Forty-Second Report
of the Independent Monitor
for the Oakland Police Department

Introduction

On February 27, Chief Anne E. Kirkpatrick took the helm of the Oakland Police Department. We look forward to working in partnership with Chief Kirkpatrick as she leads the Department toward compliance with the reforms of the Negotiated Settlement Agreement.

This month, Monitoring Team members met 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. We also reviewed some documentation from the Training Section, and observed one focus group of nine officers who participated in the Field Training Program nearly one year ago. 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.

Overall, we were satisfied with our observations and interactions. The personnel assigned to the Field Training, In-Service Training, and Academy Training Programs are knowledgeable about the policy requirements that guide their assignments and diligent in their work, and they maintain thorough records – a significant improvement from what we have observed in the past. We are also pleased that the Field Training Program was recently moved from the Bureau of Field Operations to the Training Section, resulting in better communication between the Academy Training and Field Training Programs. The officers who participated in the focus group all believed they were sufficiently prepared by the Academy and Field Training Programs to serve independently.

We remain concerned, however, as noted above, that various units throughout the Department appear to set their own standards and maintain their own tracking systems for – and implementation of – the training of their personnel. A police agency must have uniformity in its training protocols. The Department's various units select external training that their personnel attend, without necessarily consulting the Training Section. This is a disjointed approach that means that personnel throughout OPD do not always benefit from the Department's in-house training expertise and resources. We will discuss this further with Department officials during upcoming site visits.

This is our forty-second 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 34, 41, and 45. 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 (Task 41); several Department policies and procedures, including policies on the new PRIME system, handcuffing, span of control, and the use of electronic control weapons; and the Department's follow-up to its 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 polices 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 is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

OIG's March report examined: (1) officers' attendance at community meetings; and (2) the Department's firearm inventory and control.

In its first review, OIG reviewed the community meetings that OPD hosts throughout the City, officers' attendance at community meetings in their assigned beats or geographic Areas – and the quality of the meetings, as well as the mechanisms for tracking officers' attendance. While OIG found that OPD exceeds the requirement that it host a minimum of one meeting per Area each quarter (in fact, it holds, on average, nine meetings per Area per quarter); OIG also observed "very low rates for community meeting attendance" among officers and sergeants, and noted that while some attendance may not be properly tracked, some of the "meetings" officers contended they attended would be more appropriately categorized as "private interactions" – with a business owner, for example.

Per the report, "It is important that the Department remembers its reason for having BFO [Bureau of Field Operations] personnel attend community meetings. According to Training Bulletin III-A.5, Community-Oriented Policing, BFO personnel attendance at community meetings is part of the Department's community-oriented policing program, and 'officer attendance at community meetings is key to building relationships with the community and identifying community concerns. Community meetings can provide officers with information that assist with targeting their problem-solving efforts (pg. 3).' More importantly, working with the community to solve issues builds trust between the community and the Department."

The report recommends that OPD improve its tracking of community meeting attendance, and that commanders encourage – and, when possible, make it easier for – officers to participate in community meetings.

OIG's second review followed up on its 2010 audit in which it examined the Department's management of firearms; OIG also sought to verify the accuracy of OPD's firearm-tracking and "assess the physical safeguarding of shotguns made available for checkout during patrol shifts." While the review found that OPD had improved its overall firearm management since the 2010 audit, OIG also noted that the Department needs to continue to improve its procedures in this area.

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 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.[1] OPD has been in compliance with this Task since the nineteenth reporting period.

OPD has thus far conducted six FRBs in 2017, the most recent of which was held during our March site visit. During this incident, two officers observed five individuals gambling on the sidewalk. The officers approached the group to make further inquiry, whereupon after a brief encounter, one of the five subjects fled; two of the officers pursued him on foot. One of the pursuing officers ordered the fleeing subject to stop and warned that he would be Tased if he failed to do so; however, the subject continued flight. Shortly thereafter, the officer caught the fleeing subject, who resisted arrest, even after again being warned that force would be used should he continue resisting. The subject continued his resistance, whereupon the officer used force, including two open hand strikes. This force proved effective, following which the subject complied with the officer's commands.

The investigating sergeant provided a highly detailed analysis of the event, and each use of force applied by the officer, which the board found to be within policy. During the proceeding, the board conducted its own detailed analysis, which included a thorough review of the officers' tactical decisions. The board unanimously agreed with the sergeant's findings. We concur.

OPD remains in compliance with this Task.

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[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 uses of force.[2]

OPD conducted eight Executive Force Review Boards in 2016; none have been conducted thus far in the current year.

OPD remains in compliance with this Task.

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[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

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

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

    a. *Time, date and location;*

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

    c. *Reason for stop;*

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

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

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

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

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

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

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

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

Commentary:

OPD continues to assess and strengthen its process for the collection and analysis of stop data. As we have reported, the most recent effort has focused on a revision of the Stop Data Form to specifically identify stops predicated on intelligence – that is, what OPD calls "intelligence-led stops." Such stops are – or can be – 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.

In order to effective implement the revised Stop Data Form, OPD developed a precise definition of an "intelligence-led stop" and outlined the factors that must be present.[3] OPD followed this with training and a careful supervisory review of all stops categorized as intelligence-led to ensure that officers adhere to the carefully defined guidelines. During its initial review, OPD determined a need for additional clarification of the required factors warranting the intelligence-led designation. OPD is providing focused guidance and training to address this issue. We are continuing our review.

OPD has clearly made significant progress in the collection and compilation of stop data. This progress is particularly noteworthy given a somewhat cumbersome, time-consuming, analytical process in place that hampers the ability to provide commanders with access to relevant, stop data analytics in a timely manner. Accordingly, we remain concerned with the lack of support for strengthening the stop data analytical process in the proposed PRIME data system. Although the City represented that a stop data analytical component would be part of the PRIME system, City and OPD officials now advise that this component will be included in some later version of PRIME – not yet developed, funded, or planned.

However, despite technological challenges, the present system allows for the development of illustrative datasets and tables to assist with the identification of stop data disparities requiring detailed examination and/or analyses. These analyses are conducted prior to, during, or following OPD's regularly scheduled Risk Management Meetings (RMMs); however, they lack focused attention on the identification of the basis for data disparities – i.e., determining the basis for a squad with a high search rate having a low recovery rate and the population group or groups affected.

Of late, OPD has been exploring various ways to improve the present process, so as to focus on identification of the above described and other disparate data. This effort should result in the ability to expeditiously identify and examine data to determine the presence or absence of disparate treatment of bias; and if present, to employ appropriate remedies.

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, recently reviewed with us, indicates that 30 recommendations had been implemented or are currently in progress. The remaining 20 are scheduled to be in progress or completed by July 2017. We intend to discuss these further with OPD and the Stanford team during our upcoming site visit.

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[3] OPD defines 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."

STOP DATA REVIEWS

The tables illustrated below are illustrative of data provided at the March RMM. Tables One and Three illustrate vehicle and pedestrian data for the Area under review at the 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 31, 100 individuals during the specified period, or on average 85 per day.[4] Of this total number of stops, officers assigned to the Area under review made 5,396 stops – or on average, 15 per day during the same period.

Table One			
Area Vehicle Stop Summary[5]			
Race/Ethnicity	Stops	Searches[6]	Recoveries
African American	68%	39%	17%
Asian	3%	19%	8%
Hispanic	22%	29%	21%
White	5%	15%	14%
Other	2%	23%	12%
Total	100%	35%	17%
	4,790	1,666	290

Table Two			
Other Areas Vehicle Stop Summary[7]			
Race/Ethnicity	Stops	Searches[8]	Recoveries
African American	59%	28%	28%
Asian	5%	9%	29%
Hispanic	21%	18%	30%
White	10%	8%	31%
Other	4%	9%	16%
Total	100%	22%	28%
	21,473	4,743	1,338

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[4] This dataset includes activity for the period February 1, 2016 through January 31, 2017.
[5] This dataset includes activity for the period February 1, 2016 through January 31, 2017.
[6] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.
[7] This dataset includes activity for the period February 1, 2016 through January 31, 2017.
[8] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

Table Three			
Area Pedestrian Stop Summary[9]			
Race/Ethnicity	Stops	Searches[10]	Recoveries
African American	73%	54%	17%
Asian	2%	9%	100%
Hispanic	17%	38%	18%
White	6%	28%	45%
Other	1%	67%	17%
Total	100%	49%	19%
	606	296	55

Table Four			
Other Areas Pedestrian Stop Summary[11]			
Race/Ethnicity	Stops	Searches[12]	Recoveries
African American	67%	43%	32%
Asian	5%	24%	13%
Hispanic	15%	38%	21%
White	11%	25%	27%
Other	2%	27%	17%
Total	100%	39%	29%
	4,231	1,650	486

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[9]This dataset includes activity for the period February 1, 2016 through January 31, 2017.

[10] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

[11]This dataset includes activity for the period February 1, 2016 through January 31, 2017..

[12] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

Table Five				
Percentage of Stops Resulting in Weapons				
	Area		**Other Areas**	
Race/Ethnicity	**Vehicle Stop Pat-downs (frisks)**	**Pedestrian Stop Pat-downs (frisks)**	**Vehicle Stop Pat-downs (frisks)**	**Pedestrian Stop Pat-downs (frisks)**
African American	13%	20%	13%	16%
Asian	19%	0%	10%	14%
Hispanic	21%	41%	16%	24%
White	20%	17%	18%	20%
Other	36%	67%	12%	11%
Total	**15%**	**23%**	**14%**	**17%**

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, including at our upcoming site visit.

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. Since our last report, the Department has begun to address General Order D-17 as part of Department's ongoing policy review and revision program. The revised version of the relevant policy is currently under review.

Commentary:

The original Personnel Assessment System (PAS) also continues as the foundation for the risk management system. It houses the central database for the generation of risk assessments and for managing risk-related processes.

The revised policy (noted above) will incorporate the use of the new PRIME database and the continuation of the procedures for identifying patterns of risk-related behavior among officers, and for responding to them with reviews and monitoring or intervention when it is viewed as necessary. Since the beginning of the project, PRIME has developed methodically. After several recent extensions of announced implementation dates, and a period in which deadlines for completion of various tasks could not be set, OPD set a new deadline for May 1 and then postponed it for one week in anticipation of other demands being put on the Department at that time. The "go live" date is now May 8, and the Department appears to be on track to meet that schedule.

OPD's preparation for "going live" involves extensive training on the new system. During our most recent site visit, a member of the Monitoring Team observed the three-day train-the-trainer program in which high-functioning users identified by the Department received training on PRIME so that they will be able to assist front-end users once the system is activated. The program was run by key staff who have participated in the development of the system. A team from Sierra Systems, which has been involved since planning for the system began, also delivered a substantial amount of the training. The Sierra trainers demonstrated a very good grasp of the system and training principles and, in conversation, they noted the value of their experience with risk management systems in Los Angeles and New Orleans.

Approximately 32 OPD staff members, about half of which were sworn personnel, attended the training. The civilians are "power users" who will manage the system databases that feed information into PRIME. The training focused on data input and retrieval, and did not include training on risk management itself. PRIME, and the current training on it, reflect the extensive technical work that has gone into the database, but do not reflect any significant re-examination or change in the practice of risk management in the Department. In the days before going live, PRIME is being viewed as a somewhat complicated database, but unfortunately, not one attached to a new and improved approach to risk analysis and risk management.

Under the current training schedule plan, the entire Department will be trained in the new database procedures over the next month. PAS Unit staff expect to continue training the Department regarding the risk management process, which is described as largely unchanged under PRIME.

It must be acknowledged that reaching this point on the PRIME project has taken a great deal of time and effort. It is a large and complex technical undertaking, and the progress on that dimension must be recognized. We should, however, also recognize that as the project has moved forward, its *technical aspects* have been the dominant concern to the near total exclusion of other critical risk management issues related to how the system will be used to reduce risk and assist in management of the Department. We have raised these concerns consistently in our reports since this project was underway. The limited attention to core risk management issues raises three related issues: First, there has been limited advancement in thinking about the use and value of risk management. Second, increasing data requirements has led to the postponement of some decisions that will be important moving forward. Third, there has been limited development of the capacity for analysis that would help maximize the value of the extensive information being collected.

As noted above, PRIME, and the current training on it, reflects the extensive technical work of database design and programming – but OPD has not incorporated a significant reexamination or change in the practice of risk management in the Department. In the remaining days before PRIME's implementation, it continues to be an appropriate time for broader consideration of the Department's approach to risk analysis and risk management. Key questions have not been addressed, including such things as how risk management principles can play a wider role in recruitment and early training, or how in-service training and supervisor preparation can incorporate risk principles.

There are also more specific examples of how attention to risk may influence thinking within the Department. At the recent Risk Management Meeting, it was noted that some young officers are so comfortable with technology that they, on their own initiative, sometimes connect with community members and even possible suspects on social media. This was discussed as a potentially valuable process, but there was no acknowledgement of the associated risks or the importance of policy and supervision in that arena. That apparent oversight occurred even though a recent scandal in the Department was closely tied to the use of social media. Moving forward, the Department should work to further infuse consideration of risk issues more widely and more consistently across the organization.

While attention on technology has meant a strong focus on solving technical issues, addressing those problems has not moved forward in some key areas. The Monitoring Team has become aware of increasing discussion among Department and City personnel of the next and presumably forthcoming version of PRIME, which has become known as "PRIME 2.0." This is discussed in the context of acknowledging the limitations of the soon-to-be implemented version of PRIME. The limitations noted have referred specifically to the fact that comprehensive data on training and stop data are not included in the current PRIME database. PRIME 2.0 is discussed as a remedy to this limitation. It has become clear, however, that there is no specific plan – written or otherwise – for such an undertaking; and that the City has not designated any funding for a PRIME 2.0 project. We recognize the importance of including the data noted above in the PRIME system, and note that training issues were also at the center of a recent scandal in the Department. Furthermore, issues captured by stop data have been widely recognized as significant to concerns regarding procedural justice; and the Department has already committed to continuing research and reform associated with analysis of stop data. We view the status of the data in these two areas as ambiguous at best, even though they are central to issues relevant to the NSA. Clarification is needed with regard to the status of the next iteration of PRIME, and how and when the training and stop data issues will be resolved.

The third area in which it will be important for the Department to move past consideration of technical issues involves the analysis of information made available under the new system. This has been a frequent topic in our reports. Perhaps now that many technical issues may soon be in the rearview mirror, there will be time for more specific thinking about the use of information. There are at least three areas where advancements should be made: 1) the evaluation of the risk management process itself; 2) the identification of factors associated with risk-related behavior; and 3) the further development of the risk management process.

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 26 cases that contained at least
one sustained finding that were approved in December 2016 and January 2017. 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 was 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 26 cases with sustained findings that were approved during
December 2016 and January 2017. Five cases involved allegations of improper demeanor. In
two cases, the employees (one sworn, one civilian) were arrested off duty for driving under the
influence. The sworn employee was on probation, and was released from the Department.
Another case involved the improper accessing of confidential records and subsequent divulging
of the information to another employee. In another case, a sergeant was sustained for failing to
properly investigate a homicide. In still another case, an officer was sustained for being absent
from duty. Thirteen cases involved preventable motor vehicle accidents. One of these was
deemed a Class I violation (with gross negligence), and resulted in a recommended 15-day
suspension.

In each case, as required, the discipline fell within the Discipline Matrix that was in effect at the
time of the action for which the discipline was imposed.

During December 2016 and January 2017, OPD held one Skelly hearing for an IAD case involving a civilian employee with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly report, and found that it contained adequate justification for the results documented. The employee was sustained for creating a hostile work environment and engaging in an inappropriate relationship with his trainee. The proposed 15-day suspension was reduced to 10 days, with the concurrence of the Assistant Chief of Police. The report was well-written and followed the established format. We also reviewed the training records that OPD 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. Since it has been over a year since the initial training was provided, we will ascertain the Department's plans for any refresher training during our next site visit.

OPD remains in partial compliance with Task 45.

On March 29, 2017, the City filed its seventh progress report, fulfilling its Court-ordered requirement to document on a quarterly basis the City's progress in implementing the recommendations in the Court Appointed Investigator's April 2015 and March 2016 reports.

According to the report, the City has implemented one additional recommendation since its last report was filed, in December 2016. In January, an experienced supervising attorney from Office of the City Attorney (OCA) was appointed as OPD's Departmental Counsel. This attorney served successfully in this capacity on an interim basis while OCA and OPD administered a selection process.

In addition, the projected timeframe for completion of two outstanding recommendations was extended beyond what was identified in the City's sixth report. The updating of the IAD manual has been extended from March 2017 until May 2017. Reclassifying the "Special Counsel – Labor and Employment" position has been extended from March 2017 until July 2017.
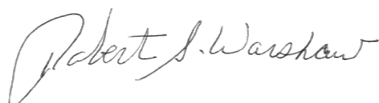
Conclusion

As noted above, 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.

With regard to oversight of the risk management process, there is a need for regular, ongoing evaluation. Does monitoring and intervention, as OPD currently practices, change behavior? That is, does the identification of – and responses to –officers as high risk reduce the likelihood of further risk-related behavior? On the other hand, approximately 90% of officers referred for PAS review ultimately receive a finding of no further action needed. What is the extent of their risk-related behavior following such a finding? Still, more general issues should also be of interest. For example, how well does training incorporate the issues identified in risk management reviews?

Another area where analysis of data will be useful involves continuing to identify factors associated with risk-related behavior. Those questions could include: What factors are associated with high- and low-rate officers on measures of stops, searches, arrests and other measures? What are their assignments, shifts, seniority, and other patterns? What other events or patterns are associated with identified risk-related behavior? For example, are there things occurring in officers' personal lives that are resulting in work-related problems? How could those be addressed?

Finally, analysis should address the further development and refinement of the risk management system. For example, the current system now examines separate risk thresholds – but it remains an open question whether combinations of behavior across several areas may be good indicators of risk even though the individual thresholds are not exceeded. Can the risk management system detect such different patterns?

The questions posed above are only examples of analyses that could have direct impact on managing risk in the Department. They suggest only that, as implementation of PRIME starts, the important work is beginning, not ending. Among the many details that make up the NSA, risk management stands out as a comprehensive safeguard for the Department and for its officers. Focusing on risk provides a broad context for contributions to management and administration, but realizing that potential will require moving beyond the issues that dominated the development phase of the PRIME project and beyond the monthly tabulations of risk data. That should be thought of as an important next step for the Department.

Chief (Ret.) Robert S. Warshaw

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