Fifty-First Report
of the Independent Monitor
for the Oakland Police Department

Introduction

This is our fifty-first 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 William H. Orrick. 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 February 2018; and describes our recent assessments of NSA Tasks 34, 41, and 45.[1] As we have noted previously, following the Court's Order of May 21, 2015, in our monthly reports, we 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.

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.

---

[1] Our Team did not conduct a site visit to Oakland in January 2018.

Within the last several months, we have provided technical assistance to OPD officials in the areas of IAD investigation quality (Task 5); stop data and related issues (Task 34); risk management and the ongoing maintenance issues of the Performance Reporting Information Metrics Environment (PRIME) (Task 41); and several Department policies and procedures, including policies related to PRIME, officer discipline, handcuffing, and the use of electronic control weapons.

As noted 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 are reviewing revisions of all NSA-related polices.

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. We review OIG's now-quarterly 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.

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 originally published on February 17, 2006, and revised on December 21, 2015.

Commentary:

Force Review Boards, consisting of three command-level staff, carefully examine the deployment and application investigation of Level 2 uses of force.[2] OPD achieved compliance with this Task during the nineteenth reporting period; however, given the serious nature of officers' use of force, we continue to monitor and periodically report on compliance with this Task, including attendance at FRBs when conducted during our site visits.

The FRB requirements continue to be a vital component a vital component of OPD's effort to limit officers' use of force; OPD has experienced a continued decline in officers' use of force by 50% during the period 2014-2017. According to OPD, the comparative data for 2016-17 is indicative of the Department's continued efforts; officers' overall use of force declined from 793 in 2016 to 507 in 2017, a decrease of 36%. However, we note Level 2 force decreased by two, from 26 in 2016 to 24 in 2017, which compels continued vigilance in this area. The decline appears to continue in 2018 with the year to date at a total of 23, compared to the same time period in 2017 at 40. This decline in the use of force affects all population groups.

OPD remains in compliance with this Task.

---

[2] According to OPD, 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."

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 on February 17, 2006, and revised on December 21, 2015.

Commentary:

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, are convened as required and consistent with policy. The EFRB conducts thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths.[3] We closely monitor this process through a review of board reports and our observations of EFRB proceedings conducted during our site visits.

---

[3] According to OPD, Level 1 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."

OPD achieved compliance with this Task during the nineteenth reporting period; however, given the seriousness of any use of force or an in-custody death, we continue to monitor and report on this Task and have observed continued progress. Officer-involved shooting events alone averaged nine each year during the period 2000-2002; however, these events are now rare. For example, OPD had recorded no officer-involved shooting events in 2016 and one in 2017.

The 2017 event was subjected to thorough and professionally conducted EFRB during our December 2017 site visit. The EFRB process includes presentations of the investigations and findings of both the Criminal Investigation Division (CID) and the Internal Affairs Division (IAD). We concurred with the EFRB's findings that the uses of force in question were compliant with legal and policy requirements.

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:

While OPD continues to make progress, the Department has not yet achieved full compliance with the requirements of this Task. As previously reported, OPD collects and stores data described in Task 34.1 (a.-g.). As of April 2013, we have found the available data to be sufficiently detailed, accurate, and voluminous for OPD to determine the lawful basis for the stops and further to identify indicators of disparate treatment. OPD continues to assess and revise its data collection and analyses processes to ensure the data's accuracy; the Department also continues to improve its processes to address data indicators of disparate treatment among the identified population groups.

OPD's monthly Risk Management Meetings (RMMs) are integral to this effort; each month, the meeting is devoted to a particular geographic Area. As part of the review of stop data and other risk factors, OPD officials compile stop data in illustrative tables that allow commanders to ascertain whether data indicates disparate treatment among the population groups – i.e., whether there are racial data disparities in stop, search, recovery rate, and other data.

As noted previously, OPD has engaged Dr. Jennifer Eberhardt of Stanford University to study the impact of race on and within OPD operations. Dr. Eberhardt and her associates confer and work with OPD in various consulting and advisory capacities.

The illustrative stop data tables originally contained basic, comparative, and understandable data. However, to more comprehensively illustrate stop data for command analyses, OPD sought the assistance of Dr. Eberhardt and her associates to assist in revising and/or developing new more illustrative tables. Though this effort is commendable, the illustrative data became increasingly more complex – to the point where focus on assessing the data was diverted to understanding the illustrations.

During our site visit earlier this month, at OPD's request, we provided technical assistance to the Department in this area. OPD and Stanford presented us with the latest iteration of illustrative tables, which more clearly and informative illustrate comparative stop data for review.

To improve the process by allowing commanders to examine more current information, commencing in March, OPD will review comparative stop data from three of the Areas each month. This will result in a timelier review and a more expeditious analysis of data to identify indicators of disparate treatment to determine its presence or absence.

OPD has made some recent, modest improvements – including in handcuffing disparities that were noted in an earlier Stanford study. Following these findings, OPD revised its handcuffing policy. A subsequent review of handcuffing rates for the period November 2016-August 2017 found the overall handcuffing rate had fallen; specifically, the rate for handcuffing African Americans had fallen from 30% to 24%; and for whites, from 12% to 10%. We will continue to monitor OPD's assessment of this procedure and identification of any areas of concern.

OPD has also placed increased emphasis on the importance of appropriately using the parole/probation search clause as the basis for searching individuals, which statistically involve a high percentage of African Americans. When searching individuals on parole or probation, officers are now required to employ additional reasoning – which, combined with "procedural justice" concepts, are designed to ensure better outcomes. As a result, we see fewer instances of officers overreaching their authority relevant to individuals on parole or probation.

In recognition of the likelihood, based on crime data, of a racial imbalance among the population groups and its consequential effect on overall stop data, OPD attempts to further address data disparities by placing considerable emphasis on intelligence-led policing and a precision-based policing model. An "intelligence-led" stop is a stop in which officers possess knowledge that can be linked to an articulable source of criminal intelligence, which then leads to the initiation of a stop. "Precision-based policing" is the design, communications and evaluation of strategies and tactics that serve to solve public safety problems and reduce crime while simultaneously reducing the "footprint" the Department has on the community.

This is an additional effort to limit unproductive – and sometimes disparate – stops and to decrease the overall policing footprint upon the community. The implementation of these operational initiatives has required considerable training of supervisors and officers, but is a worthwhile effort to reduce the likelihood of unnecessary police interactions with community members and to improve those that are necessary.

Presently, intelligence-led stops constitute approximately 30% of all stops. We anticipate that ongoing data analyses will provide data regarding stops classified as intelligence-led for comparison purposes and the identification of indicators of bias and/or disparate treatment among the population groups. Combined with the precision-based policing model, the policing footprint within the community has been reduced; recent reported data indicating a decrease of 3,040 stops, or 21%, during the period of December 2016-November 2017. More specifically, this has resulted in a decrease of 1,161 African Americans stops during the period. The lessened impact on African Americans is indicative of some progress.

OPD incorporated the adoption of the 50 Eberhardt recommendations as a component of its compliance with Task 34. Currently, OPD reports compliance with 27 of the recommendations. We concur with this assessment. OPD is regularly conferring Dr. Eberhardt on compliance issues in its effort to achieve full operational compliance.

OPD continues to make progress with Task 34. Our periodic review of stop data reports has found that, despite a significantly higher number of stops involving African Americans, the episodes are better documented and reflect more sufficient bases for the stops. The introduction of the intelligence-based stop and precision-based policing model has decreased the footprint of stops across racial lines. However, the racial variances in the data are not solely a result of police initiatives, and may be caused by sociological variances outside of police control.

In addition, our periodic review of searches has found a high degree of reasonable suspicion or probable cause depending on the type of search. A review of the stop data has also found an increasing recovery rate, which is the test to determine the validity of the search, from below 10% to often exceeding 50%. Nevertheless, there is more to be accomplished.

The monthly RMM, while including a review of varied stop data, which is illustrated in a series of tables, have been revised to illustrate data disparities to allow for in-depth analysis to ascertain whether the data disparities are or are not based on racial motivation. This move should address our previous concerns regarding the complexity of the tables and motivate OPD officials to address our continuing concerns regarding the requirement to closely examine the stop data for disparities indicative of bias and/or disparate treatment – within the Area under review, within squads, or by individual officers. We have previously noted OPD's examination of outlier officers with respect to the use of force and other factors; however, we have been critical regarding the absence of a similar review during these meetings of squads or officers whose data is indicative of bias and/or disparate treatment. We grant that the suggested review or deep-dive into the data may explain and/or resolve data disparities; however, it may also find the need for squad or individual intervention and corrective measures at the squad or individual officer levels. We have repeatedly recommended the adoption of a formal process for doing so, first by the presentation of relevant data during the RMM; with the development of a process for conducting the necessary deep-dive to verify or dispel bias or disparate treatment data; and finally, with the development of a consistent process for intervention as may be deemed appropriate. We are mindful that OPD has represented ongoing discussions between commanders and officers related to stop data disparities, we have been provided with no documentation of such discussions or findings regarding data disparities.

We acknowledge OPD's decision to include the adoption of the 50 Stanford report recommendations intended to change the Department's culture and strengthen ties with the communities it serves part of its compliance effort. As indicated above, 27 of the 50 recommendations are complete. We will regularly report on the status and progress with the adoption of the remaining recommendations.

While OPD continues to advance its efforts to comply with requirements of this Task; we have previously reported that the below-described specific issues remain incomplete; accordingly, we provide the following assessment, and will continue to monitor OPD's progress on these issues until the Department achieves full compliance.

Further, we will look for a clear and unambiguous commitment to the provisions of this Task as a means to ensure that the protocols that have been undertaken will be institutionalized and remain an integral, sustainable practice.

- 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;

- Further enhancement of the revised Risk Management Meeting process, including adjustments to illustrative charts and tables to more effectively identify indicators of bias and/or disparate treatment. Adjustments have been made to illustrative charts to comply with this requirement. We will assess the effectiveness of these adjustments during forthcoming site visits;

- Implementation of processes to provide for a more expeditious compilation of stop data prior to, during, and following Risk Management Meetings. The City anticipates that this will be achieved with implementation of PRIME 2.0, though at this time it is unclear when that version of the risk management system will be established;

- Assessment and determination whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. This requirement has been substantially accomplished with a revised process providing for monthly review of three Areas, thus reducing the intervals between assessments from six to three months.

- Implementation of the applicable 50 recommendations contained in the 2016 Stanford University report.

Task 41: Use of Personnel Assessment System (PAS) and Risk Management

Requirements:

Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole.

The policy shall include the following elements:

1. *The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*

2. *The Department shall retain all PAS data for at least five (5) years.*

3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*

4. *PAS, the PAS data, and reports are confidential and not public information.*

5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*

6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*

7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's*

immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

   Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.

   Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less

frequently than every three (3) months.

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*

10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*

11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*

13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

14. *The member/employee's designated commander/manager shall schedule a PAS*

Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*

16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*

17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*

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

(Negotiated Settlement Agreement VII. B.)

Relevant Policy:

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

Commentary:

The data-based assessment of officer risk-related behavior, the identification of inappropriate levels of risk, and the early intervention to reduce unacceptable levels of risk are the three key components of NSA Tasks 40 and 41. The NSA describes the required data and organizational structures to support these three core requirements. OPD has also made additions to its risk management process by incorporating monthly Risk Management Meetings (as noted above, in Task 34); and through efforts to improve stop data collection and analysis.

In the midst of OPD's extensive efforts to improve and reengineer the risk management database by implementing PRIME – Performance Reporting Information Metrics Environment – nine months ago, there continues to be cause for concern over the Department's compliance with these core risk management requirements. For example, problems with the data have slowed the review process by preventing automated exclusion of cases that do not require further consideration due to already current reviews. The process has also been slowed by problems with peer group comparisons that would trigger or exclude some reviews. These issues have also increased the burden on personnel responsible for PAS risk management reviews and reduced their number of reviews.

OPD and its vendor continue to discover significant problems with PRIME even as some stubborn problems – such as exclusion criteria for reviews – defy solution and while the Department continues to make progress on others. For example, it was discovered recently, and largely by accident, that for nearly six weeks beginning in early November, arrest data were not being captured in PRIME. The event led to a still more important revelation: that the system could not, on its own, identify such gaps in the data or sound an alarm in the event of major discrepancies. That is a problem complicated by the fact that the singular PRIME database replaced multiple files that could be and were easily audited by the separate divisions within OPD, such as the Internal Affairs Division, where the data were collected.

During our site visit earlier this month, it was apparent that, though problems with PRIME persist, OPD is taking steps to stabilize and improve the system eventually. Advances are being made in the technology and in the operation of the risk management database. There is broad recognition in OPD and in the City IT Department that a process of continuing to respond to emerging problems with short-term fixes is inadequate, and more systematic improvements are needed.

Several critically important steps are being taken to address the issues regarding PRIME. Among them, the City IT Department is working to hire two full-time non-sworn staff members who will work at the Police Department to manage the PRIME system.

City IT also reported that it is close to contracting with a project manager for the re-engineering of the system. As discussed in our last report, the City solicited proposals for that effort. The City has now selected a new vendor, and is initiating the necessary contract approvals. Our recent site visit also included extensive discussions of remedial approaches to discover and address issues that might arise in the system. Currently, there are only limited means of discovering problems such as missing data. The revised system will have a system of automatic programmed audit protocols to address this shortcoming.

There was also extended discussion of problems with the basic architecture of the existing version of PRIME. That version adopted a complex structure in which multiple tasks were performed together, making the process unnecessarily complex and subject to errors. The redesigned architecture will follow a more conventional approach that is a well-proven, common structure for similar computing tasks.

Along with that basic rebuild, work is simultaneously occurring in the long-planned addition of key core data elements. These include body-worn camera video, personnel information, and the inclusion of stop data and training data. Additionally, the City is completing some work on the creation of dashboards for OPD. Those dashboards will provide continued access to key data and will help manage workflow for the risk management system.

The advances in database operations and programming that are noted above reflect a more coordinated effort among City agencies. Along with those technological improvements, there has also been important work on improving the accessibility and usefulness of data presentations used for decision-making and policy development. As noted above, during our recent site visit, at the request of the Department, we reviewed tables and charts that have been redesigned for the monthly Risk Management Meetings. These data displays attempt to simplify the presentations without losing important details. If implemented properly, they will help lay a foundation for additional inquiries when significant issues are detected, particularly with regard to stop data; and will eventually contribute to the sustainable use of data for management of the Department. The presentations reflect the Chief's stated commitment to Constitutional policing and specifically to reducing the "footprint," or the extent to which intrusive actions occur but do not significantly contribute to crime reduction.

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). Several of these policies are currently being revised.

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 15 cases that contained at least one sustained finding that were approved in October and November 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 15 cases with sustained findings that were approved during October and November 2017. Two cases involved driving under the influence – one involving a sworn officer and the other a civilian employee. One case involved the failure to care for an arrestee's property. In another case, a dispatcher was sustained for failing to advise the responding officers that the complainant wished to be contacted. In another case, an officer was sustained for improperly providing a firearm to an acquaintance and then obstructing the investigation into his actions. Termination was recommended in this case. Ten cases involved preventable motor vehicle accidents.

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

During October and November 2017, OPD did not hold any *Skelly* hearings. Nor did OPD receive any arbitration decisions.

We reviewed the training records that OPD provided, and confirmed that all *Skelly* hearing officers received the approved *Skelly* Officer Training in January 2016. Additionally, all active *Skelly* officers received refresher training on April 26, 2017. No additional training was provided during this reporting period.

OPD remains in partial compliance with Task 45.

Conclusion

OPD continues to make progress implementing the recommendations in the Swanson-Barron report, which detailed the Court-appointed independent investigation of the Department's initial investigation of Internal Affairs Division case 15-0771.

OPD has also made progress on the commitments it made as part of its own Critical Incident Review – focusing on the "cultural transformation" of the Department, according to Chief Kirkpatrick – and in the October 2, 2017 Case Management Conference in Court. As noted previously, some of these commitments overlap with the continued collaboration between OPD and Dr. Jennifer Eberhardt and the Stanford University team to address disparate treatment and better understand bias and its effects on the community. We will continue to follow up on any outstanding issues during our upcoming site visits.

As described above, we continue to note serious concerns with the numerous problems related to PRIME. As we have noted previously, these issues have created substantial burdens for both the Police Department and the City's Information Technology Department – after years of work and immeasurable financial and other City resources have been devoted to this effort. After several months of working with the current vendor to improve what was developed, the City and Police Department decided to abandon the old system – and they selected a vendor who will be responsible for reengineering PRIME. The current system's architecture has serious flaws and is, according to the City's Information Technology Division, unnecessarily complex.

It is crucial that OPD learn from its past missteps and that the new system contain more reliable methods for discovering and addressing issues or discrepancies that might arise with the data.

Chief (Ret.) Robert S. Warshaw

Monitor