

August 15, 2017

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

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## Introduction

This is our forty-fifth status report on the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California under the direction of Judge Thelton E. Henderson. I was appointed in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003.

This report covers our site visits of June and July 2017. Immediately preceding our May visit, on May 8, 2017, the Department and its vendor implemented PRIME (Performance Reporting Information Metrics Environment), which replaced PAS (Personnel Assessment System) as the Department's risk management system. We discuss this further in the Task 41 section of this report.

In addition to Task 41, we also describe our recent assessments of NSA Tasks 5, 20, 34, and 45 in this report. As we have noted previously, in accordance with the Court's Order of May 21, 2015, we now devote special attention to the most problematic component parts of the Tasks that are not yet in full or sustained compliance, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable. That said, there are still other requirements where intermittent issues mitigate our hope that they shall be as sustainable as both we and the Parties would like.

## *Increasing Technical Assistance*

Each month, our Team conducts visits to Oakland that include both compliance assessments and technical assistance. During our visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department.

Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); stop data (Task 34); risk management and the development of the new PRIME system, which is scheduled to replace PAS (Task 41); several Department

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 2 of 26

policies and procedures, including policies on the new PRIME system, handcuffing, span of control, and the use of electronic control weapons; and the Department's follow-up to its recent audit of the recruitment, training, and tracking of new officers.

As mentioned previously, we are also closely following the Department's progress with its review and revision of all policies and procedures. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys have begun reviewing all revised policies related to all active and inactive Tasks.

### *Building Internal Capacity at OPD*

Also per the May 21, 2015 Court Order, we continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. Each month, we review OIG's progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of the NSA reforms. OIG is continuing the practice of following up on past reports, as a way of verifying that the Department implements OIG's recommendations.

OIG's June report examined: (1) mandated training for commanders; (2) IAD staffing and timeliness of investigations; (3) OPD's initial response time to complaints; and (4) the error rate of officer squad assignment in the Department's stop data.

In its first review, OIG examined the 2015 and 2016 training records of 35 commanders (including one Assistant Chief, three Deputy Chiefs, seven captains, and 24 lieutenants) to determine if they had completed mandated training – including 40 hours of in-service training, firearms qualifications, and other topics, including racial diversity and/or profiling. In some cases, the large majority of commanders (94%) completed the training, as required; in others, the records indicated poorer overall performance. For instance, in 2016, OIG found that only 57% of commanders completed the mandated vehicle pursuit training.

In its second review, OIG noted, among other findings, that seven of the nine current IAD investigators attended a state-accredited 24-hour training course on conducting internal affairs investigations, as required.

In its third review, OIG found that “personnel are receiving and responding to citizen complaints in the field and are doing so in an efficient and timely manner.”

In its fourth review, OIG found that 9.5% of squad assignment data is incorrect. Per OIG, “Significant data errors can lead to a misunderstanding of trends, analyses and undeservedly influence policing strategies that ultimately effect community outcomes.”

We look forward to discussing these findings and recommendations with OIG during our upcoming site visits, and continuing to assist OIG as it further develops its capacity to monitor the Department's continued implementation of NSA reforms.

## *Focused Task Assessments*

### Task 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:*

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

August 15, 2017

Page 4 of 26

- 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:*

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 5 of 26

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

(Negotiated Settlement Agreement III. E.)

### **Relevant Policy:**

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

### **Commentary:**

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD investigation 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. The Court Order was a serious development in the Department's progress toward full compliance.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 6 of 26

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

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

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

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. This subtask has not been actively monitored since December 2014, though we have reviewed cases applicable to this requirement in several recent reports.

**Task 5.12** requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Under current policy, the Communications Division must record on the DILs complaints that are received and/or handled by on-duty supervisors, and the DILs is forwarded daily to IAD.

OPD remains in compliance with Tasks 5.6 and 5.12.

**Task 5.15** through **Task 5.19**, and **Task 5.21**, collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed 15 IAD cases that were approved in April 2017.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 7 of 26

This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.<sup>1</sup>

Together, **Tasks 5.15** and **Task 5.16** require that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements.

In all of the cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the majority of cases, video and/or audio recordings proved to be a significant factor in allowing OPD to reach a proper conclusion.

Investigators conducted follow-up interviews to seek clarification or resolve inconsistencies in two of the 15 cases we reviewed. In each case, the complainant was interviewed twice.

OPD made credibility assessments for all involved parties in eight of the 15 cases. Six of the seven 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 the seventh case, we were unable to determine if credibility assessments were made for the involved officers. OPD provided the investigative package twice. The first time it was missing nearly a hundred pages. The second time it was missing at a minimum the section of the Report of Internal Investigation containing the involved officer credibility assessments. We were disinclined to ask for the information a third time. In one case, we believe the credibility assessment of the involved officer was insufficient. It was boilerplate and failed to point out the inconsistencies in the officer's statement, in sharp contrast to the four-paragraph assessment of the complainant's credibility.

In three cases (including two handled as summary findings), complainants and/or witnesses were deemed not credible. In two of these cases, PDRD recordings refuted some of the assertions being made by those involved.

In 11 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In five of the cases, PDRD recordings were available and assisted in the determination. In two other cases, recordings of calls made to Communications allowed for a definitive finding. Four cases resulted in a 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.

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<sup>1</sup> Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

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

August 15, 2017

Page 8 of 26

**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 37 allegations that received dispositions as follows: 11 exonerated; 19 unfounded; four not sustained; and three administratively closed. There were no sustained findings.

We disagreed with the finding in one case. The complainant alleged that an officer either intentionally or inadvertently informed the complainant's neighbor that the complainant called Child Protective Services on the neighbor. OPD reached a conclusion of unfounded. Based on the information provided, we believe the appropriate finding should have been not sustained.

**Task 5.20** requires that the IAD Commander review all "filed" cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed. A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. Traditionally, as part of our review of this Task, we also reviewed cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304. While we are no longer actively assessing this subtask, we note that filed and tolling cases are reviewed with the Chief during her weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and 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 his designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Six of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In five of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary. In the remaining case, CAD entries and a voicemail record allowed for a definitive finding.

OPD remains not in compliance with Task 5 based on the provisions of the March 23, 2016 Court Order. Additionally, there were several issues associated with the document request for this review. PDRD recordings were not provided for any IAD case we reviewed. The electronic folders we received that would normally contain the videos were empty. In addition, several of the audio files were missing; and two of the imaged cases were missing nearly 250 pages between them. In the future, we will make our assessments based on the material initially provided to us.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 9 of 26

## Task 20: Span of Control

### **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:**

To assess these requirements for this report, we reviewed spreadsheets prepared by the Department for the months of April, May, and June 2017 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.”) We calculated per squad the compliance percentages for this subtask during this reporting period. Each of the 51 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.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 10 of 26

OPD continues to be in compliance with these important requirements. We are encouraged that 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.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 11 of 26

**Commentary:**

OPD developed and implemented a policy requiring that Force Review Board (FRB) proceedings include a careful and detailed review of Level 2 uses of force, conduct annual reviews of force practices, and establish FRB membership.<sup>2</sup> We have closely monitored this process, and observe the FRBs that are conducted during our site visits. OPD achieved compliance with this Task during the nineteenth reporting period; however, uses of force are one of the fundamental reasons for, and requirements of the NSA; therefore, we continue to monitor and report on its compliance status.

OPD conducted eight FRBs, including one rehearing, in 2017. However, the FRB was unable to finalize two of these hearings due to unresolved issues and will thus reconvene to make its determination when complete. In the meantime, as of mid-July, these cases remain in pending status. We were present for the July FRB, which involved a takedown and baton strikes. We noted the FRB's thoughtful, detailed review; we concurred with the findings.

The most recent OPD use of force data is indicative of a continued decline in the use of force by OPD officers to 194 uses of force to date in 2017, from a total of 242 for the same period in 2016 – a decrease of 20%. This suggests the Department's continued attention to – and progress with – the evaluation of these events; and where necessary, supervisory intervention, including the provision of training.

OPD remains in compliance with this Task.

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<sup>2</sup> Level 2 uses of force include: 1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 12 of 26

## Task 30: Executive Force Review Board (EFRB)

### **Requirements:**

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

(Negotiated Settlement Agreement V. G.)

### **Relevant Policy:**

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

### **Commentary:**

OPD developed and implemented an appropriate policy establishing the Executive Force Review Boards (EFRB).<sup>3</sup> The EFRB is required to conduct thorough, detailed reviews of all Level 1 force, in-custody death, and vehicle pursuit-related deaths.<sup>4</sup> As with Task 26 above, we have closely monitored the development and implementation of these procedures to include our observations of EFRBs when they are conducted during our monthly site visits.

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<sup>3</sup> 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.

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

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 13 of 26

OPD achieved compliance with Task 30 during the nineteenth reporting period; however, given the seriousness of any use of force and in particular a Level 1 use of force or in-custody death, we also continue to monitor and report on this Task.

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

OPD remains in compliance with this Task.

## Task 34: Vehicle Stops, Field Investigation, and Detentions

### **Requirements:**

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

(Negotiated Settlement Agreement VI. B.)

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 14 of 26

**Relevant Policy:**

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

**Commentary:**

OPD developed and implemented the required policy for compliance with the requirements of this Task. The collected data described in Task 34.1 (a.-g.) is entered on data collection reports, which have been periodically revised to accommodate improved processes and expanded data elements. This data is entered into a database that can be and is summarized, searched, and queried to identify indicators of disparate treatment or biased policing. OPD illustrates this data in a series of tables depicting stop-related activities for review during monthly Risk Management Meetings. We periodically review the Stop Data Forms; and although a large percentage of the stops involve specific population groups, we have consistently found that nearly 100% of the stops are based on documented probable cause or other legal basis.

The development of the data collection and analytical process has not been timely or easily achieved by the Department. It was not until April 2013, after several procedural changes and considerable training, that the data collected by OPD was found sufficiently accurate for analysis to identify indicators of disparate treatment or bias.

OPD subsequently developed a review process allowing for the review of stop data during its monthly Risk Management Meetings wherein the data is organized into tables and graphs depicting – both globally and by Area – breakdown of stops, reasons for the stops and resulting action taken, including searches, the results of searches and arrests, and other actions. These illustrative tables have allowed for preliminary analyses to determine whether there *appears* to be disparate treatment within one or more population groups within one of more of the various Area squads.

From time to time, the datasets have contained data warranting further analysis to verify the presence or absence of disparate treatment or bias at the Area and squad levels. However, in these instances, rather than focusing on squad leadership and/or individual officer performance, OPD commanders and administrative support staff as well, often generalize the reasons for the data disparities – e.g., practices and experience of younger officers vs. older, more experienced officers; the need for training; or a need to make changes in operational and crime control strategies rather than engaging in a thorough drill-down to ascertain the presence or absence of disparate treatment or bias.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 15 of 26

Without devaluing the importance of training and an ongoing evaluation of operational and crime control strategies, which have, for example, resulted in more than tripling the 2013 search recovery rates, an in-depth analysis to ascertain the presence or absence of bias and/or disparate treatment remains an objective. However, such action has not been sufficiently robust for a finding of substantial compliance with this Task. OPD has not yet adopted and operationalized a standard, consistent process to do so; and as recently indicated, presently has no specific plans to do so.

Rather, OPD suggests, as in a recent response to one of our quarterly reports, that “stop data is best used to evaluate procedures, practices, policy, and direction, which may result in racial disparities rather than using the data to ascertain the present or absence of bias which may not be possible.” OPD further suggests, “The optimal goal, use and purpose of stop data...reduce the risk of negative disparate impact on the community by enhancing precision policing, understanding racial disparities and evaluating strategy, policy and individual performance.” The above objectives are worthwhile, and strictly speaking, “using the data to ascertain the presence or absence of bias may not be possible.” However, to summarily dismiss an attempt to determine the presence of bias, perhaps the need for intervention, or even the absence of bias when faced with clear data anomalies indicative of bias, as being worthy of any effort, requires further consideration.

We recognize, however, the considerable commitment of time, energy, and resources to address bias and disparate treatment in conjunction with the implementation of a precision policing model. For example, OPD identified the need to specifically categorize intelligence-led stops, which, in some cases, specifically affect and may be indicative of bias or disparate treatment involving particular population groups. OPD also revised its Stop Data Forms and provided extensive training regarding the basis for and the recording of these stops. A recent review indicated that approximately 26% of all stops are intelligence-based. Other operational issues under review include traffic stops and specific types of searches, which may contribute to indicators of disparate treatment. These steps are constructive and will strengthen the overall stop data collection and analytical process.

OPD’s continued collaboration with Dr. Jennifer Eberhardt and the Stanford University team to further enhance the stop data process is also positive. Present efforts include an evaluation of the Risk Management Meeting process, including modifications in data presentations to enhance the evaluation process for commanders. Both OPD and Stanford personnel have expended considerable efforts in the development of the revised process.

In July, we observed OPD’s first Risk Management Meeting using this format and were impressed with the Area Captain’s review and evaluation of the information regarding his Area. He appeared to be prepared and comfortable with the data. For instance, he examined more closely a few instances with potentially disparate impacts to determine if there were reasonable justifications for those numbers. He also discussed how he encourages personnel in his Area to work strategically instead of focusing primarily on making arrests.

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

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

August 15, 2017

Page 16 of 26

<b>AREA 1 STOPS, DISCRETIONARY SEARCHES &amp; RECOVERIES - 11/01/16 – 05/31/17<sup>5</sup></b>							
<b>Race</b>	<b>Stops</b>	<b>Stops %</b>		<b>Searches %</b>		<b>Recoveries %</b>	
		<b>Area 1</b>	<b>Other</b>	<b>Area 1</b>	<b>Other</b>	<b>Area 1</b>	<b>Other</b>
Afr. American	2,462	71%	63%	31%	33%	26%	17%
Hispanic	440	13%	24%	22%	29%	12%	21%
White	321	9%	7%	15%	17%	28%	18%
Asian	154	4%	4%	13%	23%	15%	22%
Other	90	3%	3%	19%	22%	12%	18%
<b>Total</b>	<b>3,467</b>	<b>100%</b>	<b>100%</b>	<b>27%</b>	<b>30%</b>	<b>25%</b>	<b>18%</b>

We look forward to observing future Risk Management Meetings to determine if the new structure continues to yield more productive meetings and outcomes. While the new format seems to streamline much of the data, it may be a challenge for presenters from the various Department Areas and those overseeing the Risk Management Meetings to interpret the new presentations.

Additional ongoing work with Dr. Eberhardt and the Stanford team to better understand bias and its effect on the community includes the implementation of the 50 actions that OPD should take to change the Department's culture and strengthen ties with the communities it serves. The adoption and implementation of these recommendations are acknowledged by OPD as a significant part of its compliance effort; accordingly, we regularly report on the status and progress with the adoption of these recommendations. (See below.)

More recently, Dr. Eberhardt and the Stanford University Department of Linguistics also completed and publicly released an additional study describing findings of a study of language from body camera footage relating to respect and racial disparities.<sup>6</sup> OPD is currently reviewing the study.

Clearly, OPD is forging ahead with efforts to comply with requirements of this Task. Both its internal efforts to address bias, albeit concerns regarding the lack of a robust drill-down process, and the engagement of Dr. Eberhardt and the Stanford University Team to assist will optimally result in improved operational procedures and minimizing and/or elimination of bias and/or disparate treatment. However, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until full compliance is achieved:

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

<sup>6</sup> Rob Voigt, Nicholas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky, and Jennifer Eberhardt (2017). Language from police body camera footage shows racial disparities in officer respect. Department of Linguistics, Stamford University.

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

August 15, 2017

Page 17 of 26

- 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:
- Implementation of the revised Risk Management Process, including revised illustrative charts and tables to more effectively identify indicators of bias and/or disparate treatment:
- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. It is anticipated this will be achieved with implementation of PRIME 2.0.
- Assessment and determination whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. A change in this process to better or more frequently review and address stop data issues remains under review.
- Implementation of the applicable 50 recommendations contained in the 2016 Stanford University Report. OPD represents that 39 recommendations have been implemented or are currently in progress with varying completion dates; 10 are ongoing tasks and one requires additional analysis.

## 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*

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 21 of 26

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

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

(Negotiated Settlement Agreement VII. B.)

**Relevant Policy:**

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013. Since our last report, the Department has begun to address General Order D-17 as part of Department's ongoing policy review and revision program. The revised version of the relevant policy is currently under review.

**Commentary:**

With this report it has been approximately three months since PRIME, OPD's new risk management database, has gone live and replaced the PAS database. In our last report, we noted the extensive preparation – on the part of OPD, the City, and the project vendor – that occurred to support this transition. Besides the programming and revisions that took place, the Department conducted extensive training, arranged for around-the-clock technical assistance to support officers, and closely monitored implementation.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 22 of 26

The database project, however, has been a large and complicated project – and even extensive preparation did not insulate the program from some serious problems. When the changeover to PRIME first occurred, those problems were substantial and forced periodic shutdowns of the system while repairs occurred. The shutdowns were necessary to preserve the integrity of the data. Since the early days of implementation, periodic shutdowns have become largely unnecessary except for brief periods when updates were applied. The identified problems, which had at one point increased to over 600, have been greatly reduced; and for now, all are reported to be non-cataclysmic. Progress continues to be made on these issues, and should soon accelerate because the Department is embarking on a major maintenance agreement with the vendor. This agreement provides two full-time programmers and round-the-clock access to assistance. This will, however, be a short-term contract; and there is much work to be done.

Even as progress is being made, problems remain with PRIME. Much of that may be expected given the significant size of the project; PRIME consolidated multiple large and important databases into a single, integrated system. Under PAS, the data were maintained in separate files by separate Departmental divisions that were then addressed separately. PRIME has also supported digital entry of most data directly from computers including those in police cars.

Nevertheless, OPD staff have had to continue to address multiple problems including programming and user related problems. Among the programming issues are problems associated with conducting analyses of risk thresholds, which are critical to the use of the system for identifying officers for review. Identification of peer groups became entangled in programming definitions regarding job assignments and specialty groups such as technicians, Field Training Officers, and those assigned to rifle details. Once discovered, a reasonable solution involving generating peer thresholds based on multiple groups was put into practice and appropriate reprogramming is soon expected. The use of single event thresholds is more problematic. Records of such thresholds now are only available since the initiation of PRIME. That means the early records of threshold events are not now available. Early single event thresholds are used only for quarterly reviews, so the issue will be inconsequential in a short period of time.

There have also been user-related problems. In fact, the most common characterization of PRIME by users appears to be that the system is “clunky.” It is an unexpected summary given the extensive experience of the major vendor. It generally refers to the idea that many users do not find the system to be intuitive in the way data fields are presented or the way portions of PRIME are accessed. Key PRIME personnel are finding it necessary to perform extensive audits and to provide more assistance to users than originally anticipated. One issue the audits are addressing is the problem of duplicate records that result from repeated attempts at data entry when the system was slow. System improvements have nearly eliminated the problem. PRIME personnel recognize these problems also present a significant training issue and are planning to rectify that situation by providing additional training. In other instances, it appears that it is difficult to extract some reports from PRIME in a manner consistent with the way those reports have been used in departmental review processes in the past. Accommodations will need to be made, for example, between electronic copies and access to hardcopies of reports.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 23 of 26

In connection with the problem noted above, the PAS Unit – which manages the data and review processes – reports that PRIME has significantly increased workloads. This is the result of increased needs for troubleshooting data problems associated with program bugs and user-related problems.

None of these problems are trivial because of their implications for conducting the work of the Department. However, given the magnitude of the PRIME project, they should not be completely unexpected. The most important thing, therefore, is that there is a functioning process in place for identifying and fixing problems. Following the earliest stages of implementation, that process appears to be maturing and responding appropriately to emerging issues related to PRIME. We note the efforts put forth by the key staff members working on PRIME and those working with the PAS Unit to apply the new system to the management of risk in the Department.

At the same time, we recognize that the road forward with this project has not been easy and it is likely that at least some additional, potentially serious, potholes lay ahead. Given the fact that the Department and the City face additional technology projects of a magnitude similar to PRIME, such as a new Records Management System, a formal review of the PRIME project, emphasizing the problem recognition and solving processes and lessons to be learned, may be useful. The City Department of Information Technology appears to be aware of these issues and is working to implement methods to assure smoother progress in the future. Still, resources are limited

An early test of those methods may come with the development of what has become known as PRIME 2.0. The first step forward with that system has occurred with the June 29 submission and approval by City Council of support for what is described as a court mandated PRIME 2.0 initiative. Of course, a risk management system – but not specifically PRIME 2.0 or any other named system – is what was agreed upon in the NSA. The planned \$1.8 million dollar investment will include the following enhancements to PRIME: 1) inclusion of training data; 2) inclusion of stop data; 3) an enhanced OPD personnel database; and 4) integration of body-worn camera videos.

Even as we write this, we find ourselves slipping into the same issues about which we have been critical of the Department. It is too easy to be consumed by the technology and to ignore the fact that Task 41 is focused on managing risk. With that concern in mind, we wish to comment upon the risk management process – and particularly the monthly Risk Management Meetings.

To renew the commitment to risk management beginning with a Citywide review was clearly a good idea for a variety of reasons. In this instance, it allows for easy comparisons across Areas and provides a context for future analysis that focus on individual Areas. At the same time, supporting comparisons across all sections suggests the need for analyses that can make those comparisons more useful. The problem with comparisons is that Area sizes, populations, and crime levels differ. That could be addressed through the use of appropriate norming methods. For example, it could be useful to examine stops as normed by crime and then by arrests: That is, the number of stops made per 100 reported major crimes and/or the number of stops per 100 arrests in the Area. That will support appropriate comparisons across Areas.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 24 of 26

We remain concerned, however, that race-related data on the sequence of stops, searches, contraband retrieval (what OPD calls “recoveries”), and arrests that had been a valuable staple of the data reviews is now unavailable in the current charts, thus limiting the analysis as originally intended. In other jurisdictions, the most useful data in analyses of procedural justice regarding issues of race and stops by the police has involved making comparisons across the multiple stages associated with stops. The key issue in the analyses is that the proportion of stops of people of color is important but difficult to interpret because of confounding factors including population demographics and crime. So it can be useful to compare the racial breakdown of persons stopped with the breakdown of persons searched; and to compare the racial breakdown when searches yield contraband or result in arrest based on stops by the police.

Significant differences along this chain suggest potential bias. But these steps are difficult to untangle as the data are currently presented. As a result, it will be difficult to decipher or report on the racial disproportionality of any stop-related behavior; and thus impossible to diagnose and resolve problems. OPD has justified this by suggesting that the racial imbalance of stops is too great to be usefully analyzed; however, we find no support for that position.

## 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.)

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 25 of 26

**Relevant Policy:**

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 24, 2013); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (published July 17, 2008); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published March 14, 2014).

**Commentary:**

Task 45.2 requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we reviewed the 14 cases that contained at least one sustained finding that were approved in April and May 2017. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

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

As noted above, we reviewed all 14 cases with sustained findings that were approved during April and May 2017. Three cases involved allegations of improper demeanor. One case involved an allegation of failure to properly investigate a homicide. One case resulted in sustained findings for truthfulness and obstructing an investigation; termination was the recommended penalty. Another case stemmed from the failure to properly care for an arrestee's property, resulting in the loss of a wallet and cell phone. Another case involved the failure to accept or refer a complaint. Seven cases involved preventable motor vehicle accidents.

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

During May and June 2017, OPD held one *Skelly* hearing for an IAD case involving an employee with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the *Skelly* report, and found that it contained adequate justification for the results documented. The case involved a civilian administrative assistant who was sustained for driving under the influence of alcohol and failing to report her DUI arrest by the California Highway Patrol. The proposed 10-day suspension was upheld, with the concurrence of the Chief. The report was generally well-written and followed the established format.

We also reviewed the training records that OPD provided, and confirmed that all *Skelly* hearing officers received the approved *Skelly* Officer Training in January of last year. Additionally, all active *Skelly* officers received refresher training on April 26, 2017.

OPD remains in partial compliance with Task 45.

Forty-Fifth Report of the Independent Monitor for the Oakland Police Department  
August 15, 2017  
Page 26 of 26

## Conclusion

The recent changes in the data presentation at OPD's monthly Risk Management Meetings reflect a major change in the goals of the analysis. That change appears to be led by OPD's consultants from Stanford University, but it does not appear to be based on a clear agreement from the leadership of the Department. Specifically, these new data displays indicate that the goal of the analysis is to reduce the overall number of stops and the overall number of searches. This approach to the analysis completely ignores the fact that stops and searches are reviewed to ensure that probable cause requirements are met. It also fails to recognize the legitimacy and value of constitutional police practices. It is not that all stops are equally valuable, but the level of stops in a jurisdiction is a fundamental matter for executive policy dealing with crime. In this case, there is an important need for forthright discussion of the goals of data collection and analysis and for the clear adoption of the Department's goals and the requirements of the NSA in the collection and presentation of data.

This report covers the periods of June and July 2017. There have been some important developments since that time that could bear upon our findings and commentaries as such might pertain to the investigatory processes and the status of PRIME. These are matters that we shall be closely scrutinizing and evaluating.

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

Chief (Ret.) Robert S. Warshaw

*Monitor*