

January 12, 2018

# Fiftieth Report *of the Independent Monitor for the Oakland Police Department*

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## Introduction

This is our fiftieth 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 William H. Orrick. I was appointed in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003.

This report covers our site visit of December 2017; and describes our recent assessments of NSA Tasks 5 and 41. We will resume our assessment of Task 34 in our next report. As we have noted previously, following the Court's Order of May 21, 2015, in our monthly reports, we 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 and related issues (Task 34); risk management and the development of the Performance Reporting Information Metrics Environment (PRIME) (Task 41); several Department policies and procedures, including policies related to PRIME, officer discipline, handcuffing, and the use of electronic control weapons.

As noted previously, 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 are reviewing revisions of all NSA-related policies.

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### *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. We review OIG's now-quarterly 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.

## *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:*

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- 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:*

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- 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.

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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. 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. OPD remains in compliance with Tasks 5.1 through and including Task 5.5.

**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 October 2017.

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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>

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 four of the 15 cases we reviewed. In all of these cases, the complainants were interviewed at least twice. Additionally, in two of these cases, the subject officers were also re-interviewed to obtain clarifying information. We noted one case in which the complainant and her son were interviewed at the same time during the same phone call. This interviewing method is counter to OPD policies and best practices.

OPD made credibility assessments for all involved parties in seven of the 15 cases. The eight remaining cases were approved for summary finding; and by policy, investigators are not required to assess the credibility of the involved officers and civilians in these instances.

In one case, the complainant was deemed not credible. He provided a false name, and also made statements that conflicted with the PDRD videos of the officers on scene.

In 14 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In seven of the cases, PDRD recordings were available and assisted in the determination. In two other cases, audio recordings were available. One case resulted in at least one finding of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts.

**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 an Investigative Notes Declaration Form. 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. However, in one case it appeared that the investigator used a prepared set of questions in his interviews, and they were not included in the case file. His interviews were also replete with leading questions, obviously tailored to elicit certain responses from the subject officers.

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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.

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**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 39 allegations that received dispositions as follows: 11 exonerated; 24 unfounded; one not sustained; and three administratively closed. There were no sustained findings.

We did not disagree with any of the findings in the cases we reviewed. However, we noted one case in which an allegation of potential misconduct apparently went unaddressed. The complainant indicated that she emailed the officers involved in her case several times, and received no response. There was no indication that this allegation was investigated or addressed as a potential performance of duty violation. The case was approved for a summary finding.

**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 her weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and a Monitoring Team member often attends 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 his 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. Eight 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.

While we noted some improvement in the IAD cases we reviewed for this assessment, OPD remains not in compliance with Task 5 based on the provisions of the March 23, 2016 Court Order.



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## 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 on February 17, 2006, and revised on December 21, 2015.

### **Commentary:**

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, are convened as required and consistent with policy. The EFRB conducts thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths.<sup>2</sup> We closely monitor this process through a review of board reports and our observations of EFRB proceedings conducted during our site visits.

OPD achieved compliance with this Task during the nineteenth reporting period; however, given the seriousness of any use of force or an in-custody death, we continue to monitor and report on this Task.

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<sup>2</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.

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OPD conducted its first EFRB of 2017 during our December site visit. This is a reduction in number of EFRBs from previous years, which demonstrates the Department's continued attention to – and progress with – the evaluation of these events. The board met and conducted its duties in accord with applicable policies. The presentations from both the Criminal Investigation Division (CID) and the Internal Affairs Division (IAD) were extremely thorough and professionally delivered. We concurred with the board's conclusions exonerating the uses of force in question.

## 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.*

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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:**

PRIME, or OPD's Performance Reporting Information Metrics Environment, is critical to the Department's compliance with NSA Task 40, which sets requirements for the risk management database; and Task 41, which addresses the operation of the risk management system.

During our December site visit, the Department held a City-wide risk management meeting. At this meeting, all five geographic patrol Area Captains – as well as Ceasefire and Traffic Enforcement – made reports and reviewed data. The presentations and commentary were notable in the way they reflected the key values associated with Department leadership and the use of risk principles for the administration and management of OPD.

The presenters were specific in their diagnoses and description of the crime problems in the Areas. They reflected appropriate concern about their Areas' specific communities and the communities' responses to enforcement strategies. The meeting included a discussion of preferences for minimizing harms associated with dispositions of police stops. Meeting participants emphasized their review of data in shaping their policing strategies and approaches to management; and they noted their documentation of significant positive information, as well as concerns, through supervisory notes in PRIME. The meeting was a clear and valuable forum for both reflecting and directing Department-wide management and strategy.

The focus on *process* at the regular monthly Risk Management meetings clearly has value for the Department. These meetings also have continued to evolve and improve since their inception. In the past, however, we have noted concerns about the extent to which the data analysis may not lead to responses or interventions when officers are identified as outliers for their levels of some activities such as vehicle or pedestrian stops.

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This issue is part of our larger concern regarding assessing outcomes and responding to police activity at the levels of individual and groups of officers. The Department struggles with this problem. It is clear, for example, that there is an interest in reducing unproductive stops – and through that, addressing potential problems of bias. The definition and measurement of these outcomes, however, remains unclear.

The charts presented at the recent City-wide meeting, for example, left out data that permitted calculation, by race, of the number of people stopped for whom there was no definitive reason for the stop or police definitive outcome, such as arrest, contraband seizure, warning, or release with no further police action. That means it was not possible to know, and therefore, to attempt to remedy, large racial disparities that could be identified with the data available at previous Risk Management Meetings. To address this issue, OPD's analysis should focus not only on similarities or differences in the percentages of stops or searches that result in arrest or contraband seizure. Instead, the large differences by race in the absolute number of people experiencing all stops for all reasons should be examined. From the perspective of procedural justice, as it was noted in the meeting, it is the stops that are perceived as unnecessary or unwarranted that are likely to be perceived as harassment.

These issues are also relevant to the further development of risk management. PRIME 2.0 is expected to incorporate data covering four additional areas including the personnel database, training data, body-worn camera video footage, and stop data. The data on pedestrian and vehicle stops by police may present significant challenges, since new requirements have been promulgated by the State of California. Some significant changes in data collection and reporting are included in the State requirements. OPD, as one of the larger law enforcement agencies in California, will need to comply with the requirements by early 2019. It will be important to make progress toward meeting State mandates, while continuing to both meet the current standards under the NSA and serve the Department's ongoing interests in crime reduction.

A second area of focus during our site visit was the status of PRIME, the Department's risk management database. Also related to that issue is the status of the risk management process, known as PAS, or the Personnel Assessment System. There have been, of course, many concerns over the status of PRIME, beginning with delays in implementation, to continuing issues with "bugs" in data collection, and errors in data available for use by PAS.

The Department has taken extensive measures in attempts to rectify these problems. During our site visit, OPD reported that substantial funding has been used to solve the problems since PRIME was implemented in May. Nearly that same amount will also be spent on the recently announced extension of the Microsoft maintenance agreement.

At this point, following months of problems with PRIME, the City IT Department and OPD are reviewing proposals from vendors to develop a new system. That broadly described responsibility, with very limited additional specification, is what the vendors are asked to respond to.

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It is also noteworthy that two of the four firms on the current list of vendors selected to submit proposals also served as vendors in the development of PRIME to its current condition. Preliminary responses from the limited number of vendors suggest that this “remake” of PRIME may add as much as \$2.4 million to the original costs of PRIME. We believe it is in the interest of the Parties to seek qualified vendors as widely as possible to ensure vendor competence, competitive proposals, but also to support timely progress toward full implementation.

It should also be noted that, during our site visit, the conversation around risk management and PRIME also included a discussion of how best to achieve quality in development and use of these management tools. That is, the discussion included – but did not resolve – the contrast of building or bringing in the necessary expertise among Department staff or contracting out the needed services. It was noted that expediency favored external contractors, but that there was also a need to strengthen both data skills and technical computing skills within the Department.

While the status of PRIME presents problems for the city’s planners and administrators, the issues are even more vexing for those charged with implementing and managing the risk management process, PAS (Personnel Assessment System). In this area, NSA Task 40 establishes the data requirements for the risk management system; and Task 41 outlines the procedural requirements. The compliance of both Tasks must be considered in jeopardy given the problems with PRIME. We appreciate that a reasonable period of time may be needed when new technology is implemented, but also note that the definition of “reasonable” is being strained by the continuing problems with PRIME.

The PAS process, or the identification and intervention with officers based on risk-related behavior, is severely affected by the PRIME problems. Inconsistencies and conflicts in the database occur with such regularity that nearly all use of information from PRIME also requires checking by hand by the PAS Administration Unit. The condition of the database is described as worse than under the earlier data system which was seen as needing replacement. Some key tasks are especially difficult. The process of selecting officers for review – particularly, the identification of outliers – requires extensive checking and rechecking. The process by which some officers are de-selected for review because they are already under review or were recently reviewed does not work properly, and thus makes the selection process laborious.

## City’s Progress Implementing Recommendations of Swanson-Barron Report and Commitments to its Critical Incident Review

As we reported last month, Department continues to make progress implementing the recommendations in the Swanson-Barron report, which detailed the Court-appointed independent investigation of OPD’s initial investigation of Internal Affairs Division case 15-0771.



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The Department is also making progress on the commitments it made as part of its own Critical Incident Review – focusing on the “cultural transformation” of the Department, according to Chief Kirkpatrick – and in the October 2, 2017 Case Management Conference in Court. Some of these commitments overlap with the continued collaboration between OPD and Dr. Jennifer Eberhardt and the Stanford University team to address disparate treatment and better understand bias and its effects on the community.

During our December site visit, we inquired with OPD as to the status of each of these commitments. OPD is making progress making several significant revisions to Policy 611 (Criminal Investigation of Members of the Department and Sworn Law Enforcement Personnel). The Department also continues to convene its Culture Working Group, comprised of a diverse cross-section of OPD members and employees who are responsible, per OPD, for examining “the cultural environment in OPD that allowed fostering of the egregious conduct that occurred in the sexual misconduct event” and identifying other training and leadership issues in the Department. Later this month, Chief Kirkpatrick will begin meeting individually with the Department personnel who were involved in the initial investigation of Internal Affairs Division case 15-0771 to assist them in developing personal improvement plans.

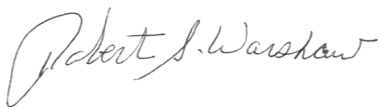
We will continue to follow up on any outstanding issues during our upcoming site visits, and update this information in our monthly reports.

## Conclusion

It is clear that there have been some strong developments with regard to risk management in the Department. In December, we observed OPD’s City-wide Risk Management Meeting, at which the Department’s top-level commanders discussed the communities they serve and the communities’ responses to enforcement strategies. The meeting reviewed, among other key metrics, the Department’s stop data. OPD must continue to enhance this process to develop strategies to resolve indicators of bias and/or disparate treatment.

However, some persistent problems remain. As we have noted previously, PRIME-related problems have created substantial burdens for both the Police Department and the City’s Information Technology Department. The problems that require resources and expertise beyond OPD’s capacity have become more troublesome.

It is critically important that the City and the Police Department come together to succeed in addressing the problems that currently affect the risk management process.



Chief (Ret.) Robert S. Warshaw  
*Monitor*