Thirty-Sixth Report
of the Independent Monitor
for the Oakland Police Department

Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.,* in the United States District Court for the Northern District of California.[1] After 13 years of monitoring OPD's progress with the reforms, the Court recognized that it was time for us to devote special attention to the most problematic component parts of the Tasks that are not yet in full compliance or have not been in compliance for at least one year, and those for whom factors currently make compliance determination uncertain. In accordance with the Court Order, we began increasing the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities.

This is, as is now widely known, perhaps the most trying time in OPD's history. As a result of concerns about the measure of investigative effort undertaken by the Department in IAD case 15-0771, the Court issued an Order on March 23, 2016 indicating that "irregularities and potential violations of the NSA" occurred. The Order directed the Monitor/Compliance Director to take action to "to ensure that this case and any related matters are properly and timely investigated, and that all appropriate follow-up actions are taken." As the Order states, "This case raises most serious concerns that may well impact Defendants' ability to demonstrate their commitment to accountability and sustainability – both of which are key to ending court oversight."

Last month, OPD's Internal Affairs Division completed and presented to the City Administrator the findings of its administrative investigation. Our Team worked closely with the IAD leadership during the course of the investigation, and a Monitoring Team member observed the very thorough final case presentation. While there still remain some issues to be resolved regarding the sufficiency of resources devoted to the investigation until the matter was brought to the attention of the Court, we recognize the efforts of the City, OPD, and its leadership on this extensive investigation.

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[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.

Yet while the initial investigation is complete and several involved officers have been served with discipline, this matter is not yet over. In keeping with the Court Order and my charge as Monitor and Compliance Director, my Team remains involved in several ways. We continue to monitor the pending investigations that have stemmed from the original matter; and we continue to support and offer technical assistance to the IAD team investigating these cases, Assistant Chief Downing, the Executive Team, and City leadership. We will continue to monitor all of these developments and report on their outcomes in our future reports.

This Report

In this report, we describe our recent assessments of Tasks 34 and 45. Because we now report on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

In accordance with the May 21, 2015 Court Order, we provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that have been in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) We also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

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

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

Increasing Technical Assistance

Per the May 21, 2015 Court Order, "The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court's December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator's April 16, 2015 report." Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance.

As in the past, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department. Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); Executive Force Review Board (Task 30); stop data (Task 34); risk management (Task 41); several Department policies and procedures; and the Department's current audit of the recruitment and training of new officers. We are also closely following the Department's adoption of Lexipol, the online policy platform. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys will review and re-approve all polices 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. With two police auditors added late last year, OIG expanded the unit's staffing and capacity.

Each month, we review OIG's progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of the NSA reforms.

OIG issued reports in August and September. In August, OIG examined officers' refusal to accept or refer complaints, which corresponds with Task 6. In this review, OIG found that "some officers took the opportunity to build legitimacy when faced with a possible complaint," and found that nine of the 10 "refusal" allegations were unintentional. It also found that "investigators appropriately labeled violations and their subsequent findings were judicious," though it also noted that one investigation "appeared incomplete."

Also in August, OIG conducted an audit of training for police officer trainees by examining the Trainee Officer Questionnaire forms that trainees complete to document issues of inconsistencies in the training they receive in the Academy. However, per OIG, "there was no documentation on the forms indicating the explicit discrepancies had been acknowledged and resolved as an actual inconsistency in training or confusion about a procedure." Here OIG recommended that Field Training Unit and Training Section staff "document their acknowledgement of the explicit discrepancy, whether the issue is an actual inconsistency in training or confusion about a procedure, and how the matter was resolved."

In September, OIG examined whether "current procedures effectively and efficiently capture and track all policy, training issues, and recommendations identified" in IAD investigations. OIG found that "there are no written policies or procedures for the process of tracking policy and training recommendations identified in IAD cases" and that while such recommendations are tracked, "the current method of tracking is limited."

Also in September, OIG reviewed OPD's handcuffing data and found the following: (1) "handcuffing decisions are primarily linked to search decisions;" (2) "handcuffs appear to be applied to persons of all races at relatively equal rates when data is examined when controlling for search activity;" and (3) "probation and parole searches are the primary cause for the appearance of racially disparate handcuffing."

We look forward to reviewing future OIG progress reports and continuing to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of NSA reforms. We continue to work with OIG to ensure that the recommendations it offers in its monthly reports are followed up on appropriately and sufficiently.

Focused Task Assessments

Task 26: Force Review Board (FRB)

Requirements:

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

1.   *Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*

2.   *Require the FRB to review all use of force investigations;*

3.   *Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*

4.   *Require the FRB to forward sustained policy violations to the Discipline Officer.*

5.   *Require the FRB not to review any use of force allegation until the internal investigations has been completed;*

6.   *Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*

7.   *Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*

8.   *Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*

9.   *Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

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

Commentary:

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.[2]

OPD has been in compliance with Task 26 since the nineteenth reporting period; however, when the Department conducts FRBs during our scheduled site visits, we attend, observe, and assess the proceedings. No boards were scheduled during our August site visit.

OPD has conducted 12 Force Review Boards during 2016. We attended the September FRB. The investigating sergeant presented a detailed and comprehensive report of the event and each use of force, which involved officers responding to a report of a stabbing.

In the incident, the responding officers identified the involved subject at the designated address. Officers developed a plan to take him into custody, which included interacting/negotiating with the subject and using less-lethal force in an effort to avoid serious or fatal injuries. At one point, the subject was observed drinking ammonia and the disinfectant cleaner Pine-Sol, which he also threw at officers, declaring that he wanted the police to kill him. Due to the location and conduct of the subject, and the probability of an extraction, entry team officers also responded.

During the elongated encounter, officers deployed less-lethal bean bags, pointed firearms, and deployed the ECW (Electronic Control Weapon). During his presentation, the sergeant addressed and evaluated each deployment in detail; he found each use of force in compliance with policy. Two subject matter experts also responded to FRB questions regarding policy and training. We raised one concern about an officer's use of a single continuous 10-second ECW deployment. While the ECW deployment appears warranted in this case based upon the exigencies present and the totality of circumstances, the 10-second duration of the deployment was double the standard five-second deployment authorized by OPD policy. We inquired how the Department is training its officers regarding elongated ECW deployments; the subject matter expert related that a prolonged deployment is part of the rule and not an exception to the rule. We recommend that OPD reconcile this inconsistency between its policy and training.

The FRB found the investigation to be comprehensive. We agree; the presentation by this particular sergeant demonstrated a significant advance in the thoroughness of such cases, and is an example of a standard that OPD should maintain.

OPD remains in compliance with this Task.

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

Task 30: Executive Force Review Board (EFRB)

Requirements:

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

2.   *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

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

Commentary:

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.[3]

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

OPD conducted six EFRBs during current year 2016. We observed the board hearing conducted in August, and we concurred with the EFRB that the investigation was thorough and complete. We continue to note OPD's ever-increasing proficiency in such investigations – and the seriousness with which such cases are investigated. OPD remains in compliance with this Task.

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[3] Level I Use of Force events include: 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.
The EFRB consists of three senior commanders as voting members. In addition, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office.
A Level 1 use of force may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD present the results of their respective investigations to an EFRB

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

1. *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*

   a. *Time, date and location;*

   b. *Identification of the initiating member or employee commencing after the first year of data collection;*

   c. *Reason for stop;*

   d. *Apparent race or ethnicity, and gender of individual(s) stopped;*

   e. *Outcome of stop (arrest, no arrest);*

   f. *Whether a search was conducted, and outcome of search;*

   g. *Offense categories (felony, misdemeanor or infraction).*

2. *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*

3. *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

   (Negotiated Settlement Agreement VI. B.)

Relevant Policy:

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

Commentary:

OPD continues to collect and retain stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling as required by this Task. We found the collected data and retrieval process sufficiently reliable for its intended purpose in 2013 – which we point out, was approximately 10 years after the inception of the NSA. However, we and OPD are continually evaluating processes and procedures in an effort to strengthen them and to ensure that the data collected accurately identifies indicators of bias-based policing or racial profiling.

One of OPD's more recent initiatives has been the inclusion of enhancements to the Stop Data Form to more clearly identify reasons for stops, as well as to enhance supervisory and search recovery analytics. OPD has worked closely with Dr. Jennifer Eberhardt and her Stanford University-based research team on these enhancements. OPD initially planned beta-testing of the updated form for May of this year, with full implementation to commence in June; however, fully incorporating these revisions in the form has resulted in a delay with the anticipated operational implementation, which is now set for early October.

OPD also reviews various stop during its monthly Risk Management Meetings (RMMs). These meetings, generally led by a Deputy Chief, are conducted for the purpose of reviewing various risk data from one of the five Areas. The designated area commander is present to provide information and answers to personnel activity within the designated Area for a specified time period. A review of the Area stop data has been an integral part of these meetings, which generally include the identification/explanation of anomalies and/or variances in stop data between citywide and Area data and among Area squads; and an examination of stops, searches, search recovery rates and other related data. These reviews and discussions have proven fruitful in that we have seen a significant increase in the search recovery rates within the various population groups, even after discovering and addressing erroneous recovery rates described in previous reports.

We attended the September Risk Management Meeting and found in its effort to increase the operational value of these meetings, OPD changed the meeting format. Rather than focusing strictly on numbers, the meeting began with a discussion or the identification of various activities that are "contrary to OPD mission…and…corrective action" that can or should be taken. The Area Commander responded by outlining a number of operational issues, including the mismatch of supervisor and subordinate schedules, which limits interaction time between them. There was no immediate proposal to address these issues.

The Commander and staff also comprehensive described Area activities; crime control and community engagement strategies and activities; squad activities; and emphasized their efforts to provide weekly comprehensive instruction on policies and the law with emphasis on stop, search, and seizure. Based on this meeting, it is clear that this Area command is attentive to its mission, continuously addresses identified shortcomings, and works to improve operational activities.

While these meetings have proven fruitful from a risk management perspective – and to some degree, by increasing the Department's understanding of the various stop dataset indicators – OPD has more work to do regarding identified disparities. The more recent data consistently includes indicators of possible disparate treatment among the various population groups – i.e., bias-based policing or racial profiling. However, OPD has not yet developed a protocol or process for evaluating these indicators, an intervention strategy or corrective measures where appropriate – whether at one or more of the Area, squad, or individual officer levels. Such guidance should be developed and provided to Area commands to ensure that OPD consistently addresses indicators of disparate treatment. We do, however, recognize the effort put forward by OPD to better understand issues surrounding bias via the engagement with Dr. Eberhardt and the Stanford University research team.

The Stanford research was initiated with the purpose of examining "relations between the Oakland Police Department (OPD) and the Oakland community, and then to develop evidence-based remedies for the racial disparities" that may be found. The resulting report(s) noted, "[We indeed uncovered evidence that OPD officers treat people of different races differently…we found little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, our research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment." The findings recommended 50 actions that OPD should take to change the Department's culture and strengthen ties with the communities it serves.[4] OPD is developing an implementation plan to address these recommendations. We await the finalization of the plan.

As indicated above, we attended the September RMM. The tables illustrated in the following section illustrate stop data results for the Area referenced for discussions during that meeting.

STOP DATA REVIEWS

As is our practice, we are including several tables to illustrate various stop data. Again, we do so with the admonition that the stop data in and of itself is not dispositive of disparate treatment among the population groups. Instead, it is an indicator of possible disparate treatment warranting further, careful analysis and – where warranted –intervention.

CITYWIDE STOPS

Tables One and Two illustrate Citywide vehicle and pedestrian stop data from OPD.

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

Table One Vehicle Stop Summary[5]			
Race/Ethnicity	**Stops**	**Searches[6]**	**Recoveries[7]**
African American	57%	27%	37%
Asian	6%	8%	28%
Hispanic	21%	15%	47%
White	11%	5%	40%
Other	4%	5%	30%
Total	**100%** **15,458**	**20%** **3,119**	**38%** **1,184**

Table Two Pedestrian Stop Summary[8]			
Race/Ethnicity	**Stops**	**Searches[9]**	**Recoveries[10]**
African American	70%	52%	39%
Asian	4%	26%	42%
Hispanic	14%	34%	51%
White	11%	20%	55%
Other	2%	39%	31%
Total	**100%** **2,041**	**45%** **920**	**40%** **371**

As illustrated in the above tables, OPD officers stopped and interacted with a total of 17,499 individuals during the specified period of time or on average 155 per day. One in four of the stops resulted in a search, with an average recovery rate of 38%.

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[5]This dataset includes activity for the period April 22, 2016 through August12, 2016..

[6]Incident to arrest, weapons, inventory searches and related stops excluded.

[7] Subject to further verification.

[8]This dataset includes activity for the period April 22, 2016 through August12, 2016.

[9] Incident to arrest, weapons, inventory searches and related stops excluded.

[10] Subject to further verification.

MONTHLY REVIEW OF SELECTED AREA

Vehicle and Pedestrian Stops

Officers assigned to the Area under review during the August RMM stopped and interacted with a total of 3,257 individuals during the specified period of time – or, on average, 29 per day – as illustrated in Tables Three and Four. One in three of the stops resulted in a search, with an average recovery rate of 28%. African Americans were stopped and searched at the highest rates. See Tables Three and Four below.

Table Three[11]			
Area Vehicle Stop Summary			
Race/Ethnicity	**Stops**	**Searches[12]**	**Recoveries**
African American	67%	37%	25%
Asian	3%	9%	14%
Hispanic	23%	23%	42%
White	5%	9%	38%
Other	3%	8%	17%
Total	100%	31%	28%
	2,879	895	252

Table Four[13]			
Area Pedestrian Stop Summary			
Race/Ethnicity	**Stops**	**Searches[14]**	**Recoveries**
African American	81%	64%	24%
Asian	1%	25%	100%
Hispanic	10%	24%	56%
White	6%	21%	60%
Other	2%	57%	25%
Total	100%	56%	26%
	378	213	56

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[11] This dataset includes activity for the period April 22, 2016 through August12, 2016..

[12] Incident to arrest, weapons, and inventory searches excluded.

[13] This dataset includes activity for the period April 22, 2016 through August12, 2016..

[14] Incident to arrest, weapons, and inventory searches excluded.

Pat-Down (Frisks) Searches

Table Five illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches. This data is provided for informational purposes.

Table Five — Citywide Stops — Percentage of Stops Resulting in Weapons or Probation/Parole Searches				
Race/Ethnicity	**Vehicle Stop Pat-downs (frisks)**	**Pedestrian Stop Pat-downs (frisks)**	**Vehicle Stop Probation/Parole Searches**	**Pedestrian Stop Probation/Parole Searches**
African American	11%	15%	41%	34%
Asian	108%	10%	25%	13%
Hispanic	18%	24%	25%	19%
White	16%	21%	31%	11%
Other	21%	21%	32%	24%
Total	**12%**	**17%**	**37%**	**29%**

As we have noted previously, OPD has developed a process for the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling. It should do so. Thoughtful analysis of presently available data will enable OPD to identify the likely presence or absence of disparate treatment of one of more population groups, which will advance the goal of enhancing its relationship with all segments of the community. The publication of the Stanford University report provides further guidance on ways to comply with both the letter and spirit of this Task.

In the meanwhile, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on them until full compliance is achieved.

- Implementation of the revised Stop Data Forms, to include appropriate training to ensure that officers accurately document their search recoveries. OPD originally projected implementation of the revised Stop Data Forms for May; however, additional revisions have delayed implementation. Beta-testing is presently scheduled to commence in October. OIG reported the initiation of a program of daily inspections of stop/search/recovery data that will focus on strengthening supervisory accountability in these areas. OPD provided preliminary but limited results, which indicate increased accuracy regarding search recovery data. We await more complete results.

- Completion of training regarding search recovery documentation in cases of multiple-person stops and/or vehicle searches with multiple occupants. The first phase of the training is reportedly complete; OPD will initiate the second phase of the training when it adopts the revised Stop Data Form described above. Supervisory accountability for assuring the collection and recording of accurate search recovery data remains as issue.

- The implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels. OIG is focusing on careful reviews and follow-up of Area data as presented at the monthly RMM meetings. These reviews are designed to strengthen the entire stop data process. We continue to work with the Department on these strategies.

- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliable identify possible bias and assure sustained intervention and/or prevention measures. (This objective is temporarily delayed awaiting the implementation of PRIME, which should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings.) However, the OIG review of stop/search/recovery data described above is a limited, but proactive, step.

- Development of a plan for the implementation of the recommendations contained in the recently received Stanford University report. The report, researched and prepared by Dr. Eberhardt and her colleagues, analyzed 28,119 Stop Data Forms and found evidence that OPD officers treat people of difference races differently – but also found little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, the research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment. The report includes 50 recommendations, many of which OPD has partially or fully implemented. The City and OPD have represented full commitment to implement all 50. We look forward to the implementation plan to do so, and we will continue to work with the Department on these strategies.

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

  1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*

  2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*

  3. *All internal investigations which result in a sustained finding shall be submitted to*

> *the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
>
> 4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Relevant Policy:

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 24, 2013); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (published July 17, 2008); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published March 14, 2014).

Commentary:

The NSA requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases with at least one sustained finding that were approved from June 1 through July 31, 2016. This query yielded 32 cases, each containing at least one sustained finding. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

The NSA also requires that discipline be imposed in a manner that is fair and consistent. To this end, the Department developed a Discipline Matrix, which was adopted on September 2, 2010 and in effect until a new Discipline Matrix was approved on March 14, 2014. This new Matrix applies to violations after that date.

We reviewed all 32 cases with sustained findings that were approved during June and July 2016. Two cases resulted from Integrity Testing Unit (ITU) investigations. Another case stemmed from the off-duty conduct of an officer. Another case involved the improper search of a vehicle. Two other cases involved procedural issues associated with arrests, including failure to advise of *Miranda* warnings and failure to allow for a phone call. In one case, an officer failed to activate his PDRD as required. In another, a civilian employee was sustained for accessing inappropriate websites on Department computers. Eighteen cases originated from motor vehicle accidents that were ultimately determined to be avoidable.
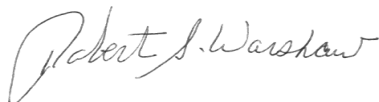
In each case, the discipline fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed. Termination was recommended in two cases. In four other cases, the involved employees retired or resigned before discipline was administered.

During the period of June 1 through July 31, 2016, two Skelly hearings were held for two IAD cases involving sworn employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly reports, and found that they contained adequate justification for the results documented. In one case, the officer was sustained for a preventable accident, and the proposed three-day suspension was reduced to one day, with the concurrence of the Assistant Chief of Police. In the other case, which involved allegations of demeanor and failure to accept or refer a complaint, the proposed 10-day suspension was upheld, again with the concurrence of the Assistant Chief of Police. Both reports were well written and followed the established format. We also reviewed the training records provided and confirmed that both Skelly Hearing Officers received the approved Skelly Officer training in January of this year.

OPD remains in partial compliance with Task 45.

Conclusion

The Oakland Police Department will soon embark on a new chapter, as the City seeks a new, permanent police chief. The issues that remain in this case are serious, and we expect the City to demonstrate the resolve to build on its accomplishments and to remedy those deficiencies that still exist.

Robert S. Warshaw

Chief (Ret.) Robert S. Warshaw

Monitor