June 14, 2017

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

## Introduction

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

This report covers our site visit of May 2017. Immediately preceding our visit, on May 8, 2017, the Department and its vendor implemented PRIME (Performance Reporting Information Metrics Environment), which replaced PAS (Personnel Assessment System) as the Department's risk management system. Since the most significant development of the new system has been the entry of most data directly into PRIME – rather than linking to separate databases – going live has meant largely ceasing the many old methods of collecting data, often through paper forms or rather basic electronic tracking systems, and inputting it into separate databases which were then fed in to the PAS database. Flipping the switch for PRIME has thus meant disabling and replacing PAS – and this transition was not entirely smooth.

We have been carefully tracking and monitoring the development of PRIME over the last few years, and we will discuss the earliest days of its implementation in our next monthly report.

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

## *Increasing Technical Assistance*

Each month, our Team conducts visits to Oakland that include both compliance assessments and technical assistance. During our visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct

interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department.

Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); stop data (Task 34); risk management and the development of the new PRIME system, which is scheduled to replace PAS (Task 41); several Department policies and procedures, including policies on the new PRIME system, handcuffing, span of control, and the use of electronic control weapons; and the Department's follow-up to its recent audit of the recruitment, training, and tracking of new officers.

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

## *Building Internal Capacity at OPD*

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

OIG's May report examined: (1) probation and parole search encounters; and (2) the Department's tracking of search warrant forms and search warrant inventory sheet. The latter is a review that OIG conducts annually.

In its first review, OIG found that officers "are not immediately" inquiring about probation and parole statuses. The report notes, "Current OPD policy encourages officers to develop a rapport with community members during police-community encounters and to refrain from **immediately** asking if a person is on probation or parole (emphasis added). OIG recommends that the Department consider providing additional instruction through revised policy or future training to further restrict questioning which may be perceived as assumptive."

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

## *Focused Task Assessments*

## Task 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 to review the investigations of Level 2 uses of force.[1] OPD has been in compliance with this Task since the nineteenth reporting period.

OPD has thus far conducted four FRBs, including one rehearing in 2017, the most recent during our May site visit. This use of force followed OPD officers' response to reports of an individual armed with a firearm; upon the approach of officers, the individual in question fled the scene, only to be involved in a hit and run vehicle accident shortly thereafter. Again, the individual fled whereupon officers established a perimeter and continued their search during which they encountered the individual – who again fled.

Officers continued their search, and located a shed cluttered with household items, large pieces of plywood, and other construction materials in which they heard noises. Believing the individual in question might be inside, the officers summoned a K-9 to assist with the search. Officers gave multiple warnings for the subject to give himself up; however, the subject did not respond, so the officers released the K-9 to locate the subject. The K-9 located the subject, whereupon officers again ordered him to surrender, warning that his failure to do so could result in a K-9 bite. The subject did not respond – and the officers released the K-9, who confronted the subject – and due to actions by the subject – bit him. The subject surrendered. During this encounter, an officer also pointed a firearm at or in the direction of the subject.

The board fully and carefully reviewed each step of this event, and found deployment of the K-9 and the pointing of a firearm within policy. We concur.

OPD's uses of force continue to decline. Recent data indicates a total of 140 to date in 2017, as compared with 171 for the same period in 2016 – a decrease of 18%.[2] This decrease is demonstrative the Department's continued attention to – and progress with – the evaluation of these events, and where necessary, supervisory intervention, including the provision of training.

OPD remains in compliance with this Task.

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

[2] City of Oakland Memorandum, 184th Bi-Weekly Compliance Update, May 24, 2017.

## 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 to review Level 1 uses of force.[3]

OPD conducted eight Executive Force Review Boards in 2016; none have been conducted thus far in the current year.

OPD remains in compliance with this Task.

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[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

# 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:

We have reported on the positive progress OPD has made with the collection and compilation of stop reliable stop data for the past three years. The data have been collated and depicted in illustrative tables and graphs and presented for review by administrative and command staff, generally at monthly Risk Management Meetings.

At these meetings, the data is illustrated in the tables and graphs often points to anomalies requiring in-depth administrative and/or command review to ascertain the presence or absence of disparate treatment or bias among the identified population groups to determine whether intervention is warranted. It is at this level that OPD has been challenged to definitively and consistently take steps to determine whether the data disparities are verified and followed with appropriate corrective measures or dispelled due to legitimate operational strategies.

To improve the process, OPD – with the assistance of the Stanford University team – have engaged in a revision of the illustrative graphs to more clearly identify data indicative of disparate treatment or bias, but also the assist with crime control and deployment strategies – i.e., intelligence-led stops have been carefully analyzed to not only detect disparate treatment or bias, but also to assess the effectiveness of that activity. OPD provided us with a report on its progress and solicited our input regarding the proposed improvements, which we provided during our May site visit. We look forward to the revised presentation of data using these illustrations during our next visit.

In addition to making changes to the illustrative tables, OPD seeks to improve the cumbersome, time-consuming analytical process in place to not only compile data for the purposes described above, but also to allow for in-depth analyses. This inability to provide access to relevant, stop data analytics in a timely manner has significantly hampered the analytical process; Department officials advise us that this deficiency will be addressed in a proposed future enhancement to the recently activated PRIME data system.

In the meanwhile, using the present systems, including the revised illustrative tables and adjustments in the review process during the monthly RMM, OPD plans to continue reviewing its collection and analyses of stop data in its effort to identify and address disparate treatment or bias. OPD also continues to collaborate with the Stanford University team on revisions and improvements to the present process; we are encouraged by both the collaboration and progress and will continue to support it. In addition, we are closely following OPD's implementation of the Stanford University Team's 50 recommended actions to change its culture and strengthen ties with the communities it serves.

Although OPD is progressing with implementation of processes related to the collection and analysis of stop date, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until full compliance is achieved:

- 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: The analysis of data prior to, during, and following Risk Management Meetings has been an ongoing endeavor to ensure a strong stop data process. However, these monthly meetings have been suspended pending completion of improvements to the process being developed by OPD in collaboration with the Stanford University team. The pending revisions will focus on ways to accurately identify indicators of racial bias or disparate treatment among the various population groups, as well as the development of appropriate intervention processes.

- Assessing and addressing whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures.  This is an ongoing concern temporarily delayed awaiting the implementation of what the Department calls "PRIME 2.0," which would expedite the gathering and presentation of data for review during and between the Area Risk Management Meetings.

- Complete implementation of the applicable 50 recommendations contained in the Stanford University report.  OPD represents that 28 recommendations have been implemented or are currently in progress; the remaining are scheduled to be in progress or completed by July 2017.  We anticipate an update on the status of this requirement for the next report.

# 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).

**Commentary:**

Task 45.2 requires that OPD maintain a centralized system for documenting and tracking all OPD forms of discipline and corrective action, whether imposed centrally or at the division level. To assess Phase 2 compliance with this subtask, we reviewed the 22 cases that contained at least one sustained finding that were approved in February and March 2017. All (100%) of these cases and findings contained all of the necessary information available on the spreadsheet generated by IAD for our review. OPD is in compliance with the requirement that it maintain an adequate system for documenting and tracking discipline and corrective action.

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

As noted above, we reviewed all 22 cases with sustained findings that were approved during February and March 2017. Two cases involved allegations of improper demeanor. Four cases stemmed from allegations of failure to properly investigate incidents or make an arrest where warranted. Another case involved Police Records Specialists providing inaccurate information to a complainant. In another case, an employee was sustained for untruthfulness based on statements made during her IAD interview. In two cases, the employees were arrested for criminal activity, and were sustained for the corresponding allegations in the IA investigations. Another case involved the failure to accept or refer a complaint. In another case, an officer was sustained for failing to activate his PDRD as required. One case involved the unintentional discharge of a service pistol. Nine cases involved preventable motor vehicle accidents.

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

During March and April 2017, OPD held three *Skelly* hearings for IAD cases involving employees with sustained findings in which discipline of a one-day suspension or greater was recommended. We reviewed the *Skelly* reports, and found that they contained adequate justification for the results documented. In one case, a civilian Police Records Specialist was sustained for failing to provide a citizen with proper information. The proposed one-day suspension was upheld, with the concurrence of the Chief of Police. In another case, an officer was sustained for misuse of the Consolidated Records Information Management System (CRIMS). The proposed 15-day suspension was upheld, with the concurrence of the Chief. In

the last case, involving a sustained allegation of an officer accessing and sharing privileged information, the proposed 15-day suspension was reduced to 10 days, again with the concurrence of the Chief of Police. The reports were generally well-written and followed the established format.

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

OPD remains in partial compliance with Task 45.

## Conclusion

As noted above, in early May, the new risk management database, PRIME, went online. To the extent possible, the Department seemed well prepared for this transition. We have noted the extensive work on the software system with its vendor. The Department also provided broad training, including training the trainers – including various "super-users" responsible for overseeing their categories of data and training others throughout the Department. On top of that, immediately following PRIME's implementation, staff overseeing PRIME built in a lengthy period of continuous, around-the-clock technical assistance for any Department personnel experiencing problems related to the new system.

As the poet Robert Burns so clearly warned, however, "The best laid plans…often go awry." What "awry" has meant in this case has been the periodic suspension of the system and the requirement that reports be kept in paper form until they could be entered manually into PRIME. What began as a fairly modest set of approximately 200 identified, but mostly minor, system errors quickly grew to about 600 – including some of which required the temporary shutdowns.

Certainly, in a project of the size and scope of PRIME, one should expect at least some technological glitches, and the client and vendor should be well-prepared for a process of discovering and fixing errors. The level of problems experienced with PRIME, however, seemed quite high and led to frustration across the Department and particularly with key OPD staff overseeing the new system. Addressing this required growing but apparently not fully anticipated assistance from the vendor. The implementation process from the vendor though seemed hampered through the involvement of programming teams that did not appear to fully understand policing or early intervention systems – and were not dedicated or stable over time.

Of course, our principal argument all along had been that OPD was expending significant time and resources on the *technology* to the detriment of the *use* of the system. But as the technological requirements are inevitably met, we remain concerned over the limited planning that has considered the use of the system for managing risk. An issue concerns us at this point involves the administrative structure around PRIME and the changes that will occur once implementation problems are resolved. Although the individual databases gain some autonomy in PRIME compared with PAS, there will remain a need for high-level planning and management addressing risk identification and reduction. Analysis for risk management may suffer if there is not some high level management dedicated to PRIME. We are pleased to learn that Chief Kirkpatrick shares our interest in this area.

In the end, we recognize that beyond the technology problems, how the system will be used to help manage the Department will be the most important issue. Strong advocates and staff competent with data and analysis will find value in data for risk management. The best use of PRIME will require a stretch in thinking by command staff. The groundwork for that is being laid by the Chief and with the assistance of the Stanford University team. Continuing that stretch may mean that the technology problems cannot make vulnerable all of recent gains in risk management. We think the important question now is the same as it has always been: How will PRIME be used?

Chief (Ret.) Robert S. Warshaw

*Monitor*