

Fortieth Report *of the Independent Monitor for the Oakland Police Department*

Introduction

This month, the Oakland Police Department and its vendor continued to work on on the development of PRIME (Performance Reporting Information Metrics Environment), which will replace PAS (Personnel Assessment System) as the Department's risk management system. As noted in previous reports, there have been significant issues addressing Phase 1 and 2 problems in the new system – and these problems are defined as significant enough to prevent implementation of the new system. In addition, we remain concerned that as OPD moves toward implementation, its focus has been on the technical aspects of the system, but it has paid far less attention to the use of the new system to enhance risk management.

We are carefully tracking and monitoring the development of the new system. (See Task 41 for further information about our concerns.)

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

In this report, we describe our recent assessments of NSA Tasks 20, 34, 41, and 45. In accordance with the Court's Order of May 21, 2015, we now devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

Increasing Technical Assistance

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

investigations (Task 5); stop data (Task 34); risk management and the development of the new PRIME system, which is scheduled to replace PAS within the coming year (Task 41); several Department policies and procedures, including policies on handcuffing, span of control, and the use of electronic control weapons; and the Department's recent audit of the recruitment and training of new officers.

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

Building Internal Capacity at OPD

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. Each month, we review OIG's progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of the NSA reforms.

OIG's January report examined: (1) the Department's Management-Level Liaison (MLL), which tracks and reviews criminal cases that are not tried due to "any possible discrepancies associated with the performance of OPD personnel;" and (2) personnel arrested, sued, and/or served with administrative process.

The MLL review found no issues within the one-year period it assessed, and it noted that the Department is streamlining its MLL policy to reflect updated practices. However, it also observed that information on "dropped" cases is not currently entered into PAS; and recommended that "the Department should evaluate whether the number of dropped criminal cases should be added as a category in its early warning system as another measure to detect employee performance issues."

The second review examined whether OPD implemented the recommendations offered in OIG's October 2015 report on personnel arrested, sued, and/or served with administrative process. The review noted that the Department needs to do more work to implement the recommendations. We commend OIG for following up on one of its past reports.

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

We will also continue to work with OIG to ensure that the Department appropriately and sufficiently follows up on the recommendations that OIG offers in its monthly reports. In several recent reports, OIG detailed the findings of its in-depth evaluations and audits, which identified several shortcomings within various components of OPD. These included, for example, OPD's failure to comply with training requirements set forth in policy for dispatchers, supervisors, and criminal investigators; the timely and thorough completion and processing of performance evaluations; and OPD's compliance with its use of force investigation timelines. We were pleased to learn during our last site visit that OPD, in response to findings and recommendations of a recent OIG audit, has revised its policy related to criminal investigative training requirements; the new policy takes a more realistic and practical approach than the former policy. However, the frequency of training-related issues has prompted us to once again review OPD's compliance with Tasks 42 and 43 as they relate, respectively, to Field Training and in-service, or Continued Professional Training. Our review will commence during our February site visit.

Focused Task Assessments

Task 20: Span of Control

Requirements:

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

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

(Negotiated Settlement Agreement IV. C.)

Relevant Policy:

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

Commentary:

To assess these requirements for this report, we reviewed spreadsheets prepared by the Department for the months of October, November, and December 2016 that, by date, note which type of sergeant supervised each applicable squad – a primary sergeant, relief sergeant, acting sergeant, other sergeant (one working overtime), or none. (The Department refers to

unsupervised squads as “open.”) Using Telestaff, the Department’s electronic scheduling system, we also spot-checked this data to verify its accuracy. We calculated per squad the compliance percentages for this subtask during this reporting period. Each of the 47 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

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

Task 26: Force Review Board (FRB)

Requirements:

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

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

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

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

Commentary:

Force Review Boards are convened to reviewing the investigations of Level 2 use of force events.¹ OPD has been in compliance with Task 26 since the nineteenth reporting period; however, we continue to attend, observe, and assess FRBs when the board hearings are scheduled during our monthly site visits. OPD conducted 16 Force Review Boards in 2016 and one in 2017.

The most recent FRB was conducted during our January site visit. In this incident, officers engaged with an individual who they believed was armed and about to enter a restaurant. When encountered, officers instructed the subject to remove his hand from his pocket, whereupon the subject fled. During flight, officers noted the subject reaching for his waistband. In response, two officers, one after the other, deployed their Tasers; neither deployment had any effect. The pursuit continued, with one officer catching and making contact with the subject. The subject resisted, which resulted in the officer deploying the baton, whereupon the subject stopped resisting and complied with instructions. Officers placed the subject into custody without further incident or a resulting injury.

The investigating sergeant provided the board with a detailed presentation of the event and the ensuing investigation, including training points, a tactical assessment, and findings. The FRB thoroughly reviewed the entire event and investigation, and found the force and the investigation in compliance with OPD policy.

As we previously reported, force data for the period 2007-16 indicates an overall decline of uses of force from 1875 to 414 or 78%.

OPD remains in compliance with this Task.

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

Task 30: Executive Force Review Board (EFRB)

Requirements:

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

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

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

Commentary:

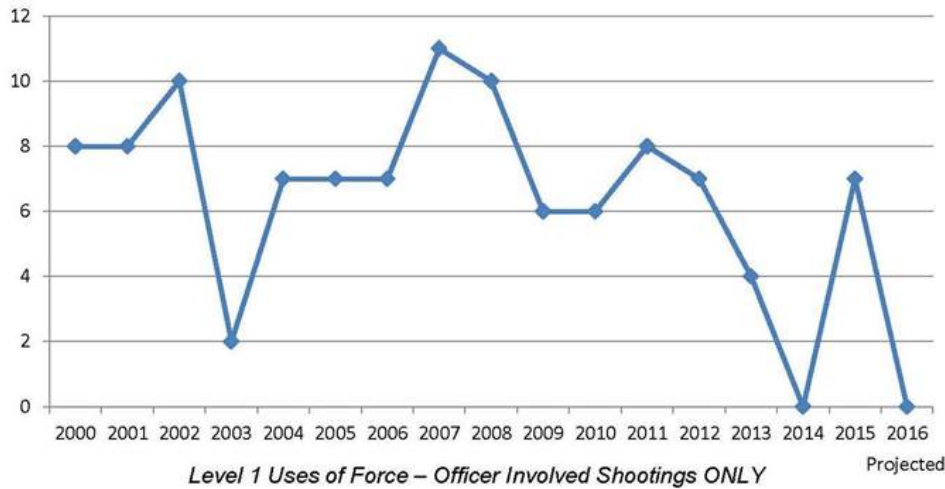
Executive Force Review Boards (EFRBs) are convened to review Level 1 use of force events.²

OPD conducted eight Executive Force Review Boards in 2016. There have been no officer-involved shooting events since November 2015; and, to date, all board reviews are complete. (The most recent board hearing was held in August 2016.) OPD has, over time, seen a decrease in officer-involved shootings, which is a noteworthy achievement. Although we included the below illustration in our previous report, due to its significance, we again include it for review.

² 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



OPD remains in compliance with this Task.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

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

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

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

Commentary:

As we have repeatedly reported, OPD has developed a credible and effective process for the collection and analyses of stop data. In addition, OPD has continuously strengthened the process and most recently has implemented a revised Stop Data Form, which assists officers with the means to capture essential, required data on each discretionary motor vehicle and pedestrian stop in a uniform, consistent manner.

These adjustments will enhance OPD's ability to identify, address, and resolve indicators of bias-based policing, racial profiling, and/or disparate treatment among the identified population groups, as required by this Task.

Of particular importance is the identification of stops made based on intelligence. These stops are often the cause of numerical disparities among population groups; therefore, documentation of the basis for these stops is important when reviewing databases for indicators of disparate treatment or racial profiling. OPD developed specific guidance for making and recording such stops and carefully reviews intelligence-based stops to ensure compliance with carefully defined guidelines.

Stop data collection is an ongoing endeavor, as is the compilation and review of the data. This compilation has been primarily handled by one sergeant, who not only collected and compiled the data – but over time, developed an illustrative process that provided a visual depiction of a variety of datasets to assist with the identification of data disparities. Unfortunately, due to recent personnel shifts, the sergeant will soon be reassigned; OPD reports that the sergeant will remain in his current assignment until he can sufficiently train his successor (a civilian crime analyst) on stop data collection, presentation, and analysis. We will monitor this closely.

As a general practice, OPD schedules a full review of stop data from one of its five Areas as part of a more broadly based risk management meeting each month during our site visits. This consists of a panel of command officers who review the data with the Area Commander to identify areas *indicative* of racial profiling and/or disparate treatment; and, where appropriate, to address relevant crime control, deployment, or supervisory strategies. This meeting did not occur during our January site visit; rather, we met with OPD to discuss ways to improve the process and move to full compliance with Task requirements.

This meeting revealed several concerns including the lack of planned support for the stop data analytical process in the planned PRIME data system – essentially leaving the cumbersome, time-consuming, analytical process in place and the lack of an ability to provide commanders with access to timely, relevant, stop data analytics. In addition, we remain concerned with the reluctance of OPD to identify and/or find either the presence or absence of disparate treatment.

Accordingly, we continue to recommend that OPD prioritize further refinement of its process for focused analysis (drill-downs) of selected squads' data that appear to reflect disparities among population groups in order to determine the actual presence or absence of disparate treatment.

We also continue to closely follow OPD's implementation of the Stanford University research team's 50 recommended actions that the Department should take to change its culture and strengthen ties with the communities it serves. The implementation plan, first presented to us by OPD for review in December, indicated that 28 recommendations had been implemented or are currently in progress. The remaining 22 are scheduled to be in progress or completed by July 2017.

STOP DATA REVIEWS

As indicated above, we reviewed no stop data during our January visit; however, we are once again including Citywide data tables for information purposes. These tables indicate that officers stopped and interacted with a total of 23,930 individuals during the specified period, or on average 83 per day.³

The data illustrates a significant numerical variance in the stops of individuals among the identified population groups; however, as we previously advised, this in and of itself is not a dispositive indicator of disparate treatment given the multitude of factors that are involved in directives to or decisions by officers when making stops. Therefore, any determination of the presence or absence of disparate treatment among population groups requires more in-depth analysis. This is an ongoing OPD activity, which we are closely monitoring.

Tables One and Two illustrate Citywide stop data; Table Three illustrates the percentage of Citywide stops resulting in pat-down or probation/parole searches.

³ This dataset includes activity for the period January 16, through October 31, 2016.

Table One			
Citywide Vehicle Stop Summary⁴			
Race/Ethnicity	Stops	Searches⁵	Recoveries
African American	60%	29%	32%
Asian	5%	5%	36%
Hispanic	21%	17%	38%
White	10%	7%	34%
Other	3%	8%	19%
Total	100%	22%	33%
	20,253	4,457	1,481

Table Two			
Citywide Pedestrian Stop Summary⁶			
Race/Ethnicity	Stops	Searches⁷	Recoveries
African American	69%	47%	35%
Asian	4%	18%	29%
Hispanic	14%	34%	31%
White	11%	25%	37%
Other	2%	35%	26%
Total	100%	41%	35%
	3,677	1,514	526

⁴This dataset includes activity for the period January 16, through October 31, 2016.

⁵Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

⁶This dataset includes activity for the period January 16, 2016 through October 31, 2016.

⁷ Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

Table Three				
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	12%	15%	41%	17%
Asian	11%	12%	26%	4%
Hispanic	19%	23%	26%	12%
White	16%	21%	31%	12%
Other	19%	20%	39%	15%
Total	14%	17%	38%	15%

In summary, OPD has designed and developed a process for the collection and retention of stop data in a manner that can be accessed and analyzed to identify, address, and resolve indicators of bias-based policing or racial profiling. Such analyses should assist with building trust and enhancing its relationship with all segments of the Oakland community. As we have previously noted, 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 these issues until the Department achieves full compliance with the following:

- The implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels: OPD reviews Area data during its monthly RMM. The analysis of data prior to, during, and following these meetings is an ongoing endeavor to ensure a strong stop data process. We continue to work with the Department on the development of strategies to identify indicators of racial bias or disparate treatment among the various population groups, as well as the development of appropriate intervention processes.
- Assessing and addressing whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. We previously noted that this objective is temporarily delayed awaiting the implementation of PRIME, which we understood should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings; however, learned during our January visit that this may not be the case. We will seek further clarification as OPD makes progress on the development of PRIME. In the meantime, OIG’s review of stop/search/recovery data described above is a limited, but proactive, step.

- Complete implementation of the 50 recommendations contained in the Stanford University report. In December, OPD provided us with its implementation plan and progress report, which indicates that 28 recommendations have been implemented or are currently in progress; the remaining are scheduled to be in progress or completed by July 2017. We will continue to work with the Department on these strategies.

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

Requirements:

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

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received*

during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as “one” even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).

7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee’s immediate supervisor shall conduct a more intensive review of the member/employee’s performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee’s performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee’s immediate supervisor shall remain and discuss the situation and the member/employee’s response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*
8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

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

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee’s immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee’s responsible Deputy Chief, following a recommendation in writing from the member/employee’s

immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*

18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013.

Commentary:

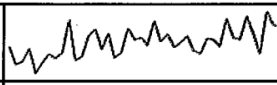


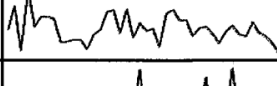
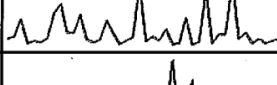
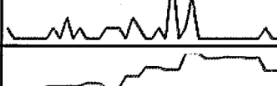
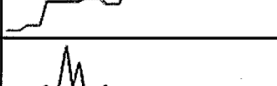

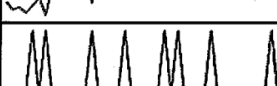
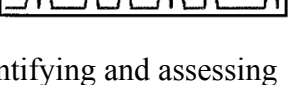
Task 41 is linked to Task 40, which addresses the data needed by the risk management process. Again for the period covered in this report there are no significant issues regarding data quality and availability. The Department, through the PAS Administration Unit, continues to conduct internal audits of the required data and to correct any problems as they arise. The PAS Administration Unit is also involved in testing PRIME to ensure that the data transfers well in anticipation of the implementation of the new system.

PAS records for the quarter of October through December 2016, as compiled by OPD, indicate that data were entered for all of the fields required by Task 40. The required data for the quarter included reports of 138 uses of force. The graphs at the end of the table below show that drops in the use of force have also been accompanied by increases in the numbers of arrests over time, indicating that the declines in force used have occurred while enforcement levels have increased or remained stable.

A further breakdown of the types of use of force shows that, as with the last quarter, there were again no Level 1 uses of force. There were 31 Level 3, 10 Level 2, and 97 Level 4 uses of force during the quarter. The total of Level 2 and 3 uses of force were therefore 41, compared with a total of 34 for the previous quarter. With a total of 176, Internal Affairs complaints this quarter show a decrease from the 227 reported the previous quarter.

**Command Review Totals by Month
 4Q - 2016**

Label	Oct-16	Nov-16	Dec-16	SPARKLINES (Jul 13 - Dec 16)
Level 1 Uses of Force	0	0	0	
Level 2 Uses of Force	4	5	1	
Level 3 Uses of Force	4	21	6	
Level 4 Uses of Force	32	38	27	
Unintentional Firearms Discharge	1	0	0	
Sick Leave Hours	2802.05	2940.95	1757.53	
Line of Duty Injuries	0	0	0	
Narcotics Related Possessory Offenses Arrests	298	177	175	
Vehicle Collisions	11	1	1	
All Vehicle Pursuits	11	4	0	
All Arrest	2132	1745	1716	
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	24	37	12	
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	10	26	2	
Awards	16	6	63	
Assignment History	12799	12799	12799	
Case Evaluation Reports	65	37	3	
Report Review Notices--Positive	1	3	2	
Report Review Notices--Negative	0	0	0	
Canine Deployments	9	9	4	
Financial Claims	0	0	0	

Internal Affairs Complaints	100	84	82	
In-Custody Injuries	2	2	0	
Civil Suits (Tort Claims)	0	0	0	
Criminal Cases Dropped	47	27	0	
O.C. Checkouts	3	7	8	
Officer Involved Shootings	1	0	0	
Rank / Class History	2607	2607	2607	
Training History	1354	1254	977	
Supervisory Notes	1442	1262	1470	
Criminal Arrest Made Against OPD	0	1	0	

The core of the risk management process defined by Task 41 involves identifying and assessing individual officers based on risk-related behavior and then intervening as appropriate. The system also supports a broader approach to managing risk, in which the Department continuously assesses activity and seeks to incorporate those assessments more generally into its risk reduction effort. To support that, the Department holds monthly Risk Management Meetings by Patrol Area. However, OPD did not hold a Risk Management Meeting in January.

For the reporting period ending December 31, 2016, OPD completed a total of 39 risk management reviews that were processed up the chain of command and through the PAS Review Panel. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. The reviews include examination of all identified risk-related activity consistent with the policy. The table below also shows that 42 officers exceeded thresholds for review during this quarter.

The table tracks the review process and shows that supervisors recommended that no action be taken in 31, or 79%, of the 39 reviews for the current reporting period. Three officers were recommended for monitoring and one for supervision. When assessed at the end of the review period, 14 officers were in monitoring and three were in intervention. Again, that is nearly unchanged from the previous quarter. Nine of the officers were referred for review through the administrative referral process, rather than for exceeding one of the set thresholds. Overall, the data are largely unchanged from the prior quarter and indicate that approximately 2.3% of all

officers (Total N=745, monthly average) are on some risk management-related status – either monitoring or intervention. When the percentage using patrol officers as the base (N=453) is considered, this increases to over 3.7% of all patrol officers. Again we note that these numbers are somewhat lower than expected under a system intended to continuously lower risk over time.

The value of the data in the chart below is for tracking data over time, and using it to assess, and perhaps, increase the rigors of the review process as it serves the goal of risk reduction.

Summary of PAS Reviews and Recommendations 2016

	PAS Reviews Completed		Supervisor Rec- no action		Supervisor Rec- Recognition		Supervisor Rec- Monitoring		Supervisor Rec- Intervention		Supervisor Concurs with PAS Admin		Commander rec Concurs w Supervisor		Dep. Chief Concurs w Commander		PAS Panel Concurs w DC		Pending	Number of personnel that exceeded a Threshold
			%		%		%		%		%		%		%		%			
																				Percentages apply to completed cases only
January	10	9	90%	1	10%	0	0%	0	0%	10	100%	10	100%	10	100%	10	100%	1	2	
February	12	11	92%	0	0%	1	8%	0	0%	10	83%	12	100%	12	100%	11	92%	3	23	
March	19	16	84%	0	0%	3	16%	0	0%	18	95%	19	100%	19	100%	19	100%	1	0	
April	9	9	100%	0	0%	0	0%	0	0%	8	89%	9	100%	9	100%	9	100%	8	20	
May	11	11	100%	0	0%	0	0%	0	0%	11	100%	11	100%	11	100%	10	91%	2	0	
June	2	1	50%	0	0%	1	50%	0	0%	2	100%	2	100%	2	100%	2	100%	5	0	
July	0	0		0		0		0		0		0		0		0		8	2	
August	15	14	93%	0	0%	1	7%	0	0%	15	100%	15	100%	15	100%	15	100%	3	0	
September	8	7	88%	0	0%	1	13%	0	0%	8	100%	8	100%	8	100%	8	100%	3	5	
October	10	8	80%	1	10%	0	0%	1	10%	10	100%	10	100%	9	90%	9	90%	6	17	
November	17	16	94%	0	0%	1	6%	0	0%	16	94%	17	100%	17	100%	16	94%	16	15	
December	12	9	75%	0	0%	2	17%	1	8%	11	92%	11	92%	12	100%	11	92%	19	10	
Total	125	111		2		10		2		119		124		124		120		75	94	
Average	11.4	10.1	88.8%	0.2	1.6%	0.9	8.0%	0.2	1.6%	10.8	95.2%	11.3	99.2%	11.3	99.2%	10.9	96.0%	6.3	7.8	

For our reports, we also review the PAS histories of officers who had a Level 1 use of force. For this quarter, as was true during the last quarter, no officers fell into this category.

As noted above, during our January site visit, the Monitoring Team attended a Departmental meeting on the status of the risk management system PRIME. The meeting was also attended by key City Information Technology staff. As noted in previous reports, there have been significant issues addressing Phase 1 and 2 problems in the new system. These problems are defined as significant enough to prevent implementation of the new system.

As of the January meeting, the Department reports that it continues to make progress on the development of PRIME. From approximately 400 such problems three months ago, currently 19 remain for OPD, and an additional 20 remain for the vendor to address. The Department and the vendor have daily scheduled phone calls to address these issues; while they do not anticipate additional delays, they acknowledge that additional problems may be discovered as the current ones are resolved.

According to the existing schedule, OPD expects full implementation of PRIME by the end of April. We are uncertain if that is a realistic timeframe.

In addition to the “bugs” described above, one other significant issue will need to be addressed before implementation. That has to do with the speed of the connection between the vendor’s cloud-based system and OPD. A direct connection will be needed to increase data capacity and support an acceptable speed of communication for the system.

It is clear that OPD is making progress toward implementation of PRIME (Performance Reporting Information Metrics Environment), the Department’s new risk management system. OPD and its vendor have addressed significant and numerous technical problems, and the development of the system is moving forward. At the present time, however, the development work has largely focused on the *technological* aspects of the system and particularly on ensuring that the new and improved database can replicate the processes and products developed and used in PRIME’s predecessor, the Personnel Assessment System (PAS).

It is, of course, important that the reports that the new system will be able to generate are consistent with the earlier reports. However, as full implementation nears, it is also important that the Department continues to consider how it can take advantage of the new capacities of the PRIME system. That aspect of planning has lagged behind the technical dimensions of the project, and it appears that no one now has responsibility for planning uses of the system that go beyond the duplication of PAS. That means that there is not a current effort to generate the reports that will be used to enhance management in the Department in ways that take advantage of the new technology. It is widely recognized that PRIME will have the capacity to generate information dashboards and special reports, but there has been limited progress on development in that area to date. For example, on its present course, PRIME is not expected to generate stop data reports or to automatically generate reports that summarize risk management data like the reports currently assembled by hand for the monthly Risk Management Meetings.

The potential value of PRIME is arguably limited by three issues related to the assignment of personnel:

- **First, no individual or group has responsibility for tapping into the enhanced capacities of the system for managing risk in the Department.** There is no systematic rethinking of analyses or data-based reports, even though the Department has made important advances in using data over recent years. There would be value in assigning responsibility for advancing this area.

- **Second, and related to the problem discussed above, is the fact that the data enhanced management tasks done in the Department have outpaced the resources applied in that area.** In recent reports, we have discussed issues involving analysis of risk-related behavior, reporting of stop data, analyses of recruitment and training, and the analysis of data on crime and violence. Uniformed staff have been asked to lead these analyses; they have brought considerable law enforcement experience to the tasks and have worked hard at them. But the volume of such work and the growing demand for analysis, as well as the untapped technical capacity of Departmental data systems, all combine to support the view that additional expertise is needed. *The current approach is simply inefficient and subject to erroneous analyses and conclusions.* The Department would benefit from adding expertise in data analysis. The addition of trained data scientists would improve administrative processes as well as crime analysis. The demands for these skills have simply outpaced the availability of appropriate resources in the Department.
- **The third personnel-related issue impacting risk management in the Department is closely tied to both of the problems noted above.** With the new year, existing personnel practices have resulted in the movement of several key staff members from risk management and related organizational units. Since there are few long-term civilian employees with management responsibilities in these areas, the changes have caused a serious drain on specialized knowledge and experience. The rotation of uniformed staff, combined with limited non-uniformed staff assigned to key technical areas, significantly impedes progress in these areas.

The three issues noted above address the question of how OPD can reap the benefits of the extensive investment that has been made in information technology in the Department. Those investments include the new PRIME system, a forthcoming records management system, and even the Department's commitment to open data. To date, those investments and their planned enhancements have outpaced commitments to the human resources that will maximize the contributions of the technology to police operations. For now, OPD continues to meet the requirements of Task 41 under the predecessor of the about-to-be-implemented PRIME system. We remain concerned that as the Department moves toward implementation, exhaustive technical work has been done to prepare that system for implementation but less attention has been paid to *the use of the new system to enhance risk management.* The implementation of PRIME provides an opportunity to look beyond technical issues and toward both the use of the system for managing risk and for addressing the data and analysis potential in the Department.

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:

Task 45.2 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 reviewed the 13 cases that contained at least one sustained finding that were approved in October 2016. 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.

As noted above, we reviewed all 13 cases with sustained findings that were approved during October 2016. Four cases involved allegations of improper demeanor. In three cases, the employees failed to dispatch a call, or take a report once on scene. In one case, the officer improperly classified a domestic battery offense. Another case involved an improper relationship between a civilian trainee and her civilian trainer. One case involved a pursuit that was deemed out of compliance, and three others stemmed from preventable motor vehicle accidents.

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.

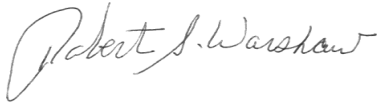
During October 2016, OPD held Skelly hearings for three IAD cases involving sworn employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly reports, and found that they contained adequate justification for the results documented. In one case, the officer was involved in a domestic altercation while off-duty. The sustained finding for obedience to laws was changed to not sustained, and the proposed 10-day suspension was rescinded, with the concurrence of the Assistant Chief of Police. In another case, which involved allegations of performance of duty (report writing) and intentionally failing to accept or refer a complaint, the one finding was changed to *unintentionally* failing to accept or refer a complaint, and the proposed five-day suspension was reduced to three days, with the concurrence of the Assistant Chief of Police. In the third case, involving a preventable collision which occurred during a pursuit, the sustained finding was upheld, but the penalty was reduced from a one-day suspension to a written reprimand. Again, the Assistant Chief of Police concurred with this determination. All reports were well-written and followed the established format. We also reviewed the training records provided and confirmed that all Skelly Hearing Officers received the approved Skelly Officer Training in January of last year. No new Skelly officers were trained during the two-month period under review.

OPD remains in partial compliance with Task 45.

Conclusion

While our focus on the topic of risk management has been largely on technical areas, it is worth noting the extent to which these practices seem to have wider effects. During our January site visit, members of the Monitoring Team observed a meeting of street outreach workers and OPD officials, including Community Resource Officers. The outreach workers repeatedly mentioned the problem of officers frequently transferring in and out of assignments in their neighborhoods. There was a general consensus that the Departmental practice had a detrimental effect on neighborhoods and on police-community relations. They pointed out that these frequent transfers essentially prohibited the development of important relationships between officers and community members. The impact of personnel processes in the community paralleled our statement regarding the technical skills areas that we noted above.

This meeting provided an opportunity for OPD to obtain critical feedback from concerned community members. It was also an important and commendable step in building community relations, and in understanding some specific concerns that OPD can resolve with commitment.

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

Chief (Ret.) Robert S. Warshaw
Monitor