

Thirty-Third Report *of the Independent Monitor for the Oakland Police Department*

Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in 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.¹ After 13 years of monitoring OPD's progress with the reforms, the Court recognized that it was time for us to devote special attention to the most problematic component parts of the Tasks that are not yet in full compliance or have not been in compliance for at least one year, and those for whom factors currently make compliance determination uncertain.

To do this, in accordance with the Court Order, we began increasing the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. However, we did not issue our usual monthly report in June, as disturbing circumstances prevented us from doing so. This is, as is now widely and publicly known, perhaps the most trying time in OPD's history. For over two months now, the local, national, and international media have been full of reports of the sometimes salacious and often shocking details of this ever-burgeoning matter. As a result of concerns about the measure of investigative effort undertaken by the Department, the Court issued an Order on March 23, 2016 indicating that "irregularities and potential violations of the NSA" occurred in the case. The Order directs the Monitor/Compliance Director to take action to "to ensure that this case and any related matters are properly and timely investigated, and that all appropriate follow-up actions are taken." As the Order states, "This case raises most serious concerns that may well impact Defendants' ability to demonstrate their commitment to accountability and sustainability – both of which are key to ending court oversight."

¹ United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Modifying Monitoring Plan, dated May 21, 2015.

Months later, against this background and the initial mismanagement of this case by OPD leadership, Chief Sean Whent resigned; and then two interim chiefs in about one week also resigned. Some involved officers remain on administrative leave pending the outcome of the investigations, and some have resigned. Several loosely and more directly related issues have stemmed from it, and several investigations – both internal and external – are ongoing.

It is not an understatement to say that that these matters have consumed the OPD's and City's leadership; this is a crisis. And while the interim leadership in the Department has been cooperative and communicative, this is a major test of OPD's resilience and capacity. It remains to be seen if OPD – in the absence of a permanent chief and in a period of either actual or perceived instability – can sustain the gains it has made over the last several years with the NSA reforms. The events of the last several months called into serious question the integrity of the agency and some of its sworn leaders.

As for now, the City's national hiring search for a permanent police chief is underway. Currently, Acting Assistant Chief David Downing is OPD's highest-ranking official, and he reports directly to City Administrator Sabrina Landreth, who is more involved in the day-to-day management of the Department.

My Team remains involved in several ways. In keeping with the Court Order and my charge as Monitor and Compliance Director, we continue to monitor the initial matter (Internal Affairs Division [IAD] case 15-0771) as well as the other pending investigations that have stemmed from it. We offer consultation, support, and technical assistance to the IAD team investigating these cases, Assistant Chief Downing, the Executive Team, and City leadership. We will continue to monitor all of these developments and report on their outcome in our future reports.

This Report

In this report, we describe our recent assessments of Tasks 5, 34, and 45. As noted previously, because we now report on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

In accordance with the May 21, 2015 Court Order, we provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that have been in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) We also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

Our assessment of compliance for Task 5 takes into account the degree to which the City continues to implement the recommendations listed in the Court-Appointed Investigator's two reports on police discipline and arbitration (issued on April 16, 2015 and March 16, 2016), as well as current uncertainties associated with an ongoing Internal Affairs investigation.

Below is the current compliance status of the Tasks listed in the May 21, 2015 Court Order.

Compliance Status of Tasks Listed in the May 21, 2015 Court Order		
Task	Description	Compliance Status
5	Complaint Procedures for IAD	As of the twenty-first reporting period (covering October through December 2014), this Task was in partial compliance. The pending IAD investigation, referenced above, requires that this Task be found not in compliance.
20	Span of Control	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
26	Force Review Board (FRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
34	Vehicle Stops, Field Investigation, and Detentions	In partial compliance since the fourth reporting period (covering July through September 2010).
41	Use of Personnel Assessment System (PAS)	In compliance since the twentieth reporting period (covering July through September 2014). Now considered inactive. Not assessed in this report.
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance.

Increasing Technical Assistance

Per the May 21, 2015 Court Order, “The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court’s December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator’s April 16, 2015 report.” Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance. As in the past, 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); Executive Force Review Board (Task 30); stop data (Task 34); risk management (Task 41); and several key Department policies and procedures. We are also closely following the Department's adoption of Lexipol, the online policy platform, and occasionally observe meetings of OPD's Lexipol working group. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys will review and re-approve all policies related to all active and inactive Tasks.

Building Internal Capacity at OPD

Per the May 21, 2015 Court Order, "The Monitor will also help Defendants institutionalize an internal system of monitoring by the Office of Inspector General or other City or Department entity, along with internal mechanisms for corrective action."

As reported previously, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and his 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. With two police auditors added late last year, OIG expanded the unit's staffing. More importantly, this change signaled a commitment by the Department to self-reflection and analysis.

OIG continues to expand its auditing role within the Department. Last month, we met with OIG to discuss and review its auditing plans through the end of 2016; over the year, OIG plans to assess more NSA-related subject areas that it has not reviewed in the past.

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. In late June, OIG produced its most recent monthly progress report, which, like the others OIG produced, is impressive and will be released publicly, via the Department's website. In an unusual step, in the introduction of his report, the Inspector General opted to print from the Law Enforcement Code of Ethics (from the California Peace Officer Standards and Training [POST] Administrative Manual) instead of giving general remarks about the audits OIG had conducted.

The Code of Ethics reads:

AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret

unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before all to my chosen profession...law enforcement.

The report details the results of its most recent reviews, which include: (1) an audit of citizen's written and videotaped statements; (2) review of transporting detainees and citizens; and (3) Management Level Liaison review. As with its other reports, in each of the areas where OIG identified problems, the report included recommendations to Department units to "close the loop" on outstanding or problematic issues.

In its first review, which correlates to inactive NSA Task 38, OIG found that patrol officers are not "not precisely following policy when taking written and videotaped statements." As a result, OIG recommended that the Department review its policy and procedures and make any necessary clarifications; and provide remedial training to all officers, including information on how the Criminal Investigation Division uses the statements.

In its second review, which correlates to inactive NSA Task 36, OIG found, "While the Department is mostly complying with the transport requirements, it appears that the Fugitive Unit is not calling in their transports and providing the required transport information. In addition, the purpose of the transport for non-jail and non-hospital transports are sometimes not documented."

In its third review, which correlates to inactive NSA Task 22, OIG noted that the Department's Management Level Liaison (MLL) is fulfilling its responsibilities in tracking all relevant cases – that is, according to the NSA, those "which are lost or dropped due to bad reports, defective search warrants, granted 'Motion to Suppress,' contradictory evidence or testimony, or any other indication of performance problems or misconduct." The MLL continues to publish monthly reports documenting its regular interactions with the District Attorney's Office and Public Defender's Office, as required; the Monitoring Team receives and reviews these reports. OIG noted, "[A]s a general performance measurement tool, broader tracking would provide a more holistic assessment of possible trends in handling cases that do not directly suggest misconduct by a specific individual, but rather highlight weaknesses within the Department's operational processes."

We look forward to reviewing future OIG progress reports and continuing to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of NSA reforms.

Focused Task Assessments

Task 5: Complaint Procedures for IAD

Requirements:

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

that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.

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

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

(Negotiated Settlement Agreement III. E.)

Relevant Policy:

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

Commentary:

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD investigation 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. In light of the Court Order, we deemed Task 5 to be not in compliance.

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

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

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

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This subtask has not been actively monitored since December 2014, but for our twenty-eighth and thirty-second reports, we specifically asked for and reviewed cases applicable to this requirement.

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 April 2016.

This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.²

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.

² 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.

In two of the 15 cases we reviewed, we believe that OPD failed to gather and consider all relevant evidence available. In one case involving an allegation of harassment by a panhandler, the driver of a two-officer patrol vehicle was not interviewed. Compounding the omission, all of the activity complained of took place in the occupied police vehicle – the officers never exited. No explanation was provided for the missing interview. In the other case involving the alleged mishandling of a motor vehicle accident, the complainant volunteered several times in his interview that he had assembled additional relevant documentation. The investigator never requested this material, nor even expressed any curiosity regarding its contents.

In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in reaching a proper conclusion. In three cases, OPD conducted follow-up interviews of involved officers to seek clarification or resolve inconsistencies.

Credibility assessments were made in eight of the 15 cases. Five of the remaining seven cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In one of the two other cases, the investigator assessed the involved officer's credibility, but failed to provide credibility assessments for the complainant and a witness. In the other, the investigator failed to document a witness interview in its entirety, and he did not assess this witness' credibility.

In two cases, complainants were deemed not credible. One case involved allegations of harassment and improper demeanor, and the other involved a claim of improper arrest. In both of these cases, PDRD recordings were in direct conflict with some of the complainants' assertions.

In 13 of the cases we reviewed, OPD successfully resolved inconsistent statements. In seven of these cases, PDRD recordings were available and assisted in the determination. Two cases were resolved with 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 IAD Form 11 (Investigative Notes Declaration). OPD has a sustained history of 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 15 cases we reviewed.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 46 allegations that received dispositions as follows: 11 exonerated; 23 unfounded; two not sustained; none sustained; and nine administratively closed. One allegation was not investigated, nor did it receive a finding as described below.

We disagreed with the findings in two of the cases we reviewed. In the first, the complainant alleged that an officer inappropriately accused her of drinking and throwing a bottle out of her car window. OPD failed to classify or investigate this allegation and come to a finding. In this same case, we believe the investigator arrived at an incorrect finding for failing to take a report.

Additionally, in this same case, the investigator failed to document a witness interview. The witness – a police cadet – was, in fact, interviewed. There was simply no documentation of the interview in the Report of Investigation.

In the other case, the complainant alleged that officers filed an incorrect report and did not adequately document the circumstances of his “hit and run”, which appeared to be intentional and constituted an assault. Additionally, his complaint that the reporting officer and his supervisor failed to return calls was inappropriately classified as a service complaint and administratively closed. If the calls were intentionally ignored, such willful conduct is not a service issue. The investigator – a patrol sergeant – asked several leading questions in his interviews of the subject officers. During his interview, the complainant volunteered that he had additional information regarding his case – including the identification of the suspect – and the investigator completely ignored these revelations. Not only were they pertinent to the complaint investigation, but the supervisor also missed the opportunity to rectify what appears to be shoddy service in the form of a poorly investigated crime. Instead, he referred the complainant to the Police Administration Building to file another police report.

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

Task 5.21 requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or her designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Five of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In one of these cases, the availability of PDRD video was the primary reason interviews were unnecessary, and in three others – all complaints involving dispatch personnel – the recorded phone calls to 911 negated the need for interviews.

In one case, the panhandling case described above, an involved officer was not interviewed, in violation of Task 5.21.

OPD remains in non-compliant status with Task 5, both because of the review of these sample cases, and pending satisfactory progress with the provisions of the March 23, 2016 Court Order.

Task 26: Force Review Board (FRB)

Requirements:

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

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

(Negotiated Settlement Agreement V. C.)

Relevant Policy:

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

Commentary:

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.³

OPD has been in compliance with Task 26 since the nineteenth reporting period; however, when the Department conducts FRBs during our scheduled site visits, we attend, observe, and assess the proceedings. No boards were scheduled during our May or June site visits.

OPD conducted nine Force Review Boards involving 21 officers during current year 2016. All boards were conducted in compliance with the requirements of this Task.

OPD remains in compliance with this Task.

Task 30: Executive Force Review Board (EFRB)

Requirements:

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

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

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

³ Level 2 Use of Force includes, 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.

Commentary:

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.⁴

OPD has been in compliance with Task 30 since the nineteenth reporting period; however, we continue to observe and assess EFRB activities conducted during our monthly site visits.

OPD conducted five EFRBs during current year 2016. We observed the board hearing conducted in May. This event occurred at the home of a sexual assault suspect as officers were discussing and developing their approach strategy when the suspect burst out the door; and, without warning, fired multiple shots at officers, seriously wounding one. Officers returned fire, wounding the suspect who was transported to the hospital, where he later died.

The Criminal Investigation Division and the IAD Force Investigation Section each presented their detailed investigations, which demonstrated, once again, the seriousness with which such cases are investigated. The board also was inquisitive, questioning, and thorough with its review, and largely in agreement with the investigation but made no findings. Rather, the board requested: 1) completion of a written analysis on an audio recording; and 2) a further review of the basis for one performance finding. Findings and the final report are pending. 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;*

⁴ 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

- 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:

This Task requires the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling. As noted previously, OPD staff, without a credible model for reference, developed a comprehensive system of data collection. Throughout the development of the process, OPD has reviewed its processes to identify and improve areas where improvement or adjustment was warranted. As a result, several corrective measures have been implemented – most generally, the modification of data collection points, policies, processes, forms, and relevant training.

The most recent area of concern related to search recovery rates, which was identified in the latter part of 2015 when the data indicated a rapid and significant increase in the search recovery rate of squads in the Area(s) under review. OIG’s examination of relevant data found again that officers were making lawful searches. However, OIG also found that: (a) Items – such as screwdrivers and pocket knives – discovered and temporarily held by officers for safety reasons but returned to the owners – were being recorded as recoveries even though they were not seized nor identified as either evidence or contraband; and (b) the recovery of evidence and the number of persons searched during multiple person stops was not being recorded in a consistent manner.

OPD initiated corrective measures, including developing officer training and making revisions to the data entry form to address these issues. Training is ongoing. OPD initially represented that it would begin beta-testing of the updated data entry form in May and implement it in June; however, OPD’s further revision of the form to address a vehicle search issue has resulted in a delay with the anticipated operational implementation.

Certainly, ongoing training and the revised stop data form should improve the accuracy of the search recovery data; however, we continue to emphasize the importance of assessing and insuring supervisory accountability for the review of officers' data. So long as supervisors review and approve officers' incorrect recovery data, the value of that data in the identification of potentially problematic searches will be diminished. This is an ongoing problem.

Despite the above-described issues, including adjusting for estimated variances in recovery data, increases in recovery rates are clearly evident. The ongoing attention to the identified issues by OPD has resulted in improvement in this area, which we expect to continue.

OPD now has more than two years of credible data sufficient for the conducting a variety of analyses, including the identification of statistical indicators of possible disparate treatment at the Department, area, squad, and individual officer levels. More specifically, it provides OPD with an opportunity to study police/public interactions, and where there are anomalies or indicators of possible disparate treatment among the various population groups; and to design and take appropriate corrective measures where warranted whether it is at one or more of the area, squad, or individual officer levels.

The database provides pointers to specific police/public interactions indicative of possible disparate treatment amongst the identified population groups. Until recently, the primary focus has been on squad data and, to a limited degree, on officer demographics – i.e., variances in search, recovery and other data between younger, less experienced vs. older, more experienced officers. In addition, as suggested, OPD is now more closely reviewing individual officer data to specifically identify significant variances from the norm relative to stops, searches, and other actions involving the various population groups and implementing intervention strategies to address identified variances, as may be required. However, while recognizing this progress, as indicated above, we continue to emphasize the importance of assessing the effectiveness of officers' supervisors who have responsibility to train, guide, mentor, and correct officers' performance. The process of conducting daily reviews of stops involving recoveries being initiated by OIG is a step to strengthen supervisory accountability and this concern.

STOP DATA REVIEWS

During our May site visit, as part of the monthly Risk Management Meeting, OPD again conducted its detailed review of various risk management components for one of its five Area commands in rotation. The review included in-depth review of activities relating to stop data, including the identification of anomalies and/or variances in stop data between Citywide and their particular Area data. OPD did not conduct a Risk Management Meeting in June.

At the May meeting, the Area Commander and staff presented their assessment of the various data elements. This was the sixth successive RMM during which the Area Commander and command staff had carefully reviewed and understood the data. Commanders' descriptions of Area activities, crime control strategies, and knowledge of the individual squad activities has been broad and comprehensive. In particular, both the previous and current presentations by the Area command being reviewed for this report demonstrated an engaged staff with a clear understanding of mission, problems, and the ongoing development and adjustment of crime control and community engagement strategies. The commander described his staff as

“purposeful in what we do, everything is a work in progress, stay focused, look at data, and address issues.”

One of our ongoing concerns has been the infrequent review of Area stop data, which generally occurs is the five month rotation among the five Areas. This Area Commander provided assurances that risk management data, including stop data, is reviewed on a continuous basis; explanations provided during the meeting solidified this position and illustrated that this command is attuned to the importance of and uses data in the development of its policing strategies. As an example, the commander emphasized the importance of focused, strategy based searches; comparative data for citywide and area data indicate officers assigned this Area searched less and recovered more than the overall citywide rates for the same activities. (See Table One.)

TABLE ONE						
Comparative Search/Recovery Data						
Searches	Citywide	Area		Recoveries	Citywide	Area
Vehicle	27%	18%		Vehicle	45%	47%
Pedestrian	63%	52%		Pedestrian	43%	44%

STOP DATA REVIEW

As has been our practice in previous reports, we include a number of tables to illustrate various stop data. We, once again, do so with the admonition that the stop data in and of itself is not dispositive of disparate treatment among the population groups. Instead, it is an indicator of possible disparate treatment warranting further, careful analysis and – where warranted – intervention.

CITYWIDE STOPS

Tables Two and Three illustrate Citywide vehicle and pedestrian stop data from OPD.

TABLE TWO⁵					
Vehicle Stop Summary					
Race/Ethnicity	Stops		Searches⁶	Recoveries	Arrests
African American	10,365	58%	35%	44%	8%
Asian	1,166	6%	11%	53%	2%
Hispanic	3,813	21%	21%	49%	6%
White	1,997	11%	10%	43%	4%
Other	651	4%	12%	40%	4%
Total	17,992	100%	27%	45%	7%

TABLE THREE⁷					
Pedestrian Stop Summary					
Race/Ethnicity	Stops		Searches⁸	Recoveries	Arrests
African American	2,058	69%	66%	41%	30%
Asian	125	4%	68%	53%	42%
Hispanic	462	16%	58%	47%	27%
White	270	9%	49%	49%	27%
Other	61	2%	56%	47%	28%
Total	2,976	100%	63%	43%	30%

As illustrated in the above tables, OPD officers stopped and interacted with a total of 20,968 individuals during the specified period of time or on average 187 per day. One in three of the stops resulted in a search with an average recovery rate of 47%, ranging from a low of 43% for African Americans to a high of 53% for Asians.

MONTHLY REVIEW OF SELECTED AREA

Vehicle and Pedestrian Stops

Officers assigned to the Area under review during the May RMM stopped and interacted with a total of 2,634 individuals during the specified period of time – or, on average, 23 per day – as illustrated in Tables Three and Four. One in five of the stops resulted in a search. African Americans were stopped and searched at the highest rates. See Tables Four and Five below.

⁵ This dataset includes activity for the period October 17, 2015 through April 15, 2016.

⁶ Incident to arrest, weapons, and inventory searches Excluded.

⁷ This dataset includes activity for the period October 17, 2015 through April 15, 2016.

⁸ Incident to arrest, weapons, and inventory searches excluded.

TABLE FOUR⁹					
Area Vehicle Stop Summary					
Race/Ethnicity	Stops		Searches¹⁰	Recoveries	Arrests
African American	1,356	60%	24%	48%	7%
Asian	159	7%	5%	50%	2%
Hispanic	273	12%	14%	39%	3%
White	383	17%	5%	38%	2%
Other	103	5%	13%	54%	9%
Total	2,274	100%	18%	47%	5%

TABLE FIVE¹¹					
Area Pedestrian Stop Summary					
Race/Ethnicity	Stops		Searches¹²	Recoveries	Arrests
African American	260	72%	58%	45%	26%
Asian	8	2%	38%	0%	0%
Hispanic	32	9%	41%	38%	9%
White	57	16%	33%	47%	11%
Other	3	1%	33%	100%	33%
Total	360	100%	52%	44%	21%

Pat-Down (Frisks) Searches

Tables Six illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches. This data is provided for informational purposes.

⁹ This dataset includes activity for the period October 17, 2015 through April 15, 2016.

¹⁰ Incident to arrest, weapons, and inventory searches excluded.

¹¹ This dataset includes activity for the period October 17, 2015 through April 15, 2016.

¹² Incident to arrest, weapons, and inventory searches excluded.

TABLE SIX				
CITYWIDE STOPS				
Percentage of Stops Resulting in Weapons or Probation/Parole Searches				
Race/Ethnicity	Vehicle Stop Pat-downs (frisks)	Pedestrian Stop Pat-downs (frisks)	Vehicle Stop Probation/Parole Searches	Pedestrian Stop Probation/Parole Searches
African American	11%	16%	40%	34%
Asian	8%	15%	26%	19%
Hispanic	15%	22%	24%	23%
White	16%	20%	26%	11%
Other	10%	32%	23%	21%
Total	12%	17%	36%	30%

OPD had made marked progress with the implementation of the requirements of this Task relating to the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling. OPD is now moving forward with solid analytical processes that can identify the presence or absence of disparate treatment of one of more population groups. OPD is also taking corrective measures where warranted. In addition, OIG will soon commence daily inspections of stops involving recoveries to identify and address any apparent disparities and/or inaccuracies in recovery data.

The below described issues remain incomplete; we will continue to monitor OPD’s progress on them until full compliance is achieved.

- Training and operational implementation of revised stop data forms to appropriately categorize pat-down search recoveries of both seized evidence and the return of items temporarily retained for safety purposes. OPD has implemented policy and training initiatives. The changes to OPD’s revised Stop Data Collection Form reflected the return of seized items, in addition to other improvements. OPD reportedly commenced its beta-testing of the form in May; and planned full operational implementation for June, though this was delayed pending an additional Stop Data Form revision relating to vehicle searches. Finally, OIG will initiate a program of daily inspections of stop/search/recovery data that will focus on strengthening supervisory accountability in these areas.
- Completion of training regarding search recovery documentation in cases of multiple person stops and/or vehicle searches with multiple occupants. The first phase of the training is reportedly complete; OPD will initiate the second phase of the training when it adopts the revised Stop Data Collection Form. Supervisory accountability for assuring the collection and recording of accurate search recovery data remains as issue.

- 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. OIG is focusing on careful reviews and follow-up of Area data as presented at the monthly RMM meetings. These reviews are designed to strengthen the entire stop data process. We continue to work with the Department on these strategies.
- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and assure sustained intervention and/or prevention measures. (This objective is temporarily delayed awaiting the implementation of PRIME, which should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings.) However, the daily OIG review of stop/search/recovery data described above is a limited, but proactive step.
- Receipt and implementation of Dr. Eberhardt's report, "Strategies for Change – Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, CA," and recommendations relevant to this Task. In early June, Dr. Jennifer L. Eberhardt conducted implicit bias training sessions for over 700 OPD staff. Release of the Stanford University Report followed on June 15, 2016. At that time, Dr. Eberhardt and her associate first presented the research and findings to OPD staff and entertained questions. Additional external presentations followed. The report based on analyses of 28,119 stop data forms filed between April 1, 2013 and April 30, 2014 and other identified criteria, set forth that researchers "uncovered evidence that OPD officers treat people of different races differently." However, the report also "found little evidence that disparate treatment arose from explicit racism or purposeful discrimination." The research instead "suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment." Included are 50 recommendations, many of which OPD has partially or fully implemented. The City and OPD, despite the current instability, have represented full commitment to implement all 50. The Plaintiffs' attorneys are also following this closely. We will work with OPD as it is doing so, and will confer with OPD during our upcoming site visit on the development of an implementation plan for the recommendations in Dr. Eberhardt's report.

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:

The NSA 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 queried the IAD database to identify all of the cases with at least one sustained finding that were approved from February 1, through March 31, 2016. This query yielded 20 cases, each containing at least one sustained finding. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

The NSA also requires that discipline be imposed in a manner that is fair and consistent. To this end, the Department developed a Discipline Matrix, which was adopted on September 2, 2010 and in effect until a revised Discipline Matrix was approved on March 14, 2014. This new matrix applies to violations after that date.

We reviewed all 20 cases with sustained findings that were decided during January 2016. Three of these cases involved demeanor allegations. Three other cases alleged failure to properly care for Department-issued equipment. Two other cases involved the failure to take a report, while another resulted in a sustained finding for failure to take a complaint. Seven cases originated from motor vehicle accidents that were ultimately determined to be avoidable. One case stemmed from an off-duty incident that garnered a great deal of media attention and public scrutiny.

In one case involving a demeanor complaint, no penalty was imposed because the involved civilian employee retired prior to the conclusion of the investigation/disciplinary process. In the remaining cases, the discipline imposed in each case fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed. Termination was recommended in two cases.

During the period of February 1, through March 31, 2016, OPD held two Skelly hearings for two IAD cases involving employees with sustained findings in which discipline of a one-day suspension or greater was recommended. In one of the cases, the employee was a non-sworn member. We reviewed the Skelly reports, and found that they contained adequate justification for the results documented. In one case, the sworn employee failed to take or refer a complaint (unintentional), and the proposed one-day suspension was reduced to a written reprimand, with the concurrence of the Chief of Police. In the other case, a Police Service Technician was charged with Driving Under the Influence. He received a 10-day suspension, but the suspension was held in abeyance based on the employee's successful completion of a drug and alcohol intervention program. In these circumstances, the Discipline Matrix states that the "Discipline will be held in abeyance if an approved wellness program is completed." The Chief concurred with this recommendation.

In our last discussion of Task 45, we discussed the Court-Appointed Investigator's second report to the Court. Since that time, the City has filed its third progress report as required by the Court. In that report, the City asserted that all of OPD's potential Skelly officers – both sworn and civilian – have received the enhanced training developed as a result of the investigator's initial recommendations. They report that the training was very well received and will be offered on at least an annual basis. We confirmed the positive reception of the training during our most recent site visit.

OPD remains in partial compliance with Task 45.

Conclusion

This has been a trying time in the history of the Oakland Police Department. Recent local developments, when appended to the national narrative on the fragility of the relationship between the police and the communities they serve, should intensify the resolve of the Department and those who oversee it. Findings by Dr. Eberhardt of Stanford University about certain disparities in police conduct should be a concern to all. The findings are a chilling reminder of the work that remains. More than ever, an engaged and informed community is both a practical and moral imperative.

In the face of the most difficult of circumstances, Mayor Libby Schaaf has demonstrated important and needed leadership as she has worked to stabilize the environment in both the Department and the community. City Administrator Sabrina Landreth has joined the Mayor in clearly articulating the expectations of the City's oversight leaders as to what constitutes acceptable behavior on the parts of those who enforce the laws. A series of audits and studies directed by the Mayor are an encouraging sign that an assessment of systemic matters that might have a bearing on underlying issues will help recalibrate the course and direction of the agency and its relationship with the community.

We shall continue to closely scrutinize the efforts and outcomes associated with these new initiatives.

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

Chief (Ret.) Robert S. Warshaw

Monitor