

Twenty-Ninth 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 have increased the frequency of our compliance assessments and our reports detailing our findings and other monitoring activities. We provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the three Tasks (5, 34, and 45) that are currently in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) Our assessments of compliance for Tasks 5 and 45 take into account the degree to which the City continues to implement the recommendations listed in the April 16, 2015 report on police discipline and arbitration by the Court-Appointed Investigator. In addition, per the Court's Order, we also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

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

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. Not assessed in this report.
30	Executive Force Review Board (EFRB)	In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report.
34	Vehicle Stops, Field Investigation, and Detentions	In partial compliance since the fourth reporting period (covering July through September 2010).
41	Use of Personnel Assessment System (PAS)	In compliance since the twentieth reporting period (covering July through September 2014). Now considered inactive. Not assessed in this report.
45	Consistency of Discipline Policy	As of the twenty-first reporting period (covering October through December 2014), in partial compliance.

Increasing Technical Assistance

Per the May 21, 2015 Court Order, “The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court’s December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator’s April 16, 2015 report.”

Accordingly, our Team has altered the nature of our monthly site visits so that they include both compliance assessments and technical assistance. As in the past, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or those areas identified by the Department. Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); Executive Force Review Board (Task 30); stop data (Task 34); risk management (Task 41); and several key Department policies and procedures. We are also closely following the Department’s adoption of Lexipol, the online policy platform. To ensure continuing compliance with the NSA, the Monitoring Team and Plaintiffs’ attorneys will review and re-approve all policies related to all active and inactive Tasks.

Building Internal Capacity at OPD

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

As reported previously, we continue to work closely with the Office of Inspector General’s (OIG) lieutenant and his staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability. With two new police auditors, added late last year, OIG has significantly expanded the unit’s staffing and, more importantly, signaled a commitment by the Department to self-reflection and analysis.

During our site visit last month, we met with OIG to discuss and review its auditing plans for 2016. Just last week, OIG produced its sixth monthly progress report, which details the results of its most recent reviews. This progress report, like the others OIG produced, is impressive and will be released publicly, via the Department’s website. This most recent report focused on three areas: (1) data errors in the Personnel Assessment System (PAS); (2) deliverables from the Force Review Boards and Executive Force Review Boards; and (3) the stop data search recovery rate. As with its other reports, in each of the areas where OIG identified problems, the report included recommendations to Department units to “close the loop” on outstanding or problematic issues. In its review of deliverables from the Force Review Boards and Executive Force Review Boards, OIG sought to determine if recommendations resulting from the boards for both Department-wide measures and “non-disciplinary corrective measures for specific personnel” were tracked and implemented. OIG auditors reviewed deliverables from six FRBs and four EFRBs held in 2015, and found that all 33 associated deliverables were appropriately followed up on and documented. Despite this finding, OIG offered some thoughtful recommendations for continuing compliance in this area.

We look forward to reviewing future OIG progress reports, and continuing to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department’s continued implementation of the NSA reforms. From our recent conversations with OIG staff, it appears that OIG is expanding its auditing role within the Department and planning to assess more NSA-related subject areas that it has not reviewed in the past.

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 December 21, 2015.

Commentary:

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

OPD is in compliance with this Task; however, due to the importance of these board reviews we continued to observe and assess them during our monthly site visits.

OPD conducted seven boards during calendar year 2015. The board reviewed each case in detail and found the force used in each case in compliance with policy. Four of these incidents involving 10 individual uses of force were reviewed during the fourth quarter. In addition to making findings on whether the force used was in compliance with policy, the board also reviewed areas that warranted correction or performance improvement, as well as incidents where members took extra steps that enhanced their performance in the given situation. This review resulted in the issuance of an Informational Bulletin on January 28, 2016 outlining 21 such points for review by all officers.

The board conducted one review in January, which was governed by the newly revised General Order cited above. The revised General Order requires the addition of “relevant...Subject Matter Experts in the use of force, tactical decision making, emergency vehicle operation and pursuits” as “Mandatory Presenters.” In addition, the policy, now requires the board to examine “whether any involved Department members’ conduct or actions leading up to the use of force aggravated the situation or made a use of force more likely to occur...whether any involved Department members’ actions leading up to the use of force created circumstances that lead to, or contributed to, the use of force...and the enumeration of other available options that could or should have been considered.”

The event reviewed by the board was initiated when officers received and were investigating a complaint that the subject brandished a knife in a threatening manner. Officers encountered the subject and attempted to discuss the event in an effort to determine the appropriate response; however, the subject refused to cooperate and attempted to walk away, whereupon officers attempted to restrain the subject who actively resisted. The investigating sergeant presented a detailed account of his investigation, which the board critically reviewed wherein a discrepancy, which had not been appropriately addressed by IAD was identified. The board therefore directed additional follow-up from IAD to resolve the discrepancy and will re-convene once the follow-up work is completed.

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.

Task 30: Executive Force Review Board (EFRB)

Requirements:

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

(Negotiated Settlement Agreement V. G.)

Relevant Policy:

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

Commentary:

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.³ Such events are serious, therefore even though OPD is in compliance with this we continue to observe and assess EFRB activities during our monthly site visits.⁴

The board conducted four reviews during calendar year 2015: one each in May, July, August, and November. An additional review originally scheduled for December was postponed until February. We will observe this board hearing and report on the proceedings in a future report.

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

The EFRB consists of three senior commanders as voting members. In addition, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office.

A Level 1 use of force may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD present the results of their respective investigations to an EFRB

⁴ Compliance assessments include a review of the full case files and our regular observations of the boards.

In July, concerned with a spate of recent fatal officer-involved shootings, we recommended that OPD strengthen its EFRB process. During the months following, we regularly met with the Chief to discuss policy revisions to do so. Finally in December, after much discussion regarding the specific policy language, including discussions between the chief and the Oakland Police Officers Association (OPOA) consistent with the “meet and confer” requirements of the OPOA’s contract, and a December 11, 2015 Court Order requiring OPD to “reach a final determination on whether it will implement the revised policy,” the Department and the OPOA reached agreement on the revisions.

The policy, issued on December 21, 2015, now requires the board to examine “whether any involved Department members’ conduct or actions leading up to the use of force aggravated the situation or made a use of force more likely to occur...whether any involved Department members’ actions leading up to the use of force created circumstances that lead to, or contributed to, the use of force...and the enumeration of other available options that could or should have been considered.” These revisions strengthen the EFRB process for determining the justification for an officer’s use of force when appropriately employed – and by extension, enhance the public’s understanding of an officer-involved shooting.

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:

For the past several months, we have reported on OPD's progress with the requirements of this Task, which requires the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indications of bias-based policing or racial profiling. We have recognized the development of an excellent, but not perfect, process that provides for the collection and the means to analyze stop data. We also recognize the fact that this progress had been made without access to developed models for reference; instead, the stop data collection process was developed by capable OPD in-house staff that continue to assess its effectiveness and makes improvements when deemed necessary.

Most recently, OPD identified and is addressing key issues relating to the appropriate documentation of information relating to multiple person stops and the recovery of contraband or evidence. Corrective measures include training and revisions to the data entry form. Training is currently in progress, and revisions to the data entry form should be complete and ready for implementation in April of this year.

OPD's monthly Risk Management Meetings have proven to significantly assist with the analysis of stop data. At these meetings, OPD commanders are tasked with the identification of anomalies and/or variances in stop data between Citywide and their particular Area data – and more recently, among Area squads, squad supervisors, and officers. Probation/parole stop outcomes and especially high and/or in particular, low search recovery rates are also carefully reviewed. The focus on recovery rates, in particular, has proven fruitful as demonstrated by an ever-increasing search recovery rates illustrated below.

Determining whether the stop data is indicative of bias and/or disparate treatment is a challenge requiring careful analysis, therefore the datasets illustrated below are not dispositive of the presence of bias or disparate treatment; instead are indicators of areas requiring analysis to determine whether administrative intervention may be necessary.

CITYWIDE STOPS

Clearly the basic stop data illustrated in Table One below is not reflective of community demographics, neither is the stop data for each of the five Areas fully consistent with either citywide or other Areas.⁵

⁵ This data may be significantly affected by variances in demographics, criminal activity, and crime control deployment strategies within the various Areas.

TABLE ONE ⁶				
Race/Ethnicity	Vehicle Stops		Pedestrian Stops	
	Number	Percent	Number	Percent
African American	16,330	57%	3,882	67%
Asian	1,956	7%	287	5%
Hispanic	5,960	21%	867	15%
White	3,309	12%	600	10%
Other	898	3%	117	2%
Total	28,453	100%	5,753	100%

As illustrated in Table One, OPD officers stopped and interacted with a total of 34,206 individuals in 2015.⁷ Clearly, this indicates that OPD officers had voluminous discretionary interactions with members of the public. However, this is tempered somewhat when one considers that officers assigned field duties stop, on average, two individuals per working week.⁸

The above aside, a careful review of the reasons for and the results of stops – including searches and recovery rates – can provide indicators of whether or not bias may be a factor in a squad’s performance or an officer’s decision making. OPD is now positioned to conduct these analyses; however, we are cognizant that part of the process regarding the identification of bias is an *understanding* of it – that only comes with awareness and other training, which is an ongoing process within OPD. We expect this will be addressed in March 2016 when Dr. Jennifer Eberhardt of Stanford University releases the results of her study regarding policing practices and the presence or absence of bias within OPD.

MONTHLY REVIEW OF SELECTED AREA

During our January site visit, we attended the monthly Risk Management Meeting, during which stop data for the selected Area was reviewed. This Area Commander exhibited an understanding of the data and how the various Area crime control strategies affected it. He also noted the continued work of his command staff to improve officers’ interaction with various population groups and in particular with individuals on parole/probation as well as the conducting of searches.

⁶ This dataset included activity for the period of January 17 through December 17, 2015.

⁷ This dataset includes all vehicle and pedestrian stops during the period January 17 through December 11, 2015.

⁸ This is the *average* based on the total number of stops divided by the number of weeks and the number of officers assigned field duties.

Vehicle and Pedestrian Stops

OPD officers assigned to the Area under review in January made 4,422 vehicle stops and 836 pedestrian stops, as illustrated in Table Two.⁹ For *vehicle stops*, the racial/ethnic percentages range from a high of 55% for African Americans, to a low of 3% for Other. Similarly for *pedestrian stops*, the percentages also range from a high of 55% for African Americans, to a low of 3% for Other. This compares favorably with citywide data indicating that 57% of the vehicle stops and 67% of the pedestrian stops involved African Americans.

Race/Ethnicity	Vehicle Stops		Pedestrian Stops	
	Number	Percent	Number	Percent
African American	2,432	55%	460	55%
Asian	502	11%	93	11%
Hispanic	914	21%	168	20%
White	437	10%	94	11%
Other	137	3%	21	3%
Total	4,422	100%	836	100%

Searches-Recoveries

Data for the Area reviewed for this report illustrated in Table Three indicate that while a variance in the search percentage of the various population groups, search recoveries at 72% and 63% for vehicle and pedestrian related searches are high by any known standard. This also compares favorably with the Citywide averages for both categories of stops at 45%. (Citywide data not illustrated.)

Race/Ethnicity	Vehicle			Pedestrian		
	Searches ¹²		Recoveries	Searches ¹³		Recoveries
	Number	Percent	Percent	Number	Percent	Percent
African American	646	30%	70%	106	34%	63%
Asian	99	21%	80%	24	60%	54%
Hispanic	156	19%	74%	40	40%	65%
White	26	6%	81%	7	12%	86%
Other	10	8%	70%	3	20%	67%
Total/Average	937	23%	72%	180	34%	63%

⁹ This dataset is for the period January 17 through December 11, 2015.

¹⁰ The dataset included activity for the period of January 17 through December 11, 2015.

¹¹ The dataset includes activity for the period of January 17 through December 11, 2015.

¹² Searches incident to arrest, weapons (pat-downs) and inventory searches are excluded.

¹³ Ibid.

Squad Level Searches and Recoveries

A comparative review of squad search/recovery data within the Area reviewed is also demonstrative of progress. Vehicle-related searches among the squads in this Area is relatively low, averaging 23% with the highs represented in the CRO and CRT squads at 32% and 69% respectively; however, these two squads also have the highest recovery rates at 75% and 83% respectively, which is commendable.

As explained in our last report, the percentage of *pedestrians* stopped and searched is generally higher than searches related to vehicle stops given that these stops are often made on the basis of reasonable suspicion or probable cause; accordingly, pedestrian searches in this Area average 59%, again with the CRO and CRT squads the highest at 83% and 77% respectively. The recovery rates for the CRO and CRT squads are 52% and 67%, respectively; however, they are exceeded by a third squad at 75%.

These high recovery rates are, once again, indicators that OPD’s focus on stops and searches – including supervision, training, and counseling – is proving beneficial.

Weapons (Pat-down) Searches

Tables Four and Five illustrate the pat-down searches conducted citywide and within the Area under review for this report. Citywide recoveries are at 27% and 20%, respectively, for vehicle and pedestrian pat-downs. Area recoveries are at 38% and 40%, respectively, for vehicle and pedestrian pat-downs.

TABLE FOUR – CITYWIDE¹⁴				
Citywide	Pat-downs (frisks) Vehicle Stops		Pat-downs (frisks) Pedestrian Stops	
	Searches	Recoveries	Searches	Recoveries
Race				
African American	647	26%	422	19%
Asian	21	38%	37	30%
Hispanic	200	26%	111	22%
White	47	30%	50	18%
Other	13	31%	9	44%
Total	928	27%	629	20%

¹⁴ The dataset includes activity for the period of January 17, to December 11, 2015.

Area	Pat-down (frisks) Vehicle Stops		Pat-downs (frisks) Pedestrian Stops	
Race	Searches	Recoveries	Searches	Recoveries
African American	104	36%	47	40%
Asian	9	44%	18	40%
Hispanic	35	34%	26	35%
White	9	67%	9	33%
Other	6	33%	1	100%
Total	163	38%	101	40%

The standard for conducting pat-down searches differs from the probable cause standard required for other searches, as does the expectation or evidence/contraband discovery; instead, these searches are primarily based on officer safety. Accordingly, we view the citywide data as positive; however, the Area data is significantly better and a credit to the Area commander and staff.

Probation/Parole Searches/Recoveries

Tables Seven and Eight below illustrate the stops, searches and recovery rates involving individuals on probation/parole. As previously stated, the expectation for recovery is lessened due to there being no requirement that reasonable suspicion or probable cause be present and the deterrent effect such random, selective searches may provide; however, data for this Area finds a strong recovery rate of 50% or higher, which is a positive indicator.

Citywide	Probation/Parole Vehicle Stops		Probation/Parole Pedestrian Stops	
Race	Searches	Recoveries	Searches	Recoveries
African American	2,044	37%	705	38%
Asian	52	60%	22	54%
Hispanic	330	44%	134	46%
White	67	42%	41	17%
Other	24	42%	7	4%
Total	2,517	38%	909	40%

¹⁵ Ibid.

¹⁶ The dataset includes activity for the period of January 17, to December 11, 2015.

TABLE SEVEN – AREA¹⁷				
Area	Probation/Parole Vehicle Stops		Probation/Parole Pedestrian Stops	
Race	Searches	Recoveries	Searches	Recoveries
African American	339	50%	65	60%
Asian	35	66%	12	75%
Hispanic	60	52%	26	69%
White	12	67%	3	67%
Other	4	75%	1	100%
Total	450	52%	107	64%

OPD has made significant progress with the collection of stop data – and, to some extent, its analysis. We continue to monitor OPD’s progress with the remaining compliance issues:

- Training and operational implementation of revised stop data forms to appropriately categorize pat-down search recoveries of both seized evidence and the return of items temporarily retained for safety purposes. OPD has revised its Stop Data Collection Form to reflect the return of seized items (in addition to other improvements, and expects that it will be operationally implemented within the next few months.
- Completion of training regarding search recovery documentation in cases of multiple person stops and/or vehicle searches with multiple occupants. The first phase of the training is currently in progress, and OPD will initiate the second phase of the training when it adopts the revised Stop Data Collection Form.
- The implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels. We will be working over the next few months with OPD to improve its Risk Management Meetings to include these strategies.
- Assessing and addressing whether the present rotating review of stop data (once in five months) is sufficient to reliably identify possible bias and assure sustained intervention and/or prevention measures. This objective is temporarily delayed awaiting the implementation of PRIME, which should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings.
- Receipt and implementation of Dr. Eberhardt’s forthcoming report and recommendations.

We look forward to continued progress with the collection, analyses, and operational integration of appropriate measures to prevent, identify and/or address any behaviors that have resulted or may result in disparate treatment of any individual with whom OPD may interact.

¹⁷ Ibid.

Task 45: Consistency of Discipline Policy

Requirements:

On or before October 6, 2003, OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

1. *The policy shall describe the circumstances in which disciplinary action is appropriate and those in which Division-level corrective action is appropriate.*
2. *The policy shall establish a centralized system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the Division level.*
3. *All internal investigations which result in a sustained finding shall be submitted to the Discipline Officer for a disciplinary recommendation. The Discipline Officer shall convene a meeting with the Deputy Chief or designee in the affected chain-of-command for a confidential discussion of the misconduct, including the mitigating and aggravating factors and the member/employee's overall performance.*
4. *The COP may direct the Discipline Officer to prepare a Discipline Recommendation without convening a Discipline Conference.*

(Negotiated Settlement Agreement X. B.)

Relevant Policy:

Five Departmental policies incorporate the requirements of Task 45: Departmental General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 24, 2013); Training Bulletin V-T.1 and V-T.2, *Internal Investigation Procedure Manual* (published July 17, 2008); Internal Affairs Policy and Procedure Manual (published December 6, 2005); and Training Bulletin V-T, *Departmental Discipline Policy* (published March 14, 2014). As the Department has trained at least 95% of relevant personnel on these policies, we find OPD in continued Phase 1 compliance with this Task.

Commentary:

In our four quarterly reports prior to the nineteenth reporting period, we found OPD in compliance with Task 45. During the nineteenth reporting period, however, we placed OPD in deferred compliance status with Task 45, due to two cases that had emerged from the disciplinary process that we found unacceptable. In one case, a senior officer struck a subject when he was lying on the ground after being shocked by a Taser. In this case, the then-City Administrator overruled the OPD discipline process, and reduced the discipline from a 10-day suspension to counseling. The second case involved an officer who threw a “flash bang” explosive device into a crowd of demonstrators during the Occupy Oakland-related protests of 2011. This officer’s termination was overruled by an arbitrator who ordered his reinstatement.

The NSA requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we queried the IAD database to identify all of the cases with at least one sustained finding that were approved from November 1, through December 31, 2015. This query yielded 13 cases, each containing one sustained finding. All (100%) of these cases and findings contained all of the necessary information available on the printout generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

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

We reviewed all 13 cases with sustained findings that were decided during the period of November 1, through December 31, 2015. One case involved an allegation of improper demeanor. Three cases involved the failure to accept or refer a complaint, or the failure to provide name and badge number. Two cases were opened because of the arrest of civilian employees. Two cases involved avoidable collisions while operating Department vehicles. The remaining six cases involved various performance of duty issues such as incomplete or inaccurate reports, dialing a wrong number in Communications, and failing to take a statement at an accident scene. In six cases, the discipline determinations were pending. In the remaining seven cases, the discipline imposed in each case fell within the Discipline Matrix that was in effect at the time of the action for which the discipline was imposed.

During the period of November 1, through December 31, 2015, only one Skelly hearing was held for one IAD cases involving one employee with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the Skelly report, and found that it had adequate justification for the results documented. The sustained finding was for failure to activate a PDRD, and the Chief of Police concurred with the five-day suspension recommended by the Skelly Officer.

OPD remains in partial compliance with Task 45.

Conclusion

While we did not review data for Task 41 in this report, in January, we discussed the upcoming adoption of the new PAS (known as PRIME) with Department officials. OPD reports that PRIME will be online within the next few months, and we are monitoring this closely. Of course, PRIME, like OPD's current system, will only be as good as OPD is in using the information the system captures to make management decisions and take action. We will discuss the Department's progress with Task 41 in our next report. In the meantime, we offer the following suggestions to OPD as a starting point for thinking about how to better integrate risk management into the ongoing management of the Department:

1. Use risk management data to address specific questions regarding categories of officers or types of events. For example, identify highly productive officers with low rates of use of force or complaints and investigate how they accomplish this. Or, examine the types of events and activities that are most likely to result in uses of force or complaints.
2. Review all unusual or critical incidents such as injuries to officers or property damage, or events that grow to include additional participants or otherwise escalate, or review calls for service activity when calls that are repeated over short periods of time. Use methods similar to firearm review boards to consider how the event could have been avoided or handled more effectively.
3. Maximize the value of Area Risk Management Meetings by thoroughly addressing issues of race and procedural justice – including considering overall police activity and specifics regarding stops, searches, seizures, and arrests.
4. Strengthen the link between risk management and training by using Training personnel to report on specific implications of risk management processes (as described above) for training. Include reporting of how training has incorporated risk-related issues.
5. Charge the PAS Admin Unit – and/or create a standing group and related processes – to oversee risk management analyses by continuously developing queries to inform management practices. The group could query the data to review circumstances that are associated with traffic accidents or with problems in closing cases by arrest, for example.

We will review these suggestions with OPD personnel over the next few months, as the Department prepares to adopt PRIME. We will discuss this further in our next monthly report.

Also in our next report, as noted above, we shall comment on the nature of the deliberations in the Department's most recent EFRB, the first board hearing held since OPD revised DGO K-4.1, the policy that guides how the Department conducts EFRBs and FRBs. We will also discuss our participation in a recent Oakland community meeting, during which time issues of concern were raised to us by a diverse cross-section of the community.



Chief (Ret.) Robert S. Warshaw
Monitor