

Twenty-Fourth 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 5 and 34 – and offer commentary on Tasks 26 and 30. As described previously, because we are now reporting on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

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.
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. Discussed but not assessed in this report.
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Discussed but not assessed in this report.
34	Vehicle Stops, Field Investigation, and Detentions	In partial compliance since the fourth reporting period (covering July through September 2010).
41	Use of Personnel Assessment System (PAS)	In compliance since the twentieth reporting period (covering July through September 2014). Not assessed in this report.
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance. 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 Executive Force Review Boards (Task 30); stop data (Task 34); risk management (Task 41); consistency of supervision (Task 20); and revisions to several Department policies and procedures.

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.”

The hiring process for two additional police auditors for the Office of Inspector General (OIG) is currently underway; OPD expects to fill the positions sometime within the next few months.

In the meantime, we continue to work closely with OIG’s lieutenant and his staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. OIG recently presented a proposed schedule of audits, reviews, and inspections it expects to conduct through February 2016. Kicking that off, just last week, OIG produced its impressive first monthly progress report, which provides unit updates and details the results of its most recent reviews. For example, this report focused on the timeliness of IAD investigations; and we were pleased that OIG closely examined several untimely IAD cases to determine the reasons why they were closed after 180 days (as allowed by OPD policy). The report also described OIG’s review of stops in which officers did not complete stop data forms; the review found that while special operations and events, per policy, allow a temporary suspension of stop data forms, these suspensions were not always properly documented by OPD personnel. Finally, the report discussed OIG’s rather comprehensive examination of several recent integrity tests.

In each of these areas where OIG identified problems, the report included helpful recommendations to Department units to “close the loop” on outstanding or problematic issues. We look forward to reviewing future OIG progress reports, and also assisting OIG as it becomes a stronger unit and further develops its capacity to monitor the Department’s continued implementation of the NSA reforms.

Focused Task Assessments

Task 5: Complaint Procedures for IAD

Requirements:

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

individuals named in the complaint were not involved in the alleged act.

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

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

(Negotiated Settlement Agreement III. E.)

Relevant Policy:

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

Commentary:

We found OPD in Phase 2 compliance with Task 5 from the fourteenth through the eighteenth reporting periods. (In each of the prior reporting periods, we had found the Department in partial compliance with Task 5.) During the nineteenth reporting period, we placed Task 5 in deferred compliance based on a then-ongoing Court-Ordered investigation of the City's discipline and arbitration process. In our twenty-first report, noting that the investigation had been completed, we placed Task 5 in partial compliance. Although we found the Task 5 cases we reviewed at that time to be in compliance, we noted then that the Court had ordered the City to "work to eliminate the problems identified" in the investigator's report.

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 review 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 in recent years to elicit “forced responses” which gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD’s ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years now. Consequently, we are no longer actively assessing OPD’s compliance with these Tasks, but we continue to receive daily both DILs and Daily Complaint Referral Logs (used to document when Information Business Cards (IBCs) are provided to citizens in lieu of a complaint forms). We spot-check these forms to verify that the quality of their completion has not diminished.

Task 5.6 requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. To assess Task 5.6, we review all complaints that appeared to have originated from North County Jail, Santa Rita Jail, Glenn E. Dyer Detention Facility, or Juvenile Hall during a given reporting period. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was “handled in the same manner as other civilian complaints.” OPD has been in compliance with Task 5.6 for several years, and we are no longer actively assessing compliance with this Task or Task 5.12 (see below). However, we do receive at least 15 completed IAD cases every month to assess compliance with other Tasks. If any of these cases are applicable to Task 5.6, we will review them for compliance with this subtask’s requirements.

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. As mentioned above, OPD now has a strong history of properly completing the DILs and routing them to IAD, which in turn ensures compliance with this Task.

Task 5.15 through **Task 5.19**, and **Task 5.21**, collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed 15 IAD cases that were approved in June 2015.

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

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

In each of the cases we reviewed, we believe that OPD gathered all relevant evidence available, and appropriately considered such evidence in making their determinations of findings. In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in reaching a proper conclusion. In three cases, follow-up interviews of complainants were conducted in an attempt to seek clarification or resolve inconsistencies. In one case, the investigator neglected to conduct an interview of a potential witness. The case involved allegations of excessive force and improper procedure, and stemmed from a domestic violence call. OPD did not interview the complainant's domestic partner, or even identify her by name in the Report of Internal Investigation (ROI), despite listing her as a witness on the complaint form. While her statement most likely would not have changed the findings – PDRD video factored heavily into the conclusions – the case was not approved for a summary finding and she should have been interviewed.

Credibility assessments were made in eight of the 15 cases. The 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 one case, a witness was deemed not credible. In this case, it was alleged that officers were intoxicated when they responded to a neighbor dispute. The complaint was lodged nine months after the incident. The investigator appropriately investigated the complaint. While the call in question was not recorded – recording was not required by policy – the investigator reviewed PDRD footage from other calls for service on that date, and conducted interviews of citizens contacted by the officers unrelated to the call in question. He also interviewed supervisors and co-workers of the subject officers. The witness deemed not credible was a party to the original call, and during the course of her interview she changed the race, gender, and general description of the subject officers several times.

In 10 of the cases we reviewed, OPD successfully resolved inconsistent statements. In eight of these cases, PDRD recordings were available and assisted in the determination. In another, an audio recording of a phone call to Communications proved instrumental. In three cases, there were no inconsistent statements. The complainants' and the officers' versions of events essentially matched; the complainants simply questioned the propriety of the officers' actions. In two cases, inconsistent statements were not resolved; these were appropriately classified as not sustained.

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

² Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

a sustained history of 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 15 cases we reviewed.

Task 5.18 requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 61 allegations that received dispositions as follows: 22 exonerated; two not sustained; 33 unfounded; two sustained; and two administratively closed. PDRD video continues to be used in more and more cases to arrive at definitive conclusions. In 10 of the cases we reviewed, PDRD footage factored into the determination; and in another case, interview room footage was used. We believe that OPD appropriately used the preponderance of the evidence standard in each case we reviewed; hence, we did not disagree with any of the Department's findings.

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

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

In summary, our review of these 15 cases did not reveal any major compliance issues. OPD continues to document its investigations in adequate detail and justify its findings logically and appropriately. However, as stated in our previous reports, OPD's ultimate compliance with Task 5 hinges on how the City and the Department respond to the Court-ordered independent investigation of its discipline and arbitration process. The August 2014 Court Order requiring such an investigation reads in part:

"Failure to address the issues addressed in this order will prevent compliance, let alone sustainable compliance, with the Negotiated Settlement Agreement ("NSA"). Defendants cannot be in compliance with Task 5 if the internal investigations leading to disciplinary decisions by Defendants are inadequate.

Likewise, they cannot be in compliance with Task 45 if discipline is not consistently imposed. Because imposition of discipline is meaningless if it is not final, the Monitor and the Court must consider whether discipline is upheld at the highest level, most often arbitration...”

Just last week, the City filed its Court-ordered report detailing its progress with the recommendations identified by the investigation. Both OPD and the Office of the City Attorney (OCA) have made real strides – and we look forward to working closely with the City as it continues its progress in these crucial areas. Notwithstanding our positive review of actual cases, until such time as the City and OPD address all of the issues specifically outlined in the Court’s Orders, we find OPD in partial compliance status with Task 5.

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. During the period January 2013 through June 2015, OPD conducted 43 FRBs, including: 18 in 2013; 20 in 2014; and four in 2015.³

OPD has been in compliance with this Task since the nineteenth reporting period and continues to be in compliance; accordingly, Task 26 is now considered inactive. However, due to the importance of use of force reviews, we continue to attend and assess FRB activities during our site visits. In addition, we have recommended that OPD review and strengthen its FRB and EFRB processes, which are further described in the Task 30 commentary below.

OPD did not convene FRBs during the months of July and August, which is reflective of its significant reduction in use of force events; therefore, we are including no assessment of this Task in this report.

Task 30: Executive Force Review Board (EFRB)

Requirements:

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

(Negotiated Settlement Agreement V. G.)

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

Relevant Policy:

Department General Order K-4.1, *Force Review Boards*, was published February 17, 2006 and most recently revised on 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. During the period January 2013 through June 2015, OPD conducted 17 EFRBs, including: 10 in 2013; two in 2014; and five in 2015.⁵

A Level 1 use of force is a serious matter that may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD conduct investigations, and present the results of their respective investigations to an EFRB.⁶ CID and IAD personnel approach their investigative assignments in a thoughtful and detailed manner, which is demonstrative of the seriousness with which they approach their responsibilities. Similarly, the board review is probative and adherent to its duties as prescribed in OPD policy.

Task 30 is currently inactive; however, we continue to attend and assess EBRB activities during our site visits.⁷ For the purposes of this report, we observed the boards conducted in July and August. The July event involved a non-fatal firearm discharge by an officer during an encounter with a subject armed with a knife. The August event involved an individual reportedly off his medication and attempting to assault family members. Four officers responded and during the course of the encounter, pointed firearms, deployed ECWs and discharged a firearm (no strike).

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.

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

⁶ 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.

⁷ Compliance assessments include a review of the full case files and our regular observations of the boards.

Board members discussed a broad range of issues during each of these reviews and also assigned deliverables to appropriate personnel; however, the official reports and the results of the assigned deliverables were not available for our review and inclusion in this report. Therefore, we defer assessment of these reviews for our next report.⁸

While we recognize the significant reductions in the use of force by OPD at all levels; and in particular, the most serious Level 1 uses of force; we note that public concern about the Department's use of force remains high. Recent events around the country involving officers' use of lethal force have captured national attention. The fatal officer-involved shooting (OIS) that occurred in June in Oakland serves as a clear reminder that the use of deadly force continues to be of great concern within this community – and consequently, must be of great concern among the Police Department and City leadership. Three subsequent fatal OIS events during this summer have elevated these concerns and public scrutiny – and suggest a need to change and/or strengthen the review process.

As described above, the OPD Force Review Boards serve as the processes in which such cases are carefully reviewed, and we therefore recommended in our two previous monthly reports that OPD seize the opportunity to look beyond the customary questions of policy compliance and legal justification when these events occur. OPD should include in its EFRB deliberations an examination of whether the use of deadly force may have been avoided; the identification of tactics, strategies, and opportunities as events unfolded that may have supported such an outcome; and the enumeration of other available options that *could* or *should* have been considered. The Department should search for what may be learned from these episodes, and ensure that such lessons are widely shared across OPD. In addition, our twenty-second report set forth the importance of addressing the question of “whether the force, even though legally justified and within policy, was the only and/or best option.”

We have also expressed interest in the Department conducting an analysis and issuing findings regarding whether the tactical direction provided by the on-scene supervisor led to or contributed to an *unnecessary* use of lethal force; the measure to which supervisors are held accountable for their tactical decisions leading to the use of lethal force; and the manner in which the involvement of a supervisor and/or officer in an unnecessary use of lethal force event will be recorded or in IPAS.

That said, we recognize that police officers are clearly authorized to use force, including deadly force, to neutralize a threat of serious injury or death to themselves or others. The enhancements to the review process suggested above serve to solidify any justification for an officer's use of force when appropriately employed – and by extension, enhance the public's understanding of an officer-involved shooting.

During our August site visit, we met with the Chief to discuss the way forward with these recommendations, wherein he committed to provide suggested policy revisions to address these them. We are presently working with the Department on the adoption of appropriate revisions to the EBRB policy.

⁸ The EFRB reconvened on August 28 to review additional work related to the July report tasked to IAD; accordingly, an extension for completion was granted to September 11. The August report has not yet been completed.

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 conducted reviews of random samples of various data on 350 or more stops, including Computer Aided Dispatch (CAD) entries, Field Contact Cards, traffic citations, and Stop Data Forms.

Our several more recent reviews found the forms were accurately and fully completed as required.⁹ In addition, we gave special attention to the *reason* for the stop – essentially the

⁹ Required data includes 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).

justification for the interaction between the officer and the person stopped. We found appropriate justification for >94% of all stops; accordingly, we have turned our focus to analyses of the data to identify possible indicators of racial disparity.

In order to facilitate our reviews, we attend and observe OPD's monthly Risk Management Meetings during our site visits.¹⁰ 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.

Our more recent reviews have focused on analyses of the ratio of searches and/or the search recovery rates among the identified 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 additional activity of continuing interest is the searches and recoveries involving individuals on parole/probation.

Stops Made by the Area Under Review

During our August site visit, OPD officers assigned to the Area under review made 2,521 vehicle stops and 462 pedestrian stops.¹¹ Tables One and Two below illustrate the numbers and percentage of the above-enumerated stops resulting in searches and the searches that resulted in recoveries.

The variance in the **percentage of stops** among the various population groups is a continuing point of interest. Within the Area under review, the variance among the population groups for *vehicle stops* ranges from a high of 54% for African Americans to a low of 3% for Other.¹² Similarly, the breakdown for *pedestrian stops* ranges from a high of 56% for African American to a low of 2% for Other.

The variance in the **percentage of stops resulting in searches** is also a continuing point of interest. Within the Area under review, the variance among the population groups for vehicle-related stops ranges from 30% for African Americans to a low of 6% for Whites (average 22%). For pedestrian stops, the variance ranges from a high of 59% for Hispanics to a low of 25% for Other (average 44%).

The more revealing data point for this Area, however, is the **search recovery rate**, which is the highest we have seen since OPD began tracking this information. The search recovery rate for vehicle-related stops ranges from a high of 70% for Asians to a low of 56% for Whites (average 60%). For pedestrian stops, the search recovery rate ranges from a high of 55% for Whites to a low of 36% for Asians (average 49%).¹³

¹⁰ 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.

¹¹ The dataset includes activity for the period January 17, to July 10, 2015.

¹² "Other" includes all individuals not identified as African-American, Asian, Hispanic, or White.

¹³ We have disregarded one search and one recovery in the Other category as the high percentage.

Regardless of these results, OPD identified two squads (within the Area under review) with low vehicle-related search recovery rates (9% and 10%) and will take steps to determine whether there are issues requiring intervention. We will follow up with the Department on its determination and any intervention. Except for one squad with a 0% recovery rate from three searches, the squad with the lowest recovery rate for pedestrian searches had a recovery rate of 17%. No further review of this squad is anticipated at this time.

TABLE ONE - AREA VEHICLE STOPS/SEARCHES/RECOVERIES							
Race/ Ethnicity	Stops		Searches¹⁴		Recoveries		
	Number	Percent	Number	Percent	Number	Percent	
African American	1353	54%	381	30%	223	59%	
Asian	287	11%	33	12%	23	70%	
Hispanic	510	20%	102	21%	63	62%	
White	287	11%	16	6%	9	56%	
Other	84	3%	8	10%	5	63%	
	2521	100%	540	22%	323	60%	

TABLE TWO – AREA PEDESTRIAN STOPS/SEARCHES/RECOVERIES							
Race/ Ethnicity	Stops		Searches¹⁵		Recoveries		
	Number	Percent	Number	Percent	Number	Percent	
African American	260	56%	85	40%	42	49%	
Asian	45	10%	14	45%	5	36%	
Hispanic	101	22%	47	59%	23	49%	
White	49	11%	11	31%	6	55%	
Other	7	2%	1	25%	1	100%	
	462	100%	158	44%	77	49%	

Although the above illustrations are indicative of progress with regards to recovery rates, there is continuing concern with that OPD officers search both higher numbers and a higher percentage of individuals stopped who identify as African American and Hispanic than other

¹⁴ Excludes searches incident to arrest.

¹⁵ Excludes searches incident to arrest.

racess/ethnicities. Although this been a constant, we recognize that an officer’s decision to search is not always an easy one and is certainly prone to error; accordingly, we not only assess data for *results*, we periodically assess the documented basis for the searches to ensure that *sufficient justification* was present *for the search*. Such assessments covering the past several reporting periods have consistently verified the presence of sufficient cause for the searches in a high percentage of cases (>94%).

As previously indicated, the overall search recovery rates for the Area under review – 60% for vehicle stops, and 49% for pedestrian stops – are the highest we have noted to date. This reflects positively on this Area and its personnel.

Comparative Citywide Stop Data

OPD has also provided us with comparative citywide stop data for the first six months of 2014 and 2015, which indicates further improved performance. For the purposes of this report, we reviewed *search recovery data* for the three-month period, January through March 2014, in comparison with the latest completed three-month period, April through June 2015. See Tables Three and Four.

The overall stop data finds an increase in both numbers and percentages for stops involving both African American and Hispanic population groups, but a decrease in both numbers and percentages of the remaining population groups.

TABLE THREE	All Stops		Change
	1Q-2014	2Q-2015	(+)(-)
African American	4,554 58%	5,130 61%	+576 +3%
Asian	538 7%	510 6%	-28 -1%
Hispanic	1,325 17%	1,585 19%	+260 +2%
White	1,118 14%	976 12%	-142 -2%
Other	261 3%	227 3%	-34 +0%
Total	7,796 100%	8,428 100%	+632

Encouragingly, however, we found a marked increase in the search recovery rates during the period compared. While the searches of African Americans decreased by 1%, search recoveries increased by 14%; searches of Hispanics increased by 3%, and the search recovery rate increased by 25%. Overall searches increased numerically by 285, or 2%; while search recoveries increased by 380, or 16%. This indicates marked progress.

TABLE FOUR	All Searches ¹⁶		Change		All Recoveries		Change
	1Q-2014	2Q-2015	(+)(-)		1Q-2014	2Q-2015	(+)(-)
African American	1,182 30%	1,368 29%	+186 -1%		326 28%	580 42%	+254 +14%
Asian	45 9%	43 9%	-2 +0%		12 27%	19 44%	+7 +17%
Hispanic	237 19%	326 22%	+92 +3%		54 23%	156 48%	+102 +25%
White	69 7%	71 8%	+3 +1%		14 20%	28 39%	+14 +19%
Other	13 5%	23 11%	+10 +6%		9 69%	12 52%	+3 -17%
Total	1,546 22%	1,831 24% ¹⁷	+285 +2%		415 27%	795 43%	+380 +16%

The foregoing data clearly illustrates that African Americans and Hispanics represent the largest percentage of stops and searches. However, when reviewing the stops in context with related search and recovery data, there are no indicators *within this particular data* sufficient to conclude that OPD officers are aggressively stopping vehicles and/or engaging in disparate treatment with regards to searches.

Additional Thoughts

We have previously noted our continuing concern with the Department's high number of probation/parole stops and searches. Although we have not reviewed any data regarding this activity for this report, we are in continuous discussions with OPD regarding the development of strategies to address these concerns – while at the same time recognizing the legality and value of such stops for various crime control strategies. We will review data on probation/parole stops and searches for future reports.

¹⁶ Excluding searches incident to arrest.

¹⁷ This is an average.

As previously stated, 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. This is an area ripe for the employment of the tenets of procedural justice wherein OPD should be diligent in its efforts to ensure to the degree possible, that the process – the process of stopping and searching individuals on probation/parole – is not only *legal*, but also seen as *legitimate* in the eyes of those involved.

Yet despite these concerns, we continue to be encouraged by the progress made by OPD with the collection of stop data; and moreover, with the marked increase in search recoveries demonstrated in the most recent comparative data. We expect that OPD will issue its public report on stop data in the near future.

We are also encouraged by the various efforts being made by OPD to improve data collection processes, as demonstrated by agreed-upon revisions to the data collection forms, which are designed to strengthen analytical processes as well as by its efforts to strengthen its monthly Risk Management Meetings to bring additional focus on stop data and related issues. These will valuably indicate any disparate treatment within or between population groups, and which may require more in-depth reviews and the development of specific intervention strategies.

OPD comprehensively records, collects, and presents its stop data; however, as previously noted, the Department must continue to focus on its *analysis* in order to determine whether there is racial profiling or disparate treatment of individuals encountered by police officers. OPD is taking steps to address this issue by regularly examining those areas where data suggest the possibility of disparities among other initiatives. For example, OIG recently conducted a Stop Data Quality Assurance Review wherein it examined a random sample of 1,881 incidents to determine whether officers were justifiable in not completing stop data forms according to policy.¹⁸ The review found 91% compliance, and OPD is addressing the identified issues.

Clearly, progress is being made and the continued engagement with Dr. Jennifer Eberhardt of Stanford University should bring further understanding of the issues related to bias in policing. This will not only be beneficial to OPD and the Oakland community, but to other police agencies and the communities they serve, as well. This is forward-thinking and a credit to OPD.

¹⁸ OIG reviewed four identified groups where stop data forms were not completed, including dispatched calls; incidents involving search warrants, planned operations, and special assignments; and flag downs, all of which do not require the completion of stop data forms. In addition, OIG reviewed all events where the officer did not complete the “Reason No Stop Data” field in the Field Base Reporting.

Conclusion

After many years, OIG is transforming into a more sufficiently staffed unit that tackles issues that have impeded OPD's progress with the NSA reforms and other issues in the Department. We are encouraged that OIG also appears to be collaborating well with IAD and other crucial Department units. This paves the way for sustainability. As per the May 21, 2015 Court Order, this case will not end until OPD has been in full compliance for one year and there is "evidence that reforms have become so institutionalized that the absence of oversight will not result in a return to practices that fail to protect constitutional rights."

A handwritten signature in cursive script that reads "Robert S. Warshaw". The signature is written in black ink and is positioned above the typed name.

Chief (Ret.) Robert S. Warshaw
Monitor