

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

Introduction

The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California.¹ After 12 years of monitoring OPD's progress with the reforms, it is 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.

To do this, per the Court Order, we are increasing the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. We also provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that are currently in partial compliance. (As of our most recent quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) As we move forward, part of our assessment of compliance for Tasks 5 and 45 will take into account the degree to which the City is adopting the recommendations listed in the recent (April 16, 2015) report on police discipline by the Court-Appointed Investigator – and the City's own commitments. In addition, per the Court's Order, we will 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.

In this report, we will describe our recent assessments of Tasks 26, 30, 34, and 41. As they have been in compliance for at least one year, Tasks 26 and 30 are now considered inactive. Because we are now reporting on a monthly (as opposed to quarterly) basis, we will not assess and discuss each active or inactive Task in each report; however, for each report, we will 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.

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

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

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), in partial compliance. Not assessed in this report.
20	Span of Control	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
26	Force Review Board (FRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive.
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive.
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).
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 continue to 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 those areas identified by the Department. For instance, within the last few months, we have

provided technical assistance to Department officials in the areas of stop data (Task 34); risk management (Task 41); consistency of supervision (Task 20); and revisions to several Department policies and procedures, including how the Internal Affairs Division (IAD) processes service complaints.

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 we noted in our last report, the City Council recently approved two additional police auditor positions for the Office of Inspector General (OIG) in its two-year budget. OPD has begun the hiring process for these positions, and expects to fill them sometime in the fall. In a recent biweekly report, the Chief commented that he believes that the addition of these new auditors “will help ensure that OIG has the capacity to continue a robust auditing schedule once the Monitor has left at the conclusion of the NSA.”

In our last report, we noted our concerns with the uneven quality of audits produced by OIG and its external consultants, and the Department’s sometimes limited follow-up on the audit reports’ recommendations. In our discussions with OIG’s lieutenant and his staff, we have emphasized the importance of demonstrating the willingness and capability of OPD to sustain compliance with the NSA reforms. This, of course, depends in large part on the sufficient staffing of OIG with personnel who are capable of conducting comprehensive audits and other mini-reviews on NSA-related and other procedures.

We are working closely with OIG to determine areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. It is crucial that audits or reviews are conducted for the purpose of adding value to OPD’s administrative and/or operational components. At the July all-Parties’ meeting, OIG presented a proposed schedule of audits, reviews, and inspections for the six-month period of September 2015 through February 2016. The proposal was based on an assessment and prioritization of the Department’s needs to manage risk in conjunction with the provisions of the NSA and Department policy. OPD is preparing to implement this schedule in September. We will closely monitor this effort – and discuss it in our future reports.

Focused Task Assessments

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 October 16, 2014.

Commentary:

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.² The FRB consists of three senior commanders as voting members and is chaired by a commander of captain rank or higher. Regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office. The investigating sergeant generally presents the case to the board following a briefing of procedures and expectations by the chair. The chair, however, may require the presence of involved and/or other personnel.

While Task 26 is currently inactive, we continue to review it because of the importance of reviewing uses of force. Our assessments of compliance with this Task include a review of the full case files provided by OPD and our regular observations of the boards. Throughout our engagement, we have found and reported continued progress and improvement with the FRB process. As noted in our last report, this has been most remarkable during the past two years. The conduct of the board is professional, and its quest for facts and information necessary for determining whether the use of force was reasonable and within policy is extensive. In addition to determining whether the force used was reasonable and within policy, the FRB also evaluates each event to determine whether there are tactical or training issues of concern and/or officers' activities that may serve as examples of excellence. As indicated in our last report, the performance of the sergeants who are tasked with presenting these cases to the FRB has significantly improved over time. Their knowledge of the cases being presented – including strengths and weaknesses; and tactical, training and safety issues – is demonstrative of the seriousness they and the Department attach to an officers' use of force.

During the period of January 2013 through June 2015, OPD conducted 43 FRBs, including: 18 in 2013; 20 in 2014; and four in 2015.³ The most recent FRB was conducted in June 2015. The matter reviewed involved two officers who used force (Level 2) when attempting to arrest a subject involved in a domestic dispute for violation of a restraining order. The review was thorough and found the force reasonable and within policy; however, the board noted training points regarding tactical communications. The file documents that the recommended training has been provided to the officers. We concur with the FRB findings and follow-up training.

OPD has been in compliance with this Task since the nineteenth reporting period, and continues to be in compliance.

² 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.

³ This includes one follow-up FRB conducted in 2013 for the purpose of receiving additional information or clarification.

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 October 16, 2014.

Commentary:

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.⁴ The EFRB consists of three senior commanders as voting members and is chaired by a Deputy Chief. As in the case of the procedure for the FRB, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office.

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.

Due to the nature and seriousness of a Level 1 use of force, both the Criminal Investigation Division (CID) and IAD conduct investigations, and their respective investigations are presented for the EFRB. CID staff present the criminal case investigation and recommendations. Following that, the IAD force investigator(s) present the administrative case in detail – including diagramming, audio and visual representations of the case, its findings and recommendations with regards to whether the force was reasonable, and whether the conduct of officers during the event was consistent with OPD policies and procedures.

While Task 30 is currently inactive, we continue to review it because of the importance of reviewing uses of force – especially the most serious (Level 1) incidents. Our assessments of compliance with this Task include a review of the full case files provided by OPD and our regular observations of the boards. As with the FRB investigations and presentations, we have noted continued improvement with EFRB process. Of particular note has been the investigators' demonstrated knowledge of the cases presented and professional police procedures. This is, in part, attributed to the specialized and extensive training the present administration has provided – and it is demonstrative of OPD's commitment to addressing the serious issue of force.

During the period January 2013 through June 2015, OPD conducted 15 EFRBs, including: 10 in 2013; two in 2014; and three in 2015.⁵ For the purposes of this report, we observed the one EFRB held in July. This event involved a non-fatal firearm discharge by an officer during an encounter with a subject armed with a knife. The EFRB report was not completed for inclusion in this report; therefore, we will assess it in our next monthly report.

We recognize the reductions in the use of force by OPD at all levels; and in particular, the more serious Level 1 uses of force. The fatal officer-involved shooting (OIS) that occurred in June was the first in about two years. Another fatal OIS occurred earlier this month. These events, particularly the June event, serve as clear reminders that the use of deadly force is of great concern within a community and therefore must always be of great concern within any police department. The OPD Force Review Boards serve as the processes in which such cases are carefully reviewed.

Following events such as these that result in a loss of life, a police department should critically consider its own processes and search for ways to safely avoid the use of deadly force when possible. In addition, recent public scrutiny regarding police officers' use of force suggests a need to change and/or strengthen the review process. Clearly, OPD has made significant advancements with its investigation and review of OIS events, but as we indicated in our last report, any use of deadly force should serve as an opportunity to look beyond the customary questions of policy compliance and legal justification. The Department should consider whether the use of that level of force might have been avoidable – even when the application of that force is consistent with Departmental policy. Taking seriously the question of whether deadly force could have been avoided is recognition of the value of all human life and it is a way for the Department to not only *reflect* that principle but also to *practice* it. The loss of life itself demands this higher level of questioning.

⁵ This includes two follow-up EBRBs and one re-presentation.

Accordingly, in our last report, we recommended that OPD expand its Executive Force Board Review process, to include a review of whether the use of deadly force may have been avoided; and to identify tactics, strategies, and opportunities as events unfolded that may have supported such an outcome. We also recommended that the EFRB should explore other available options that *could* or *should* have been considered, that it should continuously examine what may be learned from these episodes, and that it should ensure that such lessons are widely shared across the Department and enumerated in training recommendations. The adoption of these additional components of the review process will not only strengthen the process; but moreover, they will address the lingering question of whether the force – even though legally justified and within policy – was the only and/or best option.

We will be meeting with OPD personnel during our upcoming August visit to further discuss these recommendations.

As in the case of Level 2 force events, OPD regularly provides the full investigative reports of all applicable events for our review. Also, as in the case of Level 2 force events, our review of the case files has found the investigations to be thorough and the Executive Review Board schedule to be timely.

OPD has been in compliance with this Task since the nineteenth reporting period, and continues to be in compliance.

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:

During our prior quarterly reviews of information to assess compliance with this Task, we reviewed random samples of various data and forms relating to stops. The sample size generally exceeded 350 stops and included Computer Aided Dispatch (CAD) entries, Field Contact Cards, traffic citations, and Stop Data Forms.

We also reviewed the stop data forms to determine whether they were accurately and fully completed as required with the following information, 1) time; 2) date; 3) location; 4) identification of member making stop; 5) reason for stop; 6) apparent race/ethnicity of individual(s) stopped; 7) gender of individual(s) stopped; 8) outcome of stop (arrest or no arrest); 9) whether a search was conducted; 10) outcome of any search; and 11) offense category (felony, misdemeanor, or infraction). We gave special attention to the *reason* for the stop (No. 5) – essentially the fundamental justification for the interaction between the officer and the person stopped.

Our reviews of this data for our last several quarterly reports found sufficient valid justification for each stop reviewed; accordingly we have turned our focus to analyses of the data to identify indicators of racial disparity. In order to facilitate our reviews, we observe OPD's monthly Risk Management Meetings during our site visits.⁶ In addition, in advance of the meetings, we receive the data scheduled for review and discussion, including stop data for the full City as well as for the particular Area scheduled for examination.

Following the more recent reviews, we have focused on our analyses on the ratio of searches and/or the search recovery rates among the population groups. We look at the overall OPD data, then at the data for the Area under review, as well as for each of the squads within the Area. An addition area of continuing interest is the searches and recoveries involving individuals on parole/probation.

During our July site visit, we attended the RMS meeting wherein citywide stop data was reviewed along with that of the selected Area.⁷ During the period under review, OPD officers made 27,492 vehicle stops and 7,059 pedestrian stops; Area officers made 3,788 vehicle stops and 841 pedestrian stops. The illustrations below, depicting comparison Citywide and Area data, represent but a sample of the voluminous material presented and evaluated during the meeting.

⁶ Risk Management Meetings are conducted monthly for the purpose of reviewing various data (including stop data) to identify performance/risk indicators requiring intervention or worthy of commendation. Each month, data from one of the five districts is reviewed by OPD command staff with the Area Commander. Any identified issues are assigned the Area Commander for resolution in the form of deliverables.

⁷ The data presented covered the time period of June 13, 2014 to June 12, 2015.

Tables 1 and 2 include the percentage of the above-enumerated stops resulting in searches; Tables 3 and 4 include the results of those searches; and Tables 5 and 6 illustrate the variance in search results of the several squads within the Area under review.

Table 1 – Vehicle Stops Resulting in Searches									
Citywide					Area				
Race	Yes	No	Grand Total	%	Race	Yes	No	Grand Total	%
Afr American	3,363	11,103	14,466	23%	Afr American	236	1,649	1,885	13%
Asian	85	1,839	1,924	4%	Asian	10	262	272	4%
Hispanic	855	4,488	5,343	16%	Hispanic	45	468	513	9%
White	150	3,397	3,547	4%	White	16	802	818	2%
Other	67	837	904	7%	Other	8	147	155	5%
Grand Total	4,520	21,664	26,184	17%	Grand Total	315	3,328	3,643	9%

Table 2 Pedestrian Stops Resulting in Searches									
Citywide					Area				
Race	Yes	No	Grand Total	%	Race	Yes	No	Grand Total	%
Afr American	1,855	2,017	3,872	48%	Afr American	203	252	455	45%
Asian	88	134	222	40%	Asian	5	14	19	26%
Hispanic	363	426	789	46%	Hispanic	16	54	70	23%
White	203	457	660	31%	White	33	79	112	29%
Other	44	74	118	37%	Other	3	8	11	27%
Grand Total	2,553	3,108	5,661	45%	Grand Total	260	407	667	39%

Table 3 – Vehicle Stops – Search Recovery Rates									
Citywide					Area				
Race	Yes	None	Grand Total	%	Race	Yes	None	Grand Total	%
Afr American	1,082	2,281	3,363	32%	Afr American	62	174	236	26%
Asian	43	42	85	51%	Asian	5	5	10	50%
Hispanic	343	512	855	40%	Hispanic	15	30	45	33%
White	53	97	150	35%	White	4	12	16	25%
Other	26	41	67	39%	Other	2	6	8	25%
Grand Total	1,547	2,973	4,520	34%	Grand Total	88	227	315	28%

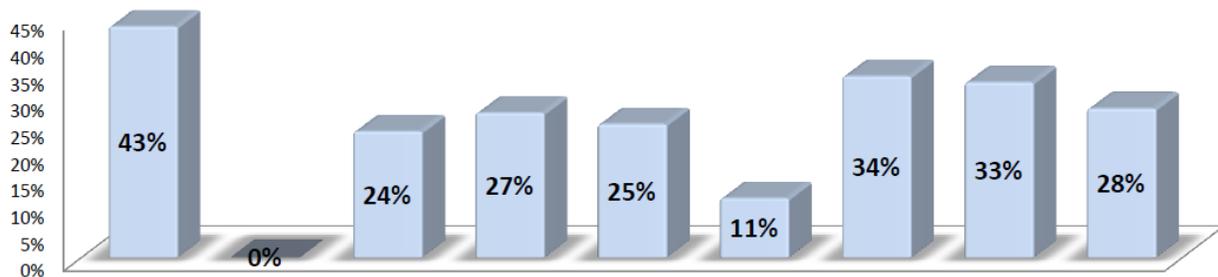
Table 4 – Pedestrian Stops – Search Recovery Rates									
Citywide					Area				
Race	Yes	None	Grand Total	%	Race	Yes	None	Grand Total	%
Afr American	488	1,367	1,855	26%	Afr American	55	148	203	27%
Asian	23	65	88	26%	Asian	1	4	5	20%
Hispanic	91	272	363	25%	Hispanic	4	12	16	25%
White	41	162	203	20%	White	8	25	33	24%
Other	16	28	44	36%	Other	0	3	3	0%
Grand Total	659	1,894	2,553	26%	Grand Total	68	192	260	26%

Clearly, the stop data illustrates that OPD officers search both higher numbers and a higher percentage of individuals stopped who identify as African American and Hispanic than other race/ethnicities. This has been a constant and continues as illustrated in Tables 1 and 2. Recognizing, however, that an officer’s decision to search is not always an easy one and certainly prone to error, we have periodically assessed the documented basis for the searches to assure justification was present. These assessments covering the past several reporting periods have verified the presence of sufficient cause for the searches in a high percentage of cases (>94%).

The next step of our analysis is to carefully review the search recovery rates to ascertain whether there is a significant variance in those rates between the various population groups. Our findings in this regard have also been fairly constant and have not demonstrated variances sufficiently significant to draw conclusions of disparate treatment.

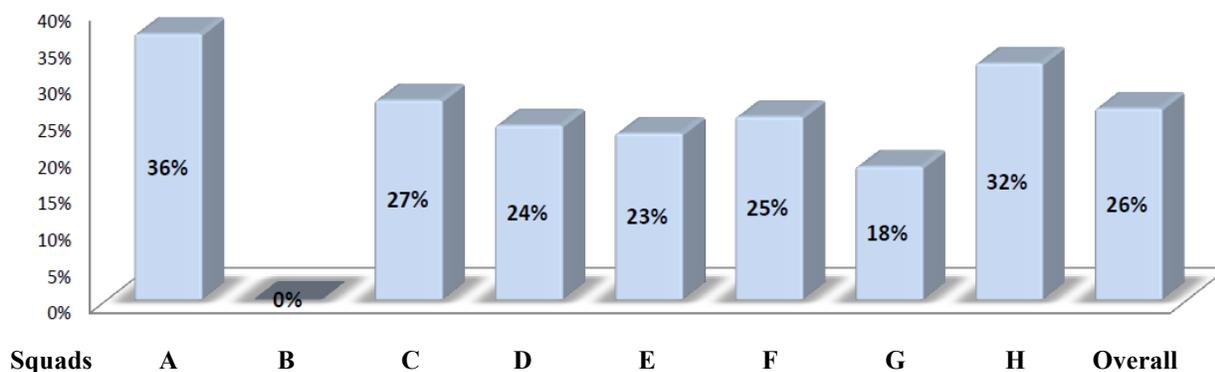
Our final step has been – and for the time being, continues to be – a review of the various squads within a given Area, generally the Area identified for review during our site visit. Tables 5 and 6 below contain the data for the Area reviewed during our July visit.

Table 5 – Area Squad – Vehicle Stops – Search Recovery Rates



Squad	Yes	None	Total	%
A	13	17	30	43%
B	0	6	6	0%
C	13	42	55	24%
D	16	43	59	27%
E	3	9	12	25%
F	4	32	36	11%
G	17	33	50	34%
H	22	45	67	33%
Overall	88	227	315	28%

Table 6 – Area Squad – Pedestrian Stops – Results of Searches



Squad	Yes	None	Total	%
A	4	7	11	36%
B	0	16	16	0%
C	9	24	33	27%
D	5	16	21	24%
E	5	17	22	23%
F	9	27	36	25%
G	4	18	22	18%
H	32	67	99	32%
Overall	68	192	260	26%

The search recover rates for the individual squads and for the Area are relatively high for both vehicle and pedestrian stops, averaging 28% and 26% respectively; however, Squad B had no recoveries for either its six vehicle or its 16 pedestrian searches, and Squad F vehicle stop recoveries averaged 11%. OIG assumed the task of reviewing the data for the limited number of searches conducted by Squad B, and we selected Squad F for further review.

The Squad F data indicated that officers made 595 vehicles stops during the data period (1.6 per day) as follows: African American, 315 (53%); Asian, 43 (7%); Hispanic, 112 (19%); White, 94 (16%); and Other 31 (5%).

The 595 stops resulted in officers making 36 (6%) searches. The below tables illustrate the breakdown of the search basis and recovery results.

Search Reasons				
Reason for Search	Number	African American	Hispanic	White
Probation/Parole	22	17	3	1
Probable Cause	6	5	1	1
Weapons	8	7	1	
Total	36	29	5	2
Search Recoveries of Contraband/Evidence				
Reason for Search	Number	African American	Hispanic	White
Probation/Parole	1	0	1	0
Probable Cause	3	3	0	0
Weapons	0	0	0	0
Total	4	3	1	0

The foregoing data, while indicating that African Americans represent the largest percentage of stops and searches, is not numerically sufficient to conclude that officers are aggressively stopping vehicles and/or engaging in disparate treatment. Quite the contrary, the data indicates that squad officers made approximately 1.6 stops per day and approximately three searches per month.

As indicated above, OIG is reviewing Squad B data, which not only indicates a low search rate, but also no recoveries. The review includes an evaluation of the experience level of officers, the high number of calls for service handled by the squad, the assigned selective enforcement due to gang activities, and other factors that may affect stop data and indicate whether or not there is a need for training or other intervention. OIG does and will continue to provide its findings for appropriate inclusion in our reports.

We continue to have concerns with the number of probation/parole stops, particularly within the squads we find with low recovery rates; but at the same time, we recognize the legality of these searches, given the unique enforcement ability they provide for California police officers. Simply put, these searches, recognized by the Courts, including the California Supreme Court, assist officers with determining whether probationers and parolees are continuing to engage in past illegal conduct – i.e., continuing to possess drugs, weapons, stolen property, and/or other

contraband. The presumption on the part of an individual on probation/parole that officers may stop and search them at any time is thought to provide a strong deterrent effect upon the probationer or parolee tempted to return to his antisocial ways.⁸ Similarly, police officers also recognize the value of these searches and attribute in part, the lack of contraband recovery as evidence of the deterrent value of such searches.

Recognizing the overall value of this legal procedure is important, but so is the recognition of the negative impact the indiscriminate employment of this strategy may have on the community – and in particular, on the population groups affected. It can clearly be detrimental to overall community relations, and to community cooperation with crime control strategies; and as we previously stated, it is an area ripe for the employment of the tenets of procedural justice. We stress the importance of OPD taking steps to ensure to the degree possible, that the process is not only *legal*, but also seen as *legitimate* in the eyes of those involved.

Our recent review of stop data relating to searches of individuals on probation/parole found OPD officers made 1,746 probation/parole searches during the first six months of 2015. The table below illustrates our findings.

Race/Ethnicity	Searches	Recoveries
African American	1,400 (80%)	430 (31%)
Asian	34 (2%)	20 (59%)
Hispanic	234 (17%)	95 (41%)
White	56 (4%)	14 (25%)
Other	22 (2%)	9 (41%)
Total	1,746	569 (32%)

The overall average recovery rate from these searches is significant at approximately one-third. However, searches of African Americans outpace all others, and the recovery rate lags at slightly below average and 10% lower than Hispanic search recovery rates. OPD is reviewing the present policies to determine whether there is justification for modification of this procedure or the need for training and/or other supervisory intervention.

Despite our concern with the above data, we continue to be encouraged by the progress made by OPD with the collection of stop data. It has collected data considered valid for more than 18 months and has issued public reports. We are expecting the issuance of additional public reports in the near future. We are encouraged by the various efforts being made by OPD regarding not

⁸ (1994) 8 Cal. 4th 68, 87. ALSO SEE *People v. Mason* (1971) 5 Cal.3d 759, 763 [“With knowledge he may be subject to a search by law enforcement officers at any time, the probationers will be less inclined to have narcotics or dangerous drugs in his possession.”]; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S.*, (1992) 4 Cal. App.4th 1000, 1002, fn.1 [“Being on probation with a consent search term is akin to sitting under the Sword of Damocles.”]; *People v. Turner* (1976).

only the collection of stop data, but in testing its reliability and continually improving processes. For example, OPD is planning a modification to its stop data form so as to identify the supervisor of the officer making the stop in order to strengthen analytical processes.

In addition, the monthly Risk Management Meetings continue to be of value in the identification of whether there are indications of disparate treatment within or between population groups requiring more in-depth reviews and the development of specific intervention strategies.

Though OPD comprehensively records, collects, and presents its stop data, we suggest there is a need for more emphasis on its *analysis*. The purpose of the data collection is to provide the information necessary for examination to determine whether there is racial profiling or disparate treatment of individuals encountered by police officers. OPD must strengthen and or place more focus on such analyses.

Finally, we again applaud OPD for its continued engagement with Dr. Jennifer Eberhardt of Stamford University. Dr. Eberhardt's collection and study of stop data is an effort to understand whether, or the degree to which, bias may affect the interactions between the police and members of the public; and to develop appropriate training or intervention strategies. This forward thinking will undoubtedly be beneficial to OPD and the Oakland community.

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:

The risk management system has a central place in the Negotiated Settlement Agreement and in the subsequent ongoing processes of the Department. To ensure that the system plays a vital role in the sustainability of compliance under the NSA, the Department is moving toward the implementation of the new risk management database, known as IPAS2. As the development of the new system moves forward, the risk management process continues, utilizing the existing database and the processes that have developed over the past several years and are reflected in existing policy.

The requirements of the risk management process are prescribed in Task 41 of the NSA but are also dependent on the data requirements that are detailed in Task 40. OPD resolved its earlier data problems and revised its operating procedures, reflecting a process of continuous review of the current system.

From the perspective of mechanics as applied to the risk-related behavior of individual officers, the system is functioning well. Thresholds are examined, officers are reviewed, and a small number are selected for monitoring or intervention. In the previous three months, 27 officers were identified as exceeding thresholds and thus eligible for review. Of those, three reviews led to recommendations for monitoring, and there were no recommendations for intervention. These figures are added to already very low numbers of officers in monitoring or intervention. In recent months, those total numbers have been well below 5% of all patrol officers.

These activity levels may seem appropriate, given the notably low levels of uses of force and citizen complaints when compared with the past. But a broader management perspective also raises the question about whether the underlying concept of risk may be too restrictive and overly static. The goal of reducing risk is not met simply by reducing or eliminating the number of officers in monitoring or supervision. Instead, the goal should be conceived of as continually

reassessing officer activity and reducing behaviors that reflect the highest risk levels when compared to all officers. With that, there should be no stigma attached to monitoring or supervision and one would expect to always find a small but significant percentage of officers in those supervision categories. Risk, then, is treated as *dynamic* rather than *static* and sustainability is not just the sustainability of procedures and processes. Instead, sustainability refers to the ongoing effort to continuously improve the Department by assessing and reducing the existing level of risk.

To be clear, this is not a change from earlier expectations regarding risk assessment. Instead, it reflects the growth that builds on the Department's success in risk management to this point. It is also the *principle* that will most effectively guide the existing Department-wide interest in risk assessment and reduction reflected in the monthly Risk Management Meetings.

In those meetings, command staff review summary data on officer activity and disaggregate the information on the squad and individual officer data level. This reflects the idea that activity should be continuously reviewed, and that opportunities for improvement can be found and implemented. Those underlying principles should also guide the individual assessment process associated with PAS. That will support sustainability of risk reduction and the resulting outcomes, rather than a focus on procedures alone.

Conclusion

We are encouraged that the risk management system now plays two key roles in the Department. The Department uses it to identify officers whose activity may raise risk issues and thus requires careful review and, when appropriate, remediation. The Department also reviews levels of potentially risk-related activity at the squad as well as individual level. The identification and management of risk have, therefore, been incorporated into the management of the Department.

However, we should be careful to distinguish the question of the sustainability of *the risk management system* from the question of the sustainability of *effectively managing risk*. The former is an issue of mechanics; and the latter, an issue of organizational management. As the Department continues to develop – and eventually adopt – its new IPAS2 system, we will monitor this closely.



Chief (Ret.) Robert S. Warshaw
Monitor