

First Progress Report of the Compliance Director for the Oakland Police Department

April 18, 2014

Introduction

This is the first progress report issued in my capacity as both Monitor and Compliance Director of 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. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). With the assistance of the Monitoring Team, I determine the status of OPD's compliance with the requirements of the 22 active NSA Tasks. Our quarterly assessments have found that while the Department has achieved compliance with several requirements, in other areas, progress has stagnated.

In December 2012, as result of the City's slow progress with the NSA reforms, and following Court-ordered negotiations among the Parties, Judge Henderson established a Compliance Director position for the Department. The Court's Order of December 12, 2012 outlined the Compliance Director's broad powers and responsibilities to "bring...[OPD] into sustainable compliance with the NSA and AMOU."¹ In March 2013, the Court appointed Commissioner Thomas C. Frazier to this position. Commissioner Frazier, along with his team, worked in this capacity for approximately one year until February 12, 2014, when Judge Henderson issued an Order finding that "it would be more appropriate and effective to now concentrate the powers of the Compliance Director and Monitor into one position."²

Wearing two hats – as Monitor and Compliance Director – is an extraordinary charge. It affords me many authorities: to determine whether the Department has achieved compliance with the NSA; and also to provide certain direction to the agency in its efforts to attain compliance.

As Monitor, I continue to oversee the Monitoring Team's work as we assess the Department's progress. The Monitoring Team makes quarterly visits to Oakland to meet with Department personnel; observe Departmental practices; review Department policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties – and, on a quarterly basis, the Court – with information about the status of OPD's compliance.

¹ United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Re: Compliance Director, dated December 12, 2012. The AMOU, or Amended Memorandum of Understanding Re: Post NSA Terms and Conditions Allowing For the Resolution of Plaintiffs' Claims for Injunctive Relief and For Dismissal of The Action, was approved by the Court on June 27, 2011.

² United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Modifying Compliance Oversight Model, dated February 12, 2014.

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As Compliance Director, I hold more direct authority over the Department's NSA-related decisions. I, with the assistance of a seasoned associate, serve as an agent of the Court, and work closely with the Department on a sustained basis. In my reports as Compliance Director, I intend to offer straightforward commentary that does not merely reiterate the contents of the Monitoring Team's quarterly reports – which continue to serve as the official record of OPD's compliance status – but speaks more to Departmental leadership and the sustainability of the reforms. This style is consistent with my approach to this new role, which I discuss further below.

As of the last quarterly monitoring report (issued in January 2014), the Department was in full compliance with 14 of the 22 Tasks, and in partial compliance with eight additional Tasks. In this report, I will discuss the status of those eight non-compliant Tasks and what the Department is doing currently to attain compliance with those requirements.

Philosophy and Approach

As this is my first report in this new capacity, I would like to describe my approach to this work. For a few years, and in my capacity as Monitor, Deputy Monitor Chief Charles Reynolds and I have provided technical assistance to OPD, which we believe has helped the Department to enact many essential changes to its policies and practices. My new appointment as Compliance Director expands upon these efforts.

My primary focus is, undeniably, for the Department to achieve and sustain compliance with the reforms outlined in the NSA. As directed by the Court, I “have the power to review, investigate, and take corrective action regarding OPD policies, procedures, and practices that are related to the objectives of the NSA...even if such policies, procedures, or practices do not fall squarely within any specific NSA task.”³ I shall become involved in all matters that directly relate to the NSA – as well as issues in which there is a reasonable nexus to the NSA or those that concern civil rights, which I view as central to the NSA.

Still, I have informed Sean Whent, the Interim Chief of Police, and his Executive Team that I do not intend to be unnecessarily prescriptive, if it can be avoided – but instead plan to work closely with the Chief and his Executive Team to build capacity and foster leadership within the Department. I believe that the Chief should manage the Department. I also believe that with appropriate guidance, support, and resources, the Oakland Police Department can become a robust, effective, and modern agency of law enforcement professionals who enforce the law while respecting the civil and Constitutional rights of the citizens of Oakland. The diverse and vibrant city of Oakland – with its remarkable strengths and tremendous challenges – deserves a police department that is responsive, just, competent, and innovative.

³ United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Re: Compliance Director, dated December 12, 2012.

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Discussion of Tasks

The Monitoring Team's assessments have shown that OPD has not yet achieved – or has had difficulty maintaining – compliance with the following eight Tasks:

- Task 20, *Span of Control for Supervisors*
- Task 26, *Force Review Board (FRB)*
- Task 30, *Executive Force Review Board (EFRB)*
- Task 33, *Reporting Misconduct*
- Task 34, *Vehicle Stops, Field Investigation, and Detentions*
- Task 37, *Internal Investigations - Retaliation Against Witnesses*
- Task 40, *Personnel Assessment System (PAS) – Purpose*
- Task 41, *Use of Personnel Assessment System (PAS)*

Below I will discuss recent efforts by OPD to achieve compliance with these Tasks.

Task 20, Span of Control for Supervisors

OPD has been in partial compliance with Task 20 since the beginning of our tenure due primarily to its non-compliance with the subtasks related to consistency of supervision (Task 20.2) and the actual ratio of supervisors to officers (Task 20.3). To achieve compliance with Task 20.2, OPD must address its low staffing levels by, among other strategies, promoting officers to ensure that there are “enough” sergeants. I have conferred with Mayor Quan, the City Administrator, and the Chief regarding immediately filling patrol sergeant vacancies to help the Department come into compliance with Task 20.2. OPD promoted 23 sergeants in January, and reports that it plans to promote two others after two additional expected vacancies. According to the Department, there are currently three sergeants assigned for every two field-based squads. The Department also reports that it is working to improve the way it schedules and manages supervisors' leave, so that squads are supervised by either primary or relief sergeants at all times. It remains to be seen how these strategies will affect compliance.

In the next few weeks, I will convene a meeting of Departmental officials and the Plaintiffs' attorneys to discuss and evaluate the relief supervision system that has now been in place for over one year and consider strategies for bringing the Department into compliance with Task 20.

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Task 26, Force Review Board (FRB); and Task 30, Executive Force Review Board (EFRB)

OPD has been in partial compliance with Tasks 26 and 30 during many different reporting periods. The Department is currently revising relevant policy, Departmental General Order K-4.1, *Use of Force Boards*. This revised policy will require the board proceedings to be more formal, efficient, and analytical.

In the next few weeks, I will work with the Department to refine its policy and training to ensure that in uses of force, OPD assesses the initial reason for the encounter, ensuring that the stop/detention/search was justified under the Constitution. This includes encounters with subjects on probation and parole.

Task 33, Reporting Misconduct

OPD has been in partial compliance with Task 33 for the last four reporting periods due to the Department's failure of its officers to report misconduct during the Occupy Oakland events. The Department reports that it is increasingly holding individuals accountable for failing to report misconduct or activate their Personal Data Recording Devices (PDRDs) as required. To that end, OPD recently published a new PDRD policy and revised its Discipline Matrix to include enhanced penalties for PDRD violations.

In the next few weeks, I will discuss with the Chief and his Executive Team ways in which the Department can increasingly hold individuals accountable for failing to report misconduct.

Task 34, Vehicle Stops, Field Investigation, and Detentions

OPD has been in partial compliance with Task 34 since the fourth reporting period. Last month, the Department publicly released its stop data analysis report. The City and the Department are to be commended for issuing to the public a report that captures important data that shall be assessed on a continuing basis. Notwithstanding what could be varied interpretations of the data, its very dissemination is an important step in the right direction. OPD is also working to finalize a contract with Professor Jennifer Eberhardt of Stanford University to assist the Department with its stop data analysis.

In the next few weeks, I will continue to work with the Department to refine the stop data content of its monthly Risk Management Meetings. I am especially interested in assisting the Department to improve the training of its members on the purpose of collecting and analyzing stop data.

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Task 37, Internal Investigations – Retaliation Against Witnesses

OPD has been in partial compliance with Task 37 for the last two reporting periods due to the Department's failure to respond fully to the most serious allegation of retaliation observed by the Monitoring Team. OPD reports that it aggressively scrutinizes and investigates allegations of retaliation. The Department is providing training to new police officers and employees to, according to OPD, emphasize a culture of accountability and the importance of reporting misconduct.

In the next few weeks, I will review OPD's training on these critical matters.

Task 40, Personnel Assessment System (PAS) – Purpose; and Task 41, Use of Personnel Assessment System (PAS)

OPD has not been in compliance with Tasks 40 and 41 for several reporting periods. The Department is currently reviewing a proposal from Microsoft to complete IPAS2 work, as the City seeks a vendor for the project. OPD also reports that it recently completed an upgrade that allows arrest data from Alameda County to automatically populate the Records Management System (RMS) without requiring manual data entry.

In addition, a recent supplementary review by the Monitoring Team revealed that a considerable number of the officers who were already on PAS Supervisory Monitoring or Intervention continued to meet thresholds for either the same or different issues for which they were assigned to Supervisory Monitoring or Intervention. This pattern is not consistent with expectations of effective risk management. Since the Department has identified patterns of unacceptably risky behavior, and it has implemented a system for intervention to reduce risk, the persistence of such patterns should trigger additional scrutiny and alternative intervention efforts.

In the next few weeks, I will work with the Department to review its system for reducing risk to address such problematic patterns.

Discussion of Matters Outlined in December 12, 2012 Court Order

The Court's Order of December 12, 2012 grants the Compliance Director the authority to assist OPD to "address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits."⁴ The Order describes such matters as "key to driving the sustained cultural change envisioned by the parties when agreeing to the NSA and AMOU." The Order also states that the Department should develop "a

⁴ United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Re: Compliance Director, dated December 12, 2012.

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personnel assessment system ('IPAS') that provides a sustainable early-warning system that will mitigate risk by identifying problems and trends at an early stage."

In the next few weeks, I will engage City and Department officials regarding how best to measure OPD's progress in these critical areas. I will discuss these matters further in future progress reports.

Other Recent Activities of Compliance Director

Beyond what is noted above, I have been involved in many activities as Compliance Director since the Court issued its Order on February 12, 2014, including:

- Discussing with the Chief and his Executive Team the need to reassess personnel assignments to determine if the Department is using its "best" people in the most effective ways. Following this discussion, the Chief and his Executive Team looked at supervisors' and commanders' patterns of decision-making in discipline recommendations, Internal Affairs Division (IAD) case dispositions, PAS review recommendations, and reviews of use of force investigations.
- Working with the Department on revisions to several NSA-related policies, including those relating to the Field Training Program (Task 42) and acting sergeants (Task 20).
- Observing OPD's monthly Risk Management Meetings and providing feedback to the Department on the structure of the meetings, and how the Department can most constructively follow up with Area Captains after the meetings.
- Providing guidance and technical assistance to Department officials in several other key areas.

In the next few weeks, beyond what I have listed above, I intend to work with the Department to:

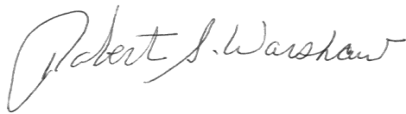
- Improve its relief system for Watch Commanders.
- Revise critical Departmental policies.

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Conclusion

It has been a productive two months since Judge Henderson's Order consolidated the roles of Monitor and Compliance Director, and there are reasons for cautious optimism that the Department can both comply and reform. One week ago, the largest Academy class in OPD's history brought 47 new officers to the Department. One other Academy is ongoing, and there are plans to begin another later this month. Citizen complaints are down 65% from the same quarter last year. OPD also reports that uses of force have declined and arrests have increased.

Despite these positive developments, there remains much uncertainty at OPD and within the City. The newly appointed City Administrator announced his impending departure just a few weeks after his appointment. A municipal election looms. I have conveyed to the Mayor and City Administrator the urgency of the appointment of a permanent chief, and the Mayor recently announced that she expects to appoint a permanent chief within the next few weeks. For nearly one full year, Interim Chief Sean Whent has competently served while the City's fragmentary attempts to select a permanent chief have consumed public resources and done little to nurture public confidence in the process. The effect of a long-term interim chief on a police department is damaging – and the uncertainty of the status of the Chief and his Executive Team impedes the Department's progress with the required and needed reforms to which the officers and community are so very entitled. The interim Chief and his team have worked well with the intervenor Oakland Police Officers' Association (OPOA), the Plaintiffs' attorneys, and the Monitoring Team. The City's Administration has worked well with me and the Monitoring Team. That said, it is the duty of the City's executives to once and for all give permanence to the leadership structure of the organization. Without such executive action, the Department's strides will either stagnate or regress – an intolerable circumstance for the men and women of the Department and the communities they serve.

A handwritten signature in cursive script, reading "Robert S. Warsaw". The signature is written in dark ink and is positioned above the printed name of the signatory.

Chief (Ret.) Robert S. Warsaw