

March 17, 2017

# Forty-First Report *of the Independent Monitor for the Oakland Police Department*

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## Introduction

This is our forty-first 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 5 and 34. As we have noted previously, 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 February report examined: (1) intelligence-led stops; (2) a follow-up inspection of recommendations that OIG made last year to the Criminal Investigations Division (CID) and Internal Affairs Division (IAD); and (3) confiscated and found currency in the Department's Property and Evidence Unit.

In its first review, OIG found that of the 252 randomly selected stops it examined, 39 (16%) were intelligence-led. OIG noted that all were "sufficiently articulated and properly categorized as being intelligence-led." To ensure that OPD continues this trend, the Department has developed a draft Information Bulletin that offers three examples of stops that were marked as intelligence-led but are actually not. The Information Bulletin, once finalized, will be used as a basis for Department-wide line-up training.

OIG's second review followed up on its April 2016 report in which it examined criminal investigations involving Department personnel. That report made three recommendations to CID – including that CID improve its documentation of when it notified the District Attorney's Office of any potential criminal violations and its tracking of misconduct allegations "that are eventually deemed non-criminal/non jurisdictional." The report found that OPD implemented all three recommendations.

We note that OIG is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

OIG's third review – the audit of confiscated and found currency in the Department's Property and Evidence Unit – found some discrepancies. As a result of the review, OIG recommended that the unit regularly verify that its safe contents and related documentation match, and evaluate its practices for keeping money envelopes.

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.

## *Focused Task Assessments*

### Task 5: Complaint Procedures for IAD

#### Requirements:

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

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

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

(Negotiated Settlement Agreement III. E.)

**Relevant Policy:**

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

**Commentary:**

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD investigation 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. The Court Order was a serious development in the Department's progress toward full compliance. As there are still residual issues associated with this matter, we deem Task 5 to be not in compliance.

Task 5 consists of several subtasks, briefly described below. Based on OPD's compliance history with many of the subtasks, not all are being actively monitored at this time.

**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene. **Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay must be documented. **Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint. **Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander. **Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD.

To assess compliance with Task 5.1 through and including Task 5.5, we reviewed the Daily Incident Logs (DILs) prepared by the Communications Division and forwarded to IAD each business day. The DIL form has been modified several times during our tenure to elicit "forced responses" that gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD's ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years now. Consequently, we no longer actively assess OPD's compliance with these subtasks, but we continue to receive both the DILs and Daily Complaint Referral Logs (used to document when Information Business Cards (IBCs) are provided to citizens in lieu of a complaint forms). We spot-check these forms regularly to verify that the quality of their completion has not diminished.

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This subtask has not been actively monitored since December 2014, though we have reviewed cases applicable to this requirement in several recent reports.

**Task 5.12** requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Under current policy, the Communications Division must record on the DILs complaints that are received and/or handled by on-duty supervisors, and the DILs is forwarded daily to IAD.

OPD remains in compliance with Tasks 5.6 and 5.12.

**Task 5.15** through **Task 5.19**, and **Task 5.21**, collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed 15 IAD cases that were approved in December 2016.

This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.<sup>1</sup>

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<sup>1</sup> Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

Together, **Tasks 5.15** and **Task 5.16** require that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements.

In all of the cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the majority of cases, video and/or audio recordings proved to be a significant factor in allowing OPD to reach a proper conclusion.

Investigators conducted follow-up interviews to seek clarification or resolve inconsistencies in three of the 15 cases we reviewed. In one, the complainant and three witnesses were each interviewed twice. In another case, the complainant was interviewed three times. In the third case, the complainant was interviewed twice.

OPD made credibility assessments for all involved parties in nine of the 15 cases. The six remaining cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In three cases (including two handled as summary findings), complainants and/or witnesses were deemed not credible. In each of these cases, PDRD recordings refuted some of the assertions being made by those involved.

In 12 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In six of the cases, PDRD recordings were available and assisted in the determination. In another case, a camcorder video made by an OPD officer taping a demonstration allowed for a definitive finding. Three cases had findings of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts.

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

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 48 allegations that received dispositions as follows: eight exonerated; 26 unfounded; five not sustained; one sustained; and eight administratively closed. We did not disagree with any of the findings.

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

Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and when available, we attend these meetings.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or her designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Six of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In all of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary.

OPD remains not in compliance with Task 5, because of its still pending satisfactory progress with the provisions of the March 23, 2016 Court Order.



## Task 26: Force Review Board (FRB)

### **Requirements:**

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

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

(Negotiated Settlement Agreement V. C.)

### **Relevant Policy:**

Department General Order K-4.1, *Force Review Boards*, was 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 uses of force.<sup>2</sup> OPD has been in compliance with this Task 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 has thus far conducted two Force Review Boards in 2017.

Annual Force data for the period 2007-16 indicates an overall decline of uses of force from 1,875 to 414, or 78%. Present year force data as of February 11 (following our last site visit) is at 26 uses of force, compared with 59 for the same period in 2016. This represents a YTD decrease of 56%.<sup>3</sup>

OPD remains in compliance with this Task.

## Task 30: Executive Force Review Board (EFRB)

**Requirements:**

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

(Negotiated Settlement Agreement V. G.)

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<sup>2</sup> 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.

<sup>3</sup> OPD Memorandum, 177<sup>th</sup> Bi-weekly Compliance Update, 29 Jan 17 – 11 February 17.

**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 uses of force.<sup>4</sup>

OPD conducted eight Executive Force Review Boards in 2016. Prior to the recent fatal officer-involved shooting, on February 17, the last such event occurred in November 2015. Except for the most recent event, 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 – after reaching a high of 11 in 2007 – saw none in 2014 and 2016.

OPD remains in compliance with this Task.

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<sup>4</sup> 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 has developed, and continuously assesses and strengthens its process for the collection and analysis of stop data. As we have reported previously, the most recent change in the process involved the Department’s implementation of the revised Stop Data Form. This form captures data that is essential to the identification of any indicators or evidence – or lack thereof – of disparate treatment or bias affecting the identified population groups, as required by this Task.

One of the more important revisions to the Stop Data Form is the elicitation of information from officers on stops that they made based on “intelligence.” Per OPD, in intelligence-led stops, “officers possess knowledge, which can be linked to an articulable source, leading to the

initiation of a stop...[The source] may be very specific, such as a named person, or information about a recent crime trend or pattern tied to a specific location or area.” Intelligence-led stops are often the cause of numerical disparities among population groups; accordingly, OPD’s ability to analyze them both as part of the whole database, but also separate and apart from it, is important to the identification of possible disparate treatment and/or bias.

OPD developed specific guidance and provided training to officers regarding intelligence-led stops. These stops are carefully reviewed to ensure that officers adhere to carefully defined guidelines. An initial three-month review by OPD found that officers identified 26% of stops as intelligence-led. A more detailed review of these stops, also by OPD, determined that while the stops were justified, some did not specifically relate to intelligence – but rather were due to officers’ misinterpretations of required factors warranting the intelligence-led designation. OPD will provide additional focused guidance and training to address this issue. We are continuing our discussions and review of this data with OPD.

OPD has clearly made significant progress in the collection, compilation, and review of stop data. The Department now provides a variety of datasets to assist with the identification of disparities and allows for a visual depiction/illustration of them for review and evaluation during Risk Management and other meetings. This progress has been primarily shepherded by one sergeant who, as we noted in our last report, is now scheduled for reassignment. We recognize his talents and commitment to the development of this process; and we are pleased that he will temporarily remain in his current assignment until his successor (a non-sworn crime analyst) is sufficiently trained on stop data collection, presentation, and analysis. We will monitor this closely.

Each month, OPD schedules a full review of stop data from one of its five Areas as part of a more broadly based Risk Management Meeting. The meeting consists of a panel of command officers who review the data with the Area Commander to identify areas that are *indicative* of racial profiling or bias and/or disparate treatment; and, where appropriate, address relevant crime control, deployment, or supervisory strategies. Although the data presented during these meetings has illustrated disparities warranting further analysis to determine whether it was indicative of bias or other factors – i.e. specific crime control strategies – the efficacy of that process has been hampered by technology and time constraints. Accordingly, in an effort to improve the entire process, including the various data collected for review, OPD reviewed and made modest changes to the process, which includes additional analytics and graphic presentations.

These improvements to the Risk Management process are a small step. However, we remain concerned with the lack of support for the stop data analytical process in the proposed 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 focus on determining the basis for identified data disparities and/or the presence or absence of bias.

Accordingly, we continue to recommend that OPD prioritize refinement of its process for focused analysis (drill-downs) of selected squads' data that reflect data disparities among population groups to determine to the degree possible, the presence or absence of bias.

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

The tables illustrated below are illustrative of data provided at the February RMM. Tables One and Three illustrate vehicle and pedestrian data for the Area under review during the February Risk Management Meeting; Tables Two and Four illustrate similar data for other city Areas. Table Five illustrates the percentage of stops resulting in pat-down searches. Overall, OPD officers stopped and interacted with a total of 30, 233 individuals during the specified period, or on average 90 per day.<sup>5</sup> Of this total number of stops, officers assigned to the Area under review made 4,630 stops or on average 14 per day during the same period.

<b>Table One</b>			
<b>Area Vehicle Stop Summary<sup>6</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>7</sup></b>	<b>Recoveries</b>
<b>African American</b>	56%	27%	32%
<b>Asian</b>	4%	11%	29%
<b>Hispanic</b>	30%	15%	31%
<b>White</b>	7%	18%	39%
<b>Other</b>	3%	10%	18%
<b>Total</b>	<b>100%</b>	<b>22%</b>	<b>32%</b>
	<b>3,972</b>	<b>872</b>	<b>279</b>

<sup>5</sup> This dataset includes activity for the period January 1 through November 30, 2016.

<sup>6</sup>This dataset includes activity for the period January 1 through November 30, 2016.

<sup>7</sup>Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

<b>Table Two</b>			
<b>Other Areas Vehicle Stop Summary<sup>8</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>9</sup></b>	<b>Recoveries</b>
<b>African American</b>	61%	30%	28%
<b>Asian</b>	6%	10%	26%
<b>Hispanic</b>	20%	20%	31%
<b>White</b>	11%	7%	26%
<b>Other</b>	4%	10%	19%
<b>Total</b>	<b>100%</b>	<b>24%</b>	<b>28%</b>
	<b>21,606</b>	<b>5,156</b>	<b>1,446</b>

<b>Table Three</b>			
<b>Area Pedestrian Stop Summary<sup>10</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>11</sup></b>	<b>Recoveries</b>
<b>African American</b>	62%	42%	29%
<b>Asian</b>	4%	30%	25%
<b>Hispanic</b>	23%	39%	17%
<b>White</b>	9%	43%	36%
<b>Other</b>	3%	37%	0%
<b>Total</b>	<b>100%</b>	<b>41%</b>	<b>26%</b>
	<b>658</b>	<b>267</b>	<b>70</b>

<sup>8</sup>This dataset includes activity for the period January 1, through November 30, 2016.

<sup>9</sup>Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

<sup>10</sup>This dataset includes activity for the period January 1 through November 30, 2016.

<sup>11</sup> Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

<b>Table Four</b>			
<b>Other Areas Pedestrian Stop Summary<sup>12</sup></b>			
<b>Race/Ethnicity</b>	<b>Stops</b>	<b>Searches<sup>13</sup></b>	<b>Recoveries</b>
<b>African American</b>	69%	46%	30%
<b>Asian</b>	4%	18%	19%
<b>Hispanic</b>	14%	36%	24%
<b>White</b>	11%	23%	24%
<b>Other</b>	2%	32%	30%
<b>Total</b>	<b>100%</b>	<b>40%</b>	<b>30%</b>
	<b>3,997</b>	<b>1,611</b>	<b>468</b>

<b>Table Three</b>				
<b>Percentage of Stops Resulting in Weapons or Probation/Parole Searches</b>				
<b>Area</b>			<b>Other Areas</b>	
<b>Race/Ethnicity</b>	<b>Vehicle Stop Pat-downs (frisks)</b>	<b>Pedestrian Stop Pat-downs (frisks)</b>	<b>Vehicle Stop Pat-downs (frisks)</b>	<b>Pedestrian Stop Pat-downs (frisks)</b>
<b>African American</b>	15%	16%	11%	15%
<b>Asian</b>	14%	17%	6%	11%
<b>Hispanic</b>	18%	33%	16%	21%
<b>White</b>	13%	19%	17%	22%
<b>Other</b>	18%	20%	16%	19%
<b>Total</b>	<b>15%</b>	<b>20%</b>	<b>12%</b>	<b>16%</b>

<sup>12</sup>This dataset includes activity for the period January 1 through November 30, 2016.

<sup>13</sup> Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.



In summary, OPD has for over 12 years, been charged with the development of a credible process for the collection, retention, and analysis of stop data so as to identify, address, and resolve indicators of bias-based policing or racial profiling. For the past four years, the data has in some cases provided indicators of possible disparate treatment, which have resulted in additional OPD review and scrutiny. We now look for OPD to specifically address any indicators of *possible* disparate treatment in an effort to determine either the *presence or absence* of bias or unwarranted disparities, which is an essential ingredient to building trust and enhancing its relationship with all segments of the Oakland community.

As previously noted, the publication of last year's Stanford University report provides further guidance on ways to comply with both the letter and spirit of this Task.

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: The analysis of data prior to, during, and following Risk Management 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. This is an ongoing concern temporarily delayed awaiting the implementation of PRIME, which would expedite the gathering and presentation of the voluminous data for review during the Area Risk Management Meetings. In January, we learned that this might not be the case. We are awaiting further clarification on the timeline for the inclusion of this data in PRIME. In the meantime, OIG's review of stop/search/recovery data described above is a limited.
- 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.

## Conclusion

This past month, OPD and its vendor continued to work on meeting their deadlines in the development of PRIME (Performance Reporting Information Metrics Environment), which will replace PAS (Personnel Assessment System) as the Department's risk management system. We are carefully tracking and monitoring the development of PRIME. During our upcoming site visit, Monitoring Team members will observe a PRIME train-the-trainer session for OPD employees and meet with personnel who are responsible for bringing the system online to learn more about any recent obstacles to implementation.

While our past reports have indicated compliance with Task 41, much of our thinking in that regard is premised on what will soon be a legacy system, PAS. Having said that, our current concerns regarding PRIME, the Department's new generation of a risk management database system, involve, but are not limited to: OPD's failure to consider substantively how the system will be used – including how it will generate reports used to enhance risk management; and some serious personnel-related shortcomings, including the Department's urgent need for non-sworn personnel with data expertise. We remain concerned that OPD has focused on the technical aspects of the system, but has paid far less attention to the use of the new system to enhance risk management. We intend to more fully explore and assess the Department's progress regarding Task 41, as we consider it to be a core issue in the NSA.

Also during our upcoming site visit, Monitoring Team members will meet with personnel who oversee the Field Training, In-Service Training, and Academy Training Programs to verify that OPD has continued its compliance with the related NSA requirements. Our effort was prompted by the Department's recent Background and Recruiting review, as well as our concerns that the Department's Training Division should better coordinate specialized in-service training throughout the Department.



Chief (Ret.) Robert S. Warshaw

*Monitor*