which significantly expanded the unit’s staffing and, more importantly, signaled a commitment by the Department to self-reflection and analysis.

Last week, OIG produced its fifth monthly progress report, which details the results of its most recent reviews. This progress report, like the others OIG produced, is impressive and will be released publicly, via the Department’s website. This most recent report focused on three areas: (1) review of Field Training Program; (2) review of consent searches; and (3) audit of probable cause arrest authorization and report review. As with its other reports, in each of the areas where OIG identified problems, the report included recommendations to Department units to “close the loop” on outstanding or problematic issues. For instance, in its review of consent searches, OIG found that 37% of the records it reviewed “lacked documentation that the person agreeing to a consensual search was made aware of their opportunity to refuse the request;” and that 20% of the records “did not articulate an officer’s underlying intent, cause, or motivation to conduct a consent search.” Accordingly, OIG recommended that the Department update its policy and training to require officers “to document their motivations for conducting consent searches.”

We look forward to reviewing future OIG progress reports, and also assisting OIG as it becomes a stronger unit and further develops its capacity to monitor the Department’s continued implementation of the NSA reforms. During our site visit later this month, we will meet with OIG to discuss and review its auditing plans for 2016.

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:

We found OPD in Phase 2 compliance with Task 5 from the fourteenth through the eighteenth reporting periods. (In each of the prior reporting periods, we had found the Department in partial compliance with Task 5.) During the nineteenth reporting period, we placed Task 5 in deferred compliance based on a then-ongoing Court-Ordered investigation of the City's discipline and arbitration process. In our twenty-first report, noting that the investigation had been completed, we placed Task 5 in partial compliance. Although we found the Task 5 cases we reviewed at that time to be in compliance, we noted then that the Court had ordered the City to "work to eliminate the problems identified" in the investigator's report.

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 review 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 in recent years to elicit "forced responses" that gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD's ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years now. Consequently, we no longer actively assess OPD's compliance with these subtasks, but we continue to receive daily both 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 to verify that the quality of their completion has not diminished.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This task has not been actively monitored since December 2014, but for this review period, we requested all cases which were closed during November 2015 and which may be applicable to this task. To assess Task 5.6, we reviewed all complaints that appeared to have originated from North County Jail, Santa Rita Jail, Glenn E. Dyer Detention Facility, Juvenile Hall, or John George Pavilion. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was "handled in the same manner as other civilian complaints."

There were four such cases closed during the month of November 2015. One case originated from North County Jail, and was a complaint lodged at the time of arrest. However, it did not involve an allegation of Class I misconduct. Nonetheless, an on-duty supervisor responded to the jail. The complainant alleged that the arresting officer failed to secure his cell phone during the search incidental to his arrest, and his cell phone fell off of the police vehicle while in transit to the North County Jail. This did, in fact, occur, but the complainant did not wish to file a formal complaint. The case was handled via Informal Complaint Resolution (ICR).

The remaining three cases were all received at the same time from the same complainant, who actually complained about two different events. (Therefore, one of these three cases was deemed a duplicate and administratively closed.) The complainant called from John George Pavilion, where she was confined on a psychiatric hold. She called IAD to complain about contacts with the police that occurred five days and 25 days before her call. The call was not contemporaneous with her arrest (actually, psychiatric hold), and the cases were appropriately handled as summary findings.

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 based on this review of these inactive tasks.

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 November 2015.

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.²

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 each of the cases we reviewed except one, we believe that OPD gathered all relevant evidence available. In one case – a complaint of an inaccurate motor vehicle accident report – the investigator did not review available PDRD footage or interview one of the involved officers. This officer is the one who spoke with the complainant, and based on other evidence in the case, would have corroborated her story. We note that OPD appropriately considered available evidence in making its determinations of findings in all cases except two. The first is the case described above. In the other, the complainant alleged that he asked to talk with an officer and the officer left the scene without speaking to him. This is corroborated by PDRD evidence. Both cases are further described below.

In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in reaching a proper conclusion. In one case, follow-up interviews of the complainant and the involved officers were conducted in an attempt to seek clarification or resolve inconsistencies. In three other cases, the complainants were interviewed twice.

² 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.

Credibility assessments were made in 11 of the 15 cases. The remaining four cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In four cases, complainants were deemed not credible. Two involved allegations of excessive force; one involved an allegation of inappropriate touching during a parole search; and one involved an alleged injury sustained while being transported to jail. In all of these cases, PDRD recordings refuted the allegations.

In 10 of the cases we reviewed, OPD successfully resolved inconsistent statements. In all of these cases, PDRD recordings were available and assisted in the determination. Five cases were resolved with at least one finding of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts. We disagreed with two of these not sustained findings, as further outlined below.

Task 5.17 requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). OPD has a sustained history of 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 15 cases we reviewed.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 39 allegations that received dispositions as follows: five exonerated; 19 unfounded; eight not sustained; and seven administratively closed. (None were sustained.)

One of the administratively closed allegations was, we believe, inappropriately classified. The complainant alleged that her motor vehicle accident report “omits information that she feels is relevant...” This was classified at intake as “No MOR Violation” because “[i]t is not a violation of policy to omit details in a report as an officer cannot write everything that the citizen wants.” The omitted details are central to the complaint, and the allegation is that the officer’s report was so inaccurate and lacking in detail that it must have violated policy. This investigation was fraught with other issues. The officer who actually interviewed the complainant at the scene of the accident was never interviewed. He can, however, be heard on the subject officer’s PDRD recording relaying the facts of the accident exactly as the complainant described them. The subject officer (who apparently never spoke with the complainant) appears to indicate that he is going to disregard this information, document what the other party told him, and “have the investigators do their thing.” Despite this, in his report, he attributed statements to the complainant that she never made to either officer. The interview of the subject was cursory at best, particularly in comparison to the level of detail with which the complainant documented the inaccuracies in her report. In summary, the allegations in this case should have been sustained, rather than administratively closed and not sustained.

We believe that OPD failed to use the preponderance of the evidence standard in one other case besides the accident report case mentioned above. In this case, a complaint was lodged because an officer left the scene of a traffic stop without speaking to a citizen who had previously requested a word with the officer. OPD not sustained the allegation, apparently ignoring the PDRD video – which is clearly summarized in the Report of Investigation – which captures the citizen calling out to the officers before they left the scene. The investigator’s efforts to discount the relevance of the recording indicate a disregard of the standard of proof in administrative investigations. Similar to a case cited in our last report, the allegation was relatively minor – and would have appropriately been handled by counseling and training. However, the obvious reluctance to assign a sustained finding is concerning, all the more so because it was not caught during the review process in IAD.

Task 5.20 requires that the IAD Commander review all “filed” cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed. A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. Traditionally, as part of our review of this Task, we also reviewed cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304. While we are no longer actively assessing this subtask, we note that filed and tolling cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly.

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or her designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. As noted above, a witness officer was not interviewed in the motor vehicle accident report case, in violation of the requirements of this Task. Based on other information in the investigation, he would have corroborated the complainant’s allegations. Four 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 PDRD video was the primary reason interviews were unnecessary.

We reiterate the admonishment contained in our last report. While the majority of the cases we reviewed comported with NSA requirements and OPD policy, the exceptions noted in our relatively small sample should serve as a caution against complacency, and IAD is urged to reevaluate its case review process to insure that deficient cases are not approved.

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:

Following discussions with our Team, the Department developed and implemented an alternate relief sergeant system in 2015. While the plan reduced the number of relief sergeants assigned to Patrol, we have not found that it has affected compliance with the NSA requirements related to consistency of supervision and span of control.

For our assessment, we reviewed spreadsheets prepared by the Department for the months of September, October, and November 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 46 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

OPD continues to be in compliance with these important requirements. Even more encouragingly, 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.³

OPD is in compliance with this Task and it is therefore considered inactive; however, due to the importance of force reviews, we continue to observe and assess FRB activities during our monthly site visits. OPD did not conduct any FRBs in December. We will observe the FRB scheduled for later this month and report on the proceedings in a future monthly report.

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.)

³ 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.

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 (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.⁴ OPD is in compliance with this Task and it is therefore considered inactive; however, due to the seriousness of Level 1 force events and the importance of these reviews, we continue to observe and assess EFRB activities during our monthly site visits.⁵

Since July, OPD has conducted three boards: one each in July, August, and November. The EFRB scheduled for December was postponed until February. We will observe this board hearing and report on the proceedings in a future report.

In July, concerned with a spate of recent fatal officer-involved shootings, we recommended that OPD strengthen its EFRB process by including, for example, an examination of whether the use of deadly force may have been avoided; the identification of tactics, strategies, and opportunities as events unfolded that may have supported such an outcome; and the enumeration of other available options that *could* or *should* have been considered. In addition, we recommended that OPD address the question of “whether the force, even though legally justified and within policy, was the only and/or best option.”

For several months, we met with the Chief on a monthly basis to discuss the way forward with the adoption of these recommendations. After much discussion regarding the policy’s language and many draft iterations, the Chief met with the Oakland Police Officers Association (OPOA) to review the changes, consistent with the “meet and confer” requirements of the OPOA’s contract. Ultimately, after several exchanges, and a December 11, 2015 Court Order requiring OPD to “reach a final determination on whether it will implement the revised policy,” the Department and the OPOA reached agreement on the suggested revisions. The policy, issued on December 21, 2015, now requires the board to examine “whether any involved Department members’ conduct or actions leading up to the use of force aggravated the situation or made a use of force more likely to occur;” “whether any involved Department members’ actions leading

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

The EFRB consists of three senior commanders as voting members. In addition, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney’s Office.

A Level 1 use of force may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD present the results of their respective investigations to an EFRB

⁵ Compliance assessments include a review of the full case files and our regular observations of the boards.

up to the use of force created circumstances that lead to, or contributed to, the use of force;” and “the enumeration of other available options that could or should have been considered.”

We commend OPD for its implementation of these enhancements to the EFRB process, which should strengthen any justification for an officer’s use of force when appropriately employed – and by extension, enhance the public’s understanding of an officer-involved shooting.

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:

Compliance with the requirements of this Task – which require the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indications of bias-based policing or racial profiling – would be a challenge for any police department, so has it been for OPD. After many years, however, the Department has developed a mostly viable process that provides for the collection and the means to analyze stop data. Although there have been – and remain – challenges, it is important to note that there were no readily available models available for reference; in essence, OPD’s stop data collection process was developed by OPD in-house staff, including a key capable sergeant.

During the Department’s monthly Risk Management Meetings, OPD commanders pay particular attention to anomalies and/or variances in stop data between citywide and Area data – and more recently, among Area squads, squad supervisors, and officers. At these meetings, one of the five Area Commanders is tasked with participating in an in-depth review of his/her Area stop data for the purpose of identifying anomalies in data – i.e., probation/parole stop outcomes and especially high and/or in particular, low search recovery rates. As questions arise during the discussion, a compilation of deliverables is developed so as to address any questions or issues regarding not only anomalies/variances in data; but also to address direction, deployment, and training issues that may be pertinent. This has proven fruitful – i.e., as a result of the focus on search recovery rates – within the past several months there has been an ever-increasing search recovery rate, which has relegated the former single digit recovery rates to the annals of history.

Determining whether the stop data is indicative of bias is a more difficult challenge. Clearly, the racial/ethnic demographics of the stop data illustrated in Table One below is not reflective of community demographics, nor is it be expected to be so, given the need to match crime control deployment strategies with criminal activity as well as the variance in population demographics within the city at any given time of the day, night, week, or month. Neither would the stop data for each Area be expected to be consistent with either citywide or other Areas, given the variances in demographics, criminal activity, and crime control deployment strategies within the Areas.

| Table One⁶ | | | | |
|------------------------------|----------------------|-------------------------|-------------------------|----------------|
| Race/Ethnicity | Vehicle Stops | | Pedestrian Stops | |
| | Number | Percent | Number | Percent |
| African American | 14,822 | 58% | 3,563 | 68% |
| Asian | 1,762 | 7% | 267 | 5% |
| Hispanic | 5,405 | 21% | 787 | 15% |
| White | 2,970 | 12% | 553 | 10% |
| Other | 795 | 3% | 107 | 2% |
| Total | 25,754 | 100%⁷ | 5,277 | 100% |

⁶ This dataset included activity for the period of January 17 through November 13, 2015.

⁷ Percentages rounded.

It is clear that a careful review of the reasons for and the results of stops – including searches and recovery rates – may identify areas requiring further analysis to ascertain whether or not bias may be a factor in a squad’s performance or an officer’s decision making.

We have examined the data and reported on our findings – in particular, on the search recovery rates – on a monthly basis. We are cognizant that part of the process regarding bias is an *understanding* of it – that only comes with awareness and other training, which is an ongoing process within OPD. Both an understanding of bias and a determination whether its presence is a factor within OPD policing practices are issues that we expect will be more clearly addressed in March 2016 when Dr. Jennifer Eberhardt of Stanford University releases the results of her study regarding policing practices and the presence or absence of bias within OPD. In the meanwhile, we will continue to include the results of stop data reviews in our monthly reports.

MONTHLY REVIEW OF SELECTED AREA

During our December site visit, we again attended the Risk Management Meeting, during which stop data for the selected Area was reviewed. This Area Commander had an unusually keen interest in and understanding of the various components of not only stop data, but also of the several risk factors addressed during this monthly Risk Management Meeting. His approach to the administration, management, and supervision – risk management – of his Area was insightful and thorough.

Vehicle and Pedestrian Stops

OPD officers assigned to the Area under review in December made 3,190 vehicle stops and 586 *pedestrian stops*, as illustrated in Table Two. Although not dispositive of bias, the variance in the percentage of stops among the various population groups is evident. For *vehicle stops*, the racial/ethnic percentages range from a high of 57% for African Americans, to a low of 4% for Other. Similarly for *pedestrian stops*, the percentages range from a high of 66% for African Americans, to a low of 3% for Other. Citywide *vehicle stops* range from a high of 58% for African Americans, to a low of 3% for other. Similarly, the citywide breakdown for *pedestrian stops* ranges from a high of 68% for African Americans, to a low of 2% for Other.⁸

⁸ “Other” includes all individuals not identified as African American, Asian, Hispanic, or white.

| Race/Ethnicity | Vehicle Stops | | Pedestrian Stops | |
|-------------------------|---------------|-------------|------------------|--------------------------|
| | Number | Percent | Number | Percent |
| African American | 1,825 | 57% | 389 | 66% |
| Asian | 220 | 7% | 31 | 5% |
| Hispanic | 375 | 12% | 48 | 8% |
| White | 651 | 20% | 102 | 17% |
| Other | 119 | 4% | 16 | 3% |
| Total | 3,190 | 100% | 586 | 100%¹⁰ |

Searches-Recoveries

The variances in the percentage of stops resulting in searches and the percentage of searches resulting in recoveries among the various population groups are also of continuing interest.

Data for the Area reviewed for this report illustrated in Table Three indicate that members of the African American population group are searched at the highest rate during both vehicle stops (13%) and pedestrian stops (32%). However, the average vehicle search recovery rates for the African American population is also the highest at 36%, and the second highest for pedestrian search recoveries at 41%. Average search recovery rates for vehicle and pedestrian stops are 35% and 40%, respectively, which is indicative of continued attention to focused policing strategies within this Area. (Citywide data not illustrated.)

| Race/Ethnicity | Vehicle | | | Pedestrian | | |
|-------------------------|------------------------|-----------|------------|------------------------|------------|------------|
| | Searches ¹² | | Recoveries | Searches ¹³ | | Recoveries |
| | Number | Percent | Percent | Number | Percent | Percent |
| African American | 211 | 13% | 36% | 87 | 32% | 41% |
| Asian | 3 | 1% | 33% | 2 | 12% | 50% |
| Hispanic | 31 | 9% | 35% | 7 | 23% | 29% |
| White | 4 | 1% | 25% | 17 | 22% | 41% |
| Other | 4 | 3% | 0% | 2 | 17% | 0% |
| Total/Average | 253 | 9% | 35% | 115 | 28% | 40% |

⁹ The dataset included activity for the period of January 17 through November 13, 2015.

¹⁰ Percentages rounded.

¹¹ The dataset includes activity for the period of January 17 through November 13, 2015.

¹² Searches incident to arrest, weapons (pat-downs) and inventory searches are excluded.

¹³ Ibid.

Squad Level Searches and Recoveries

A comparative review of squad search/recovery data (not illustrated) within the Area under review is also demonstrative of continued progress within this Area. Vehicle stop search data among the squads is relatively low for the most part, ranging from 4% to 9%. The exception is the CRT squad at 35%; however, the overall average is 9%. The vehicle search recovery rate is also positive, ranging from 18% to 58%, with the one exception being one squad at 7%, which resulted in an overall average of 35%.

As expected, due to the high percentage of stops based on reasonable suspicion or probable cause, although *numerically* much lower, the percentage of pedestrian searches are higher, ranging from 18% to 44%. The pedestrian search recovery rate between the squads varies from 8% to 57%, with two squads at 8% and 10% respectively; however, the overall average is at 40%.

Average search recovery rates at 35 and 40%, respectively, are indicators that OPD’s focus on stops and searches – including supervision, training, and counseling – is proving beneficial and we note, is ongoing. During the meeting wherein the above was discussed, a number of deliverables relating to the variances in search recovery rates of the various squads were developed. The Area Commander is required to address the identified issues within a specified timeframe.

Weapons (Pat-down) Searches

Tables Four and Five illustrate the pat-down searches conducted citywide and within the Area under review for this report. Citywide recoveries are at 27% and 20%, respectively, for vehicle and pedestrian pat-downs. Area recoveries are at 21% and 12% for vehicle and pedestrian pat-downs.

| Table Four – Citywide¹⁴ | | | | |
|---|---|-----------------|--|-----------------|
| Citywide | Pat-downs (frisks) Vehicle Stops | | Pat-downs (frisks) Pedestrian Stops | |
| | Race | Searches | Recoveries | Searches |
| African American | 595 | 26% | 394 | 19% |
| Asian | 21 | 38% | 33 | 33% |
| Hispanic | 195 | 28% | 101 | 21% |
| White | 44 | 32% | 45 | 17% |
| Other | 10 | 40% | 8 | 50% |
| Total | 865 | 27% | 581 | 20% |

¹⁴ The dataset includes activity for the period of January 17, to November 13, 2015.

| Table Five – Area ¹⁵ | | | | |
|---------------------------------|------------------------------------|------------|--|------------|
| Area | Pat-down (frisks) Vehicle Stops | | Pat-downs (frisks) Pedestrian Stops | |
| | Searches | Recoveries | Searches | Recoveries |
| African American | 68 | 22% | 42 | 14% |
| Asian | 3 | 0% | 2 | 0% |
| Hispanic | 2 | 0% | 3 | 0% |
| White | 7 | 28% | 11 | 9% |
| Other | 2 | 0% | 0 | 0% |
| Total | 82 | 21% | 58 | 12% |

The standard for conducting pat-down searches differs from the probable cause standard required for other searches, as does the expectation or evidence/contraband discovery; instead, these searches are primarily based on officer safety. Accordingly, we view the citywide data as positive. Although the Area pat-down recovery rates are somewhat lower than the citywide data, the limited number of pat-down searches over the nine-month period (average 15 month) does not appear problematic; however, we note the Area commander is conducting further review.

Probation/Parole Searches/Recoveries

Given the continued interest in stops and searches of individuals on probation/parole, we include and illustrate in Tables Seven and Eight below, the search recovery rates involving individuals on probation/parole. As with the pat-down searches, the expectation for recovery is lessened due to there being no requirement that reasonable suspicion or probable cause be present and the deterrent effect such random, selective searches may provide.

| Table Six – Citywide ¹⁶ | | | | |
|------------------------------------|-----------------------------------|------------|--------------------------------------|------------|
| Citywide | Probation/Parole Vehicle Stops | | Probation/Parole Pedestrian Stops | |
| | Searches | Recoveries | Searches | Recoveries |
| African American | 1,837 | 36% | 650 | 38% |
| Asian | 46 | 57% | 223 | 55% |
| Hispanic | 307 | 44% | 119 | 45% |
| White | 59 | 39% | 40 | 40% |
| Other | 22 | 41% | 7 | 57% |
| Total | 2,271 | 37% | 581 | 39% |

¹⁵ Ibid.

¹⁶ The dataset includes activity for the period of January 17, to September 18, 2015.

| Table Seven – Area¹⁷ | | | | |
|--|---------------------------------------|-------------------|--|-------------------|
| Area | Probation/Parole Vehicle Stops | | Probation/Parole Pedestrian Stops | |
| Race | Searches | Recoveries | Searches | Recoveries |
| African American | 141 | 25% | 62 | 40% |
| Asian | 2 | 50% | 2 | 50% |
| Hispanic | 18 | 44% | 5 | 40% |
| White | 3 | 0% | 7 | 29% |
| Other | 2 | 0% | 1 | 0% |
| Total | 166 | 27% | 77 | 39% |

Except for Area probation/patrol searches related to vehicles stops within the Area under review, which stands at 27%, all other search recoveries stand at 37% or better.

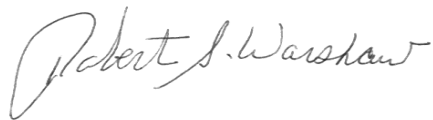
Conclusion

While OPD has made significant progress with the collection, analysis and reporting of stop data in the last five years – and more particularly since 2013, when we first assessed the collected data as sufficiently accurate and reliable; however, additional work relating to compliance and the sustaining of compliance with this Task remains. We outlined this work in our last report and again include an outline of that work herein, which includes, but is not necessarily limited to:

1. Assured resolution of issues, including revisions to stop data forms, relating to the definition and documentation of pat-down search recoveries of both seized evidence and the return of items temporarily retained for safety purposes.
2. Assured resolution of issues relating to search recoveries in cases of multiple person stops and/or vehicle searches with multiple occupants.
3. Analysis to include not only Area and overall squad activity, but activity of individual officers within squads.
4. The implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad and individual officer levels.
5. Resolution of the sustainability question as to whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and assure sustained intervention and/or prevention measures.
6. Receipt and implementation of Dr. Eberhardt’s forthcoming report and recommendations.

¹⁷ Ibid.

In short, OPD must continue to do what it is doing while making adjustments to further strengthen and assure sustainability of its collection, analysis, reporting of stop data, and equally important, to strengthen intervention processes so as to address indicators of racial bias. We will report on OPD's progress with the above outstanding tasks in our next monthly report.

A handwritten signature in cursive script that reads "Robert S. Warshaw". The signature is written in black ink and is positioned above the printed name.

Chief (Ret.) Robert S. Warshaw

Monitor