

September 13, 2017

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

Introduction

This is our forty-sixth 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.

Judge Henderson retired in early August, and upon his retirement, this case was reassigned to Judge William H. Orrick.

This report covers our site visit of August 2017; and describes our recent assessments of NSA Tasks 5 and 34. As we have noted previously, in accordance with the Court's Order of May 21, 2015, we now devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

This month, we also continued to evaluate the Department's experience with PRIME (Performance Reporting Information Metrics Environment), which replaced PAS (Personnel Assessment System) as the Department's risk management system on May 8, 2017. PRIME consolidated multiple large and important databases into a single, integrated system. A few months in, the Department and its vendor continue to resolve problems associated with the new system. We will discuss this further in our next monthly report.

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.

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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 PRIME (Performance Reporting Information Metrics Environment) (Task 41); several Department policies and procedures, including policies related to PRIME system, officer discipline, handcuffing, span of control, and the use of electronic control weapons; and the Department's follow-up to its recent audit of the recruitment, training, and tracking of new officers.

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 have begun reviewing all revised policies related to all active and inactive Tasks.

Building Internal Capacity at OPD

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. 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:*
 - 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 June 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.¹

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 one of the 15 cases we reviewed. In this case, the complainant was interviewed twice.

OPD made credibility assessments for all involved parties in five of the 15 cases. The 10 remaining cases were approved for summary finding; and by policy, investigators are not required to assess the credibility of the subject and witness officers in these instances since a determination can be made without interviewing them. However, OPD policy requires that investigators assess the credibility of complainants and witnesses, even in summary findings; and in four of these 10 cases, investigators failed to do so.

In one case, the complainant was deemed not credible. In addition to providing conflicting statements, PDRD recordings were available to refute some of his claims.

In 12 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In 10 of the cases, PDRD recordings were available and assisted in the determination. In another case, recordings of calls made to Communications allowed for a definitive finding. Three cases 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.

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 52 allegations that received dispositions as follows: 12 exonerated; 26 unfounded; four not sustained; and 10 administratively closed. There were no sustained findings.

¹ 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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We were unable to verify the findings in one case. The complainant alleged that during a traffic stop, an officer was rude, the tint was damaged on his car window, and force was used in the form of twisting the complainant's arm behind his back. OPD unfounded all allegations based on a review of PDRD video footage. However, for nearly all of the cases in our sample, including this case, OPD failed to provide the video footage for our review. In most cases, we relied on the investigators' descriptions of what the videos contained, but we were reluctant to do so in this case without viewing the alleged force for ourselves. The failure to provide all requested documentation has been a recurring problem with our last few document requests. We once again remind OPD that we will base our reviews on the material provided, and if we have insufficient material to reach a determination, a case will be deemed not in compliance.

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. Ten of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In all of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary.

OPD remains not in compliance with Task 5 based on the provisions of the March 23, 2016 Court Order and this review.

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.

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Commentary:

Force Review Boards (FRBs) are convened as required and consistent with policy. The three-member FRB consists of top command-level staff who carefully examine the deployment/application and the investigation of Level 2 uses of force.² We closely monitor this process through a review of board reports and our observations of FRB proceedings conducted during our site visits.

OPD has been in continued compliance with this Task since the nineteenth reporting period; however, we continue to monitor and reports on its compliance due to its importance.

OPD conducted eight FRBs, including one rehearing, in 2017. The FRB was unable to finalize two of these hearings due to unresolved issues and will thus reconvene to make determinations when complete.

The most recent OPD use of force data demonstrates a continued decline in the use of force by officers to 349 uses of force to date in 2017, from a total of 562 for the same period in 2016 – a decrease of 38%. This decrease suggests OPD's continued attention to – and progress with – the evaluation of these events; and where necessary, supervisory intervention, including the provision of training.

OPD remains in compliance with this Task.

² 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.

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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 February 17, 2006, and most recently revised on December 21, 2015.

Commentary:

Executive Force Review Boards (EFRBs) are convened as required and consistent with policy. The three-member EFRB consists of three top command-level staff who are required to conduct thorough, detailed reviews of all Level 1 force, in-custody death, and vehicle pursuit-related deaths.³ 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 – and in particular, a Level 1 use of force or in-custody death – we also continue to monitor and report on this Task.

³ Level I use of force events include: 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.

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OPD conducted eight Executive Force Review Boards in 2016. None have been conducted thus far in the current year; however, one is pending. This reduction demonstrates the Department's continued attention to – and progress with – the evaluation of these events, and where necessary, supervisory intervention, including the provision of training is achieving positive results.

OPD remains in compliance with this Task.

Task 34: Vehicle Stops, Field Investigation, and Detentions

Requirements:

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

(Negotiated Settlement Agreement VI. B.)

Relevant Policy:

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

Commentary:

OPD developed and implemented the required policy for compliance with the requirements of this Task. The data described in Task 34.1 (a.-g.) is entered by officers on data collection reports, which the Department has periodically revised to accommodate improved processes and expanded data elements. The reports' information is entered into a database that can be summarized, searched, and queried to identify indicators of disparate treatment or biased policing.

The development of the data collection process has been a time-consuming, challenging process in part due to the lack of sufficiently developed models for reference; this left development of a robust collection/analytical process entirely to OPD staff. In April 2013, after several procedural changes and considerable training, the data collected by OPD was found sufficiently accurate and voluminous for analysis to identify indicators of disparate treatment or bias.⁴ Using this data, OPD developed a review process allowing for the review of stop data during its monthly Risk Management Meetings (RMMs).

Risk Management Meetings include a review of stop data and other areas of risk by OPD command staff with one of the five OPD Area Commanders, generally each month. Stop data are organized into tables and graphs depicting – both globally and by Area – the breakdown of stops, reasons for the stops and resulting action taken, including searches, the results of searches, arrests, and other actions. These illustrative tables have allowed for preliminary analyses to determine whether there *appears* to be disparate treatment of or within one or more population groups by or within one of more of the various Area squads. The data has also served to inform OPD regarding the effectiveness of existing – and the development of new – crime control strategies.

These reviews have resulted in some successes – notably, increased attention to and analysis of parole/probation stops and searches, and the increase in overall search recovery rates from less than 10% to 25% or more. In addition, as a result of these reviews, OPD recognizes the need for – and importance of – focused policing strategies, which include an emphasis on intelligence-led stops, as opposed to random traffic stops. Nonetheless, the Department must make progress in addressing or resolving indicators of disparate treatment or bias to achieve compliance with this Task.

The information presented during the RMMs has, at times, contained data clearly warranting further analysis to verify the presence or absence of disparate treatment or bias at the Area; squad; and in some cases, the officer level. Although generally recognized that disparities at these levels may result from specific assignments, crime control strategies, or unusual events; it is nevertheless important – when these disparities, for example, depict a wide variance in search recovery rates between population groups – to conduct further analysis to verify, to the degree possible, the presence or absence of disparate treatment or bias. OPD presently has no operationalized, standard procedure in place to do so.

⁴ Our periodic reviews of stop data reports consistently find that nearly 100% of all OPD stops are based on documented probable cause or other legal basis.

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OPD personnel have suggested that a determination regarding the presence of absence of bias is not possible and, thus, the Department has charted another course. OPD's focus is presently placed on the evaluation of overall procedures, practices, policy, direction with a stated goal to reduce "the risk of negative disparate impact on the community by enhancing precision policing, understanding racial disparities and evaluating strategy, policy and individual performance." The value of these goals is unquestioned; however, to dismiss the value of an effort to determine the presence of bias, perhaps the need for intervention, or even the absence of bias when faced with clear data anomalies indicative of bias at the Area, squad, or officer level is problematic. We will continue providing technical assistance and working with OPD to resolve this shortcoming.

We again recognize the considerable commitment of time, energy, and resources by OPD to address bias and disparate treatment in conjunction with the implementation of a precision policing model. The added focus on intelligence-led stops, which, in some cases, specifically affect and may be indicative of bias or disparate treatment involving particular population groups is notable; and it will allow for increased scrutiny of stop data and the development of policies, practices, and strategies to mitigate disparities. We look forward to enhanced analytics that should be derived from this data.

The collaboration of OPD with Dr. Jennifer Eberhardt and the Stanford University team to further advance the stop data process is continuing. Both OPD and Stanford personnel continue to expend considerable efforts in the development of the revised process; however, it is recognized that additional work remains.

As reported in our last report, OPD utilized the newly developed process/format at the July Risk Management Meeting. The Area Captain's review and evaluation of the information regarding his Area was impressive and included the examination of instances with potentially disparate impacts to determine if there were reasonable justifications for those numbers.

The table below is illustrative of data provided at the July RMM.

AREA STOPS, DISCRETIONARY SEARCHES & RECOVERIES - 11/01/16 – 05/31/17⁵							
Race	Stops	Stops %		Searches %		Recoveries %	
		Area	Other	Area	Other	Area	Other
African American	2,462	71%	63%	31%	33%	26%	17%
Hispanic	440	13%	24%	22%	29%	12%	21%
White	321	9%	7%	15%	17%	28%	18%
Asian	154	4%	4%	13%	23%	15%	22%
Other	90	3%	3%	19%	22%	12%	18%
Total	3,467	100%	100%	27%	30%	25%	18%

We also attended the RMM conducted during our August site visit. The Area Captain was clearly focused on a precision policing strategy; he was prepared and discussed his comprehensive analysis of Area crime trends and strategies. The presentation of this material was impressive.

The captain also raised an issue relating to significant and ongoing errors relating to “intelligence-led” stops, and specifically the inclusion of contacts relating to dispatched calls as “intelligence-led.” Although he reported corrective measures have been addressed “from the podium,” which may have revolved that issue in that Area, whether this is a more widespread unresolved problem in other Areas remains unclear. We will coordinate with OPD on this matter.

Absent from the presentation, however, was any significant reference to race or implications relating to racial data. This is troublesome, given the Department’s stated goal of the Risk Management Meetings, which is “to reduce the risk of negative disparate impact on the community by enhancing precision policing, understanding racial disparities and evaluating strategy, policy and individual performance.” However, our inquiry determined this oversight resulted from direction provided to the captain regarding the presentation rather than his intention. OPD is addressing this issue.

⁵ Discretionary searches exclude incident to arrest; recoveries exclude marijuana (returned and medical) and other weapons (returned), as well as recoveries from incident to arrest and inventory searches. “Other” refers to the average for the other four Areas, weighted by Area stops.

AREA STOPS, DISCRETIONARY SEARCHES & RECOVERIES - 01/01/17 – 07/31/17⁶							
Regular Squads⁷							
Race	Stops	Stops %		Searches %		Recoveries %	
		Area	Other	Area	Other	Area	Other
African American	1,925	69%	63%	31%	33%	25%	18%
Hispanic	334	12%	23%	24%	27%	22%	19%
White	315	11%	7%	12%	18%	27%	20%
Asian	131	5%	4%	14%	21%	22%	22%
Other	99	3%	3%	11%	22%	10%	9%
Total	2,798	100%	100%	27%	30%	25%	19%

As we noted in our last report, the new RMM format and presentation of data may prove challenging for Area presenters, as well as those overseeing the Risk Management Meetings to interpret the new presentations. We continue to assist and work with OPD to resolve these issues as they arise to ensure productive meetings and outcomes.

As noted above, the Department's work with Dr. Eberhardt and the Stanford University team to better understand bias and its effect on the community continues. The implementation by OPD of the recommended 50 actions designed and intended to change the Department's culture and strengthen ties with the communities it serves, which are acknowledged by OPD as a significant part of its compliance effort, are ongoing. We regularly report on the status and progress with the adoption of these recommendations. (See below.) In addition, the recently completed study by Dr. Eberhardt and the Stanford University Department of Linguistics describing findings of a study of language from body-worn camera footage relating to respect and racial disparities is under review by OPD.

Clearly, OPD is advancing its efforts to comply with requirements of this Task. We recognize continued internal efforts to address bias and the ongoing engagement of Dr. Eberhardt and the Stanford University Team to assist, which will optimally result in improved operational procedures and minimizing and/or elimination of bias and/or disparate treatment.

⁶ Discretionary searches exclude incident to arrest; recoveries exclude marijuana (returned and medical) and other weapons (returned), as well as recoveries from incident to arrest and inventory searches. "Other" refers to the average for the other four Areas, weighted by Area stops.

⁷ Regular squads note the elimination of data regarding stops officers make in areas or during assignment outside of their primary assigned squads.

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However, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until full compliance is achieved:

- 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;
- Further enhancement of the revised Risk Management Process, including adjustments to illustrative charts and tables to more effectively identify indicators of bias and/or disparate treatment;
- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. The City anticipates that this will be achieved with implementation of PRIME 2.0;
- Assessment and determination 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. A change in this process to better or more frequently review and address stop data issues remains under review; and
- Implementation of the *applicable* 50 recommendations contained in the 2016 Stanford University Report. OPD represents that 14 recommendations have been completed, an additional 14 are completed/ongoing tasks, 21 are in progress, and one requires additional analysis.

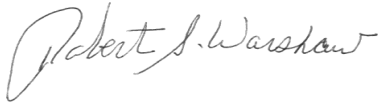
Conclusion

In June, an independent investigator appointed by the Court, Ed Swanson, Esq., and his associate Audrey Barron, Esq., released their report detailing their examination of what the Court referred to as the "irregularities and potential violations of the Negotiated Settlement Agreement" that occurred in OPD's initial investigation of Internal Affairs Division case 15-0771. In their report, Swanson and Barron noted, "The case made national headlines and was an enormous setback for a police department that had worked hard in recent years to institute reforms and regain public trust...OPD's initial investigation of this case – both as a criminal matter and as an internal affairs matter – was seriously deficient. We further conclude that the City failed to take the necessary steps to examine these deficiencies once they came to light. If not for the Court's intervention, we have no confidence that correct discipline would have ever been imposed, criminal charges filed, or departmental shortcomings examined."

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Judge Henderson echoed this sentiment when he noted at a case management conference in July, “Defendants appeared to be on the path to compliance, until they severely mishandled the now well-publicized allegations of officers’ sexual misconduct, and it’s crystal clear to me that those allegations would not have been appropriately investigated were it not for the Court’s intervention, nor would the need for any procedural or structural changes have been identified but for the Court’s intervention.”

Following the case management conference, the Court ordered the City to detail its response to the Swanson-Barron report – in particular, its progress implementing the recommendations offered by Swanson and Barron, “as well as any other policy, procedural, or other changes the City finds appropriate following its own review.” The City’s response is due later this week, and will be the subject of a case management conference in early October. We will discuss this further in our next monthly report.

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

Chief (Ret.) Robert S. Warshaw

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