

Thirty-Seventh 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. 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.

As a result of concerns about the measure of investigative effort undertaken by the Department in IAD case 15-0771, the Court issued an Order on March 23, 2016 indicating that "irregularities and potential violations of the NSA" occurred. The Order directed 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."

While the initial investigation is complete and several involved officers have been served with discipline, and some have been charged with criminal conduct, this matter is not yet over. In keeping with the Court Order and my charge as Monitor and Compliance Director, my Team remains involved in several ways. We continue to monitor the pending investigations that have stemmed from the original matter; and we continue to support and offer 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 outcomes in our future reports.

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

This Report

In this report, we describe our recent assessments of Tasks 5, 20, 34, and 41. 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 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.

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.
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.
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance. Not assessed in this report.

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); stop data (Task 34); risk management (Task 41); several Department policies and procedures, including policies on handcuffing and the use of electronic control weapons; and the Department’s ongoing audit of the recruitment and training of new officers. We are also closely following the Department’s adoption of Lexipol, the online policy platform. 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. OPD recently provided us with the first Lexipol-formatted policy for our review and approval.

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 and capacity.

Each month, we review OIG’s progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department’s continued implementation of the NSA reforms.

OIG’s October report examined some aspects of the Department’s performance appraisal system. Among its other findings, OIG found that performance appraisals are not being submitted to the Personnel Section in a timely manner as required by Department policy. We look forward to discussing this finding and OIG’s recommendations with OIG during our upcoming site visit, 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. We will also continue to work with OIG to ensure that the recommendations it offers in its monthly reports are followed up on appropriately and sufficiently.

Focused Task Assessments

Task 5: Complaint Procedures for IAD

Requirements:

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

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

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

(Negotiated Settlement Agreement III. E.)

Relevant Policy:

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

Commentary:

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

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

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

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

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This subtask has not been actively monitored since December 2014, 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 August 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

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.

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 15 cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in allowing OPD to reach a proper conclusion. We note, however, that one case was impacted by the missing PDRD data issue that recently surfaced and has garnered much public and media interest. The incident occurred in March 2015, and officers were accused of damaging the interior of a vehicle during a search. The involved officer apparently activated his PDRD as required, but the investigating sergeant learned that the video was inadvertently deleted. Despite this, OPD was still able to reach appropriate findings for the allegations.

In one case, the investigator conducted follow-up interviews with three involved officers to seek clarification or resolve inconsistencies; and in two other cases, the complainants were re-interviewed.

OPD made credibility assessments in nine of the 15 cases. The six remaining cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In four cases, complainants were deemed not credible. In two of these cases, PDRD recordings were in direct conflict with some of the complainants' assertions. In the other two cases, independent witnesses refuted the claims of the complainants.

In all of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In seven of the cases, PDRD recordings were available and assisted in the determination. In four others, audio recordings of calls to Communications allowed for definitive findings. There were no findings of not sustained during this review. 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 53 allegations that received dispositions as follows: 13 exonerated; 27 unfounded; and 13 administratively closed. We did not disagree with any of the findings. However, we do not believe one of the allegations against a dispatcher should have been handled as a "discovered violation." Department General Order M-03 provides that "Supervisors, commanders, and managers who discover Class II misconduct during the normal course of supervision, that does not indicate a pattern of misconduct, may address the Class II misconduct through non-disciplinary corrective action by a supervisor/manager." In this case, it appeared that the

dispatcher failed to accept or refer a complaint. First, the violation was discovered by IAD at intake of the complaint, and not by the employee's supervisor. Second, handling an allegation of failing to accept or refer a complaint in this manner is prohibited by inactive Task 6, which states that, "Refusal to accept a citizen complaint, failure to refer a citizen to IAD (when that citizen can be reasonably understood to want to make a citizen's complaint), discouraging a person from filing a complaint, and/or knowingly providing false, inaccurate or incomplete information about IAD *shall be grounds for discipline* for any OPD member or employee." (Italics added.) Task 6 requires that if such an allegation is sustained, the discipline process shall be invoked. It does not allow for an informal alternative.

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

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

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

Task 20: Span of Control for Supervisors

Requirements:

On or before August 14, 2003, OPD shall develop and implement a policy to ensure appropriate supervision of its Area Command Field Teams. The policy shall provide that:

- 1. Under normal conditions, OPD shall assign one primary sergeant to each Area Command Field Team, and, in general, (with certain exceptions) that supervisor's span of control shall not exceed eight (8) members.*
- 2. During day-to-day operations, in the absence of the primary supervisor (e.g., due to sickness, vacation, compensatory time off, schools, and other leaves), the appropriate Area Commander shall determine, based on Department policy and operational needs, whether or not to backfill for the absence of the sergeant on leave.*
- 3. If a special operation, (e.g., Beat Feet, Special Traffic Offenders Program (STOP), etc.) requires more than eight (8) members, the appropriate Area Commander shall determine the reasonable span of control for the supervisor.*
- 4. If long-term backfill requires the loan or transfer of a supervisor from another unit, the Chief of Police and/or the Deputy Chief of Police shall make that decision.*

(Negotiated Settlement Agreement IV. C.)

Relevant Policy:

Three Departmental policies incorporate the requirements of Task 20: Departmental General Order A-19, *Supervisory Span of Control*, issued on July 26, 2006; Departmental General Order D-13, *Assignment to Acting Higher Rank or Classification*, issued on June 17, 1999; and Departmental General Order D-13.1, *Assignment to Acting Sergeant of Police*, issued on May 14, 2014. (The publication of DGO D-13.1 cancelled Special Order 8435, which previously governed the selection process of acting sergeants.)

Commentary:

Following discussions with our Team, the Department developed and implemented an alternate relief sergeant system in 2015. While the plan reduced the number of relief sergeants assigned to Patrol, in 2016, we have not found that it has affected compliance with the NSA requirements related to consistency of supervision and span of control.

For our assessment for this report, we reviewed spreadsheets prepared by the Department for the months of July, August, and September 2016 that, by date, note which type of sergeant supervised each applicable squad – a primary sergeant, relief sergeant, acting sergeant, other sergeant (one working overtime), or none. (The Department refers to unsupervised squads as “open.”) Using Telestaff, the Department’s electronic scheduling system, we also spot-checked

this data to verify its accuracy. We calculated per squad the compliance percentages for this subtask during this reporting period. Each of the 47 applicable squads were in compliance – that is, all applicable squads during this reporting period were supervised by either a primary, relief, or other/overtime sergeant for at least 85% of their working shifts. We also found that none of the applicable squads exceeded the required 1:8 supervisor to officer ratio at least 90% of their working shifts.

OPD continues to be in compliance with these important requirements. Even more encouragingly, as we have noted previously, the Department has institutionalized the sound practices of tracking how each squad is supervised each day; planning, when possible, for expected absences; and thoughtfully considering how to fill in for personnel who are absent unexpectedly.

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, we continue to attend, observe, and assess FRBs when during scheduled our monthly site visits.

OPD has conducted 12 Force Review Boards during 2016; however, no boards were scheduled during our October site visit.

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.)

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.

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 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 also continue to observe and assess EFRB activities conducted during our monthly site visits.

OPD conducted seven EFRBs during current year 2016. We observed the board hearing conducted in October. Classified as an in-custody death, this case involved the death of a suspect wanted on a warrant for homicide, and who was also a suspect in three additional homicides. Officers from a neighboring jurisdiction observed a suspect entering a local motel. OPD was notified; and appropriately deployed personnel in an attempt to take the suspect, who had barricaded himself in the motel room, into custody. During repeated efforts to convince the suspect to surrender, he committed suicide with a firearm. This event involved the deployment of less lethal munitions, each of which was carefully reviewed by the board as were command and control, tactical, and interagency operational procedures. The EFRB was detailed and thorough. OPD remains in compliance with this Task.

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

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 collects and retains 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 required by this Task. Since 2013, the data and data retrieval process have been sufficiently reliable for its intended purpose – which we note, was approximately 10 years after the inception of the NSA. We and OPD continually evaluate processes and procedures in an effort to strengthen them and to ensure that the data is accurately collected so as to identify indicators of bias-based policing or racial profiling.

One of OPD's more recent initiatives to improve the data collection process has been a modification of the Stop Data Form so as to more clearly identify reasons for stops, as well as to enhance supervisory and search recovery analytics. OPD has worked closely with Dr. Jennifer Eberhardt and her Stanford University-based research team on these enhancements, and has also sought and received input from OPD field staff. One recent addition to the form is the inclusion of "intelligence" as one of the legitimate reasons for a stop. Due to the possibility of an overuse of this basis for stops, OPD developed specific guidance to officers for making and recording such stops. OPD began using the revised form in October, a few months after it had originally planned. The Department will receive and consider feedback from officers and make any additional necessary changes.

As we have noted previously, OPD reviews various stop during its monthly Risk Management Meetings (RMMs). Generally led by a Deputy Chief, these meetings are conducted for the purpose of reviewing various risk data from one of the five Patrol Areas. The designated Area Commander is present to provide information and answers to personnel activity within the designated Area for a specified time period. A review of the Area stop data has been an integral part of these meetings, which generally include discussions regarding anomalies and/or variances in stop data between citywide and Area data and among Area squads; and an examination of stops, searches, search recovery rates, and other related data.

These reviews and discussions have proven valuable and fruitful. We have seen a significant increase in the overall search recovery rates, which given OPD's and our increased scrutiny of these rates is not surprising. We have not however, found significant scrutiny and discussion of variances in recovery or other data among the various population groups. We suggest that as part of the RMM, in addition to providing the various data tables for review, OPD also conduct a focused analysis of a selected squad dataset(s) that appear to reflect disparities among population groups so as to definitively determine whether or not there are bias or disparate treatment issues of concern.

We attended the October RMM and found that OPD officials are making a continued effort to increase the operational value of these meetings. October's meeting began with a discussion of "deliverables" from this Area's prior meeting, which included the evaluation of high-producing squads, addressing a particular officer's low search recovery rate, and addressing an over-emphasis on vehicle stops. The Area Commander presented an impressive review of Area activities outlining his and his command staff's engagement with and direction to officers not only regarding stops, but also in crime control and community engagement.

While these meetings have proven to be fruitful from a risk management perspective, as noted above, OPD has more work to do regarding identified disparities. The data consistently includes indicators of *possible* disparate treatment among the various population groups – i.e., bias-based policing or racial profiling. However, OPD has not yet developed a protocol or process for evaluating these indicators, or conducting an intervention strategy or taking corrective measures where appropriate – whether at one or more of the Area, squad, or individual officer levels. In addition to our above suggestion regarding a focused review during the RMM, OPD leadership should develop and provide such guidance to Area commands.

These recommendations are based upon a fundamental need to identify and address any possible disparate treatment; and while not on any specified present concern, are concurrent with the Stanford research team's findings. Those findings noted, "We indeed uncovered evidence that OPD officers treat people of different races differently...we found little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, our research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment." The Stanford team reports recommended 50 actions that OPD should take to change the Department's culture and strengthen ties with the communities it serves.⁵ OPD is developing an implementation plan to address these recommendations. We look forward to discussing this further with OPD during our upcoming site visit.

As indicated above, we attended the October RMM. The tables illustrated in the following section illustrate stop data results for the Area referenced for discussions during that meeting.

STOP DATA REVIEWS

As is our practice, we are including several tables to illustrate various stop data. Again, we 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 requiring further, careful analysis and – where warranted – intervention.

CITYWIDE STOPS

Tables One and Two illustrate Citywide vehicle and pedestrian stop data from OPD. As illustrated in these tables, OPD officers stopped and interacted with a total of 19,610 individuals during the specified period of time or on average 82 per day. Slightly more than one in four vehicle stops (28%) and nearly two of every three (65%) pedestrian stops resulted in searches. African Americans were searched at the highest rate during both vehicle and pedestrian stops at 36% and 68% respectively.

⁵ Hetey, R.C., Monin, B., Maitreyi, A., and Eberhardt, J.L. (2016). Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013-2014. Stanford University, SPARQ: Social Psychological Answers to Real-World Questions; Eberhardt, J.L. (2016) Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif., Stanford University, SPARQ: Social Psychological Answers to Real-World Questions.

Table One			
Vehicle Stop Summary⁶			
Race/Ethnicity	Stops	Searches⁷	Recoveries⁸
African American	58%	36%	33%
Asian	6%	10%	25%
Hispanic	23%	22%	40%
White	11%	9%	34%
Other	4%	10%	20%
Total	100% 16,724	28% 4,619	34% 1,570

Table Two			
Pedestrian Stop Summary⁹			
Race/Ethnicity	Stops	Searches¹⁰	Recoveries¹¹
African American	66%	68%	68%
Asian	4%	64%	59%
Hispanic	16%	63%	61%
White	11%	49%	51%
Other	2%	60%	66%
Total	100% 2,886	65% 1,866	35% 652

MONTHLY REVIEW OF SELECTED AREA

Vehicle and Pedestrian Stops

As illustrated in Tables Three and Four below, Area officers stopped and interacted with a total of 3,531 individuals during the specified period of time or on average 14 per day. Nearly one in three vehicle stops (30%), and more than two of every three (69%) pedestrian stops resulted in searches. African Americans were searched at the highest rate during both vehicle and pedestrian stops, at 36% and 72% respectively.

⁶This dataset includes activity for the period January 16, 2016 through September 9, 2016.

⁷Incident to arrest, weapons, inventory searches and related stops excluded.

⁸ Subject to further verification.

⁹This dataset includes activity for the period January 16, 2016 through September 9, 2016.

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

¹¹ Subject to further verification.

Table Three¹²			
Area Vehicle Stop Summary			
Race/Ethnicity	Stops	Searches¹³	Recoveries
African American	69%	36%	42%
Asian	6%	12%	28%
Hispanic	13%	22%	47%
White	10%	13%	47%
Other	3%	7%	80%
Total	100%	30%	42%
	2,746	827	350

Table Four¹⁴			
Area Pedestrian Stop Summary			
Race/Ethnicity	Stops	Searches¹⁵	Recoveries
African American	75%	72%	48%
Asian	4%	71%	42%
Hispanic	10%	51%	23%
White	10%	58%	49%
Other	1%	57%	25%
Total	100%	69%	46%
	785	539	249

¹² This dataset includes activity for the period January 16, 2016 through September 9, 2016.

¹³ Incident to arrest, weapons, and inventory searches excluded.

¹⁴ This dataset includes activity for the period January 16, 2016 through September 9, 2016..

¹⁵ Incident to arrest, weapons, and inventory searches excluded.

Pat-Down (Frisks) Searches

Table Five illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches.

Table Five				
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	12%	16%	40%	14%
Asian	9%	10%	17%	6%
Hispanic	18%	22%	24%	11%
White	15%	20%	29%	13%
Other	20%	22%	36%	10%
Total	13%	17%	36%	13%

OPD has designed and developed a process for 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. Although OPD does an excellent job with the collection of data, the time has come for thoughtful, in-depth analysis of the data, so as to identify either the absence or presence of racial bias and of disparate treatment among the various population groups. Such analyses will assist with building trust and enhancing its relationship with all segments of the Oakland community. As we have previously noted, the publication of the Stanford University report provides further guidance on ways to comply with both the letter and spirit of this Task.

In the meanwhile, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD’s progress on these issues until OPD achieves full compliance.

- Implementation of the revised Stop Data Forms, to include appropriate training to ensure that officers accurately document their search recoveries. Though OPD originally projected implementation of the revised Stop Data Forms for May, additional revisions delayed implementation until October. However, all officers are now using the new forms.
- 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 reviews and follow-up of Area data as presented at the monthly RMMs. These reviews are designed to strengthen the entire stop data process. We continue to work with the Department on these strategies to include focused reviews of data where there are indicators of racial bias or disparate treatment among the various population groups.

- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and ensure 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 OIG review of stop/search/recovery data described above is a limited, but proactive, step.
- Development of a plan for the implementation of the recommendations contained in the recently received Stanford University report. The report, researched and prepared by Dr. Eberhardt and her colleagues, analyzed 28,119 Stop Data Forms and found evidence that OPD officers treat people of different races differently – but also found little evidence that disparate treatment arose from explicit racism or purposeful discrimination. Instead, the research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment. The report includes 50 recommendations, many of which OPD has partially or fully implemented. The City and OPD have represented full commitment to implement all 50. We look forward to the implementation plan to do so, and we will continue to work with the Department on these strategies.

Task 41: Use of Personnel Assessment System (PAS) and Risk Management

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole. The policy shall include the following elements:

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
2. *The Department shall retain all PAS data for at least five (5) years.*
3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
4. *PAS, the PAS data, and reports are confidential and not public information.*

5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*
8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible*

for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.

11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*
15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been*

identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.

18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013.

Commentary:

OPD had anticipated that its new risk management system, which is known as PRIME (Performance Reporting Information Metrics Environment), would be launched by the end of September – but it has been delayed indefinitely. The development process is now in the system-testing stage and significant problems have been detected. That debugging process is designed to identify and fix data-related problems. The process has identified an unexpectedly large number of such problems, and additional issues continue to arise as those problems are corrected. By the time of our last site visit, over 500 data problems had been identified and half of those remained open. As a result, the project was described as still in the “design phase.”

The ongoing data validation process involves matching data records across the in-place PAS system and its coming replacement, PRIME. OPD has found problems in core areas, including counts of uses of force and complaints, which are both used in constructing individual officers' risk profiles. According to key staff, these problems most often relate to differences in data definitions and counting rules. These issues relate directly to the administrative processes of risk management including reviewing cases, identifying officers for monitoring and supervision, and overseeing those interventions.

The process of solving these problems is complex, laborious, and slow. At the time of our October site visit, OPD was conducting daily conference calls with the vendor to identify and correct problems. At this point in time, according to OPD, the Department, the City IT Department, or the vendor cannot identify a timeframe for the long-expected launch of the new system. They remain confident that the coding problems can be identified and fixed but given previously missed deadlines, will not speculate as to when this might be completed.

The delays in the implementation of PRIME are problematic for several reasons even though the existing PAS program continues to function. The delays continue to require dedication of substantial staff resources. OPD's ongoing efforts to train staff in the new system are hampered by the lack of progress. A new concern has also arisen. The planned and announced retirement of a key civilian staff person is rapidly approaching. This staff person has facilitated the risk management process at OPD since its inception under the NSA, and she is heavily involved in the development of PRIME. She has played a key role in the testing, and subsequent discovery of data errors with the new system. Even under ordinary circumstances, her retirement would require extensive preparation to ensure a smooth transition. In fact, new staff are being trained to meet the responsibilities, but the transition will, no doubt, be further complicated by the still unfolding problems with PRIME.

As noted above, risk management also continues to operate under the PAS database and related procedures. The process continues to be governed by General Order D-17, which incorporates the requirements of Tasks 40 and 41; and was approved on November 20, 2013. With the delays in the new system, D-17 has not yet been addressed under the Department's ongoing policy review and revision program and has not incorporated any changes that will be needed. It remains clear that review and, at least, minor revisions will be needed as the Department moves to the use of the new PRIME system. As noted previously, an early plan to "switch off" PAS at the time PRIME is initiated has given way to include a period during which both systems are in place. This will ensure that the new system functions as anticipated, and it will provide an opportunity for the Department to address any additional needed changes.

Task 41 is linked to Task 40, which addresses the data needed by the risk management process. Again for the period covered in this report, there are no significant issues regarding data quality and availability. The Department, through its PAS Administration Unit, continues to conduct internal audits of the required data and to correct any problems as they arise.

PAS records for the quarter of July through September 2016, as compiled by OPD, indicate that data were entered for all of the fields required by Task 40. The required data for the quarter included reports of 151 uses of force. This is nearly the same as the 149 reported for the previous quarter. The graphs at the end of the table below show that drops in the use of force have also been accompanied by increases in the numbers of arrests over time. A further breakdown of the types of use of force shows that, as with last quarter, there were no Level 1 uses of force. There were eight Level 2, 13 Level 3, and 130 Level 4 uses of force during the quarter. The total of Level 2 and Level 3 uses of force was 21, compared with a total of 34 for the previous quarter and 15 for the one preceding that. There were a total of 220 Internal Affairs complaints this quarter, which is similar to the 227 reported in the previous quarter.

PAS Data for July-September 2016

Label	Jul-16	Aug-16	Sep-16	SPARKLINES (Jul 13 - Jun 16)
Level 1 Uses of Force	0	0	0	
Level 2 Uses of Force	4	4	0	
Level 3 Uses of Force	1	8	4	
Level 4 Uses of Force	62	53	15	
Unintentional Firearms Discharge	0	0	0	
Sick Leave Hours	2354.92	3296.9	1741.53	
Line of Duty Injuries	0	0	0	
Narcotics Related Possessory Offenses Arrests	291	294	322	
Vehicle Collisions	4	5	0	
All Vehicle Pursuits	9	32	0	
All Arrest	2078	2144	2028	
Arrests including PC 69, 148(a), 243(b)(c) & 245(c)(d)	13	38	17	
Arrests only for PC 69, 148(a), 243(b)(c) & 245(c)(d)	4	4	4	
Awards	58	37	1	
Assignment History	13120	13120	13120	
Case Evaluation Reports	69	111	71	
Report Review Notices--Positive	1	1	0	
Report Review Notices--Negative	6	1	1	
Canine Deployments	17	21	5	
Financial Claims	0	0	0	
Internal Affairs Complaints	94	74	52	
In-Custody Injuries	1	6	4	
Civil Suits (Tort Claims)	8	0	0	
Criminal Cases Dropped	47	86	58	
O.C. Checkouts	18	3	9	
Officer Involved Shootings	0	0	0	
Rank / Class History	2677	2677	2677	
Training History	453	789	870	
Supervisory Notes	1451	1519	1323	
Criminal Arrest Made Against OPD	0	0	0	

Task 41 addresses the use of the risk management process to establish a proper foundation to manage risk in the Department. The core of the process involves identifying and assessing individual officers based on risk related behavior and then intervening as appropriate. When all officers are included, the Department has less than 2% of officers on monitoring or supervision. That figure has been quite steady over the past year.

The Department's approach to risk management also supports an expanded approach beyond concern with identification of individual officers passing thresholds. The Department seeks to continuously assess activity and to incorporate those assessments more generally into its risk reduction effort. Again during our October site visit, members of the Monitoring Team attended the regularly scheduled Area Risk Management Meeting. The meeting involves review of substantial amounts of risk relevant data by the Area command staff and supervisors including information on force, complaints, arrests, and stop data at the squad and individual officer level. At this meeting, the Department also included the detailed examination of the risk data on individual officers identified in the meetings whose information raised particular issues or concerns. That "live" examination of PAS data made a significant contribution to the meeting.

In a previous report, we noted that the Department sought to maximize the potential benefit of the Risk Management Meetings. At that time, we also noted OPD's tendency to review past data with only a limited purpose of developing plans to address identified trends. During our most recent site visit, the Department also scheduled a meeting to discuss further improvements in the meeting process. In that process, the Department presented revised approaches to displaying data, as well as plans to make that data more manageable and the discussion more focused on plans moving forward. This effort to improve utilization of risk information to aid in the management of the Department is significant.

As we have done in the past, we have continued our examination of the stages of the current PAS processes as required under Task 41. We examined the threshold analyses that were performed for the period of July 1, through September 30, 2016. This included a review of peer-based threshold analyses completed by the PAS Administration Unit and the identification of officers meeting the single-event threshold. In many cases, the data show that the distribution of risk factors are tightly distributed, and therefore yield few or no outliers. As we have noted, while this may be seen as a positive finding, it should also indicate that it may now be appropriate to reconsider selection criteria. The recent Department concern over officers' behavior makes it clear that a comprehensive approach to managing risk, including constantly reexamining data quality, thresholds and risk criteria should be incorporated under the new PRIME directive.

In accordance with this Task requirement, we again reviewed PAS processes for the system's use in placement of officers on special assignment, transfer of officers, and commendations. An important function of PAS is to regularly provide supervisors with relevant information on officers. To consider that function, we again reviewed reports of regular quarterly PAS command reviews of officers by supervisors. We again found appropriate use of the system and no significant issues.

The PAS process is generally initiated through comprehensive risk assessment reviews when thresholds are met. In this quarter, we also note that two officers currently under monitoring were first reviewed based on a management referral, rather than for exceeding a risk threshold.

For the reporting period ending September 30, 2016, OPD completed a total of 23 PAS reviews that were processed up the chain of command and through the PAS Review Panel. OPD reported that no reviews occurred in July, due to ongoing work on the new risk management system. For the quarter, the total number of reviews is generally equivalent to those done in earlier periods. Reviews are included in the table below only after they are signed off through the level of the PAS Review Panel. Examination of the reviews as completed by the PAS Administration Unit shows them to be thorough and complete. The reviews include examination of all identified risk related activity consistent with the policy. The table below also shows that only seven officers exceeded thresholds for review during this quarter.

The table tracks the review process and shows that supervisors recommended that no action be taken in 21 of the 23 reviews for the current reporting period. Two officers were recommended for monitoring. The table also shows that Commanders and the Deputy Chief did not disagree with any of the lower-level recommendations. The PAS Review Panel also did not reverse any cases. In summary: Again, for this period the system shows high levels of “no action” required on initial review; and those decisions were not altered as the cases moved up the chain of command.

When assessed at the end of the review period, nine officers were in monitoring and two were in intervention. (One other had resigned.) Fourteen officers were reported in monitoring in the previous quarter. As noted earlier, two officers were referred for review through the administrative referral process rather than for exceeding one of the set thresholds. The numbers are down slightly from the prior quarter and mean that, 1.5% of all officers (Total N=745, monthly average) are on some risk management-related status; either monitoring or intervention. When the percentage using patrol officers as the base (N=453) is considered, this increases to 2.4% of all patrol officers. As noted in previous reports, these numbers are somewhat lower than expected under a system intended to continuously lower risk over time, and where there have been a significant number of new recruits for whom monitoring may be a beneficial adjunct to normal supervision. As noted in our earlier reports, the number of reviews and other activity will continue to be monitored to determine if the current low level of activity is an anomaly.

Summary of PAS Reviews and Recommendations 7/16-9/16																			
	PAS Reviews Completed	Supervisor Rec- no action	%	Recognition	%	Supervisor Rec - Monitoring	%	Supervisor Rec- Intervention	%	Supervisor concurs with PAS Admin	%	Commander rec Concurs w Supervisor	%	Dep. Chief Concurs w Commander	%	PAS Panel Concurs w DC	%	Pending	Number of personnel that exceeded a threshold
2016																			
January	10	9	90%	1	10%	0	0%	0	0%	10	100%	10	100%	10	100%	10	100%	1	2
February	12	11	92%	0	0%	1	8%	0	0%	12	83%	12	100%	12	100%	11	92%	3	23
March	19	16	84%	0	0%	3	16%	0	0%	18	95%	19	100%	19	100%	19	100%	1	0
April	9	9	100%	0	0%	0	0%	0	0%	8	89%	9	100%	9	100%	9	100%	8	20
May	11	11	100%	0	0%	0	0%	0	0%	11	100%	11	100%	10	91%	11	91%	2	0
June	2	1	50%	0	0%	1	50%	0	0%	2	100%	2	100%	2	100%	2	100%	5	0
July	0	0		0		0		0		0		0		0		0		8	2
August	15	14	93%	0	0%	1	7%	0	0%	15	100%	15	100%	15	100%	15	100%	3	0
September	8	7	88%	0	0%	1	13%	0	0%	8	100%	8	100%	8	100%	8	100%	3	5

For our reports, we also review the PAS histories of officers who had a Level 1 use of force. For the past quarter, as was true in the previous quarter, no officers fell into this category. The PAS records of officers involved in the recent scandal were examined as part of the Departmental review but limited data were available because training records were incomplete and not entered into the risk management system.

Conclusion

In the area of risk management, we as the Monitoring Team find ourselves in an unexpected and unsettling position for this reporting period. On one hand, we recognize the extensive work that has gone on to strengthen the risk management process. Development of PRIME, although not without its problems, is clearly a step forward. Likewise, the constant improvement focus of the Area Risk Management Meetings, and the analysis and recommendations regarding stop data, all reflect important commitments. At the same time, we remain concerned that criteria for recognizing risk, as well as the processes connected to them, mean that few officers are considered for intervention of any kind, and even analysis of stop data rarely addresses patterns of individual officers. This should be of concern to the Department and the community. In short, the mechanics of the risk management process remain in place and functioning, but the actual application and use of that process for improving the Department and its officers seems less certain.

The recent scandals, along with a sense of stagnation even as PRIME development continues, all suggest the need for critical thinking and action in this area.

This leaves a full plate for the Department and City, as the hiring of a new, permanent police chief and; following the successful Citywide ballot initiative, the establishment of the independent civilian Police Commission lie ahead.

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

Chief (Ret.) Robert S. Warshaw

Monitor