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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

DELPHINE ALLEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	NO. 00-CV-04599-WHO
	)	
CITY OF OAKLAND, et al.,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California
Wednesday, September 4, 2024

TRANSCRIPT OF PROCEEDINGS

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Also Present:

OPOA PRESIDENT HUY NGUYEN
CHIEF FLOYD MITCHELL
ASSISTANT CHIEF JAMES BEERE
DEPUTY CHIEF ANGELICA MENDOZA
CHAIR MARSHA CARPENTER PETERSON
MAYOR SHENG THAO
CITY ADMINISTRATOR JESTIN JOHNSON
INSPECTOR GENERAL CHARLOTTE JONES
DIRECTOR MAC MUIR

Wednesday - September 4, 2024

3:35 p.m.

P R O C E E D I N G S

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THE COURTROOM DEPUTY: All rise. This Court is now in session, the Honorable William H. Orrick presiding.

THE COURT: Good afternoon, everybody.

ALL: Good afternoon, Your Honor.

THE COURT: Please be seated.

THE COURTROOM DEPUTY: We're here in Case Number 00-4599, Allen, et al. v. City of Oakland, et al.

Counsel, if you would please come forward and state your appearance for the record.

MR. CHANIN: James Chanin appearing for plaintiff, Your Honor.

MR. BURRIS: John Burris for the plaintiff. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. MARTIN: Good afternoon, Your Honor. Brigid Martin for defendant, City of Oakland. And I have with me here many folks, including Chief Assistant City Attorney Ryan Richardson, Mayor Sheng Thao, Police Chief Floyd Mitchell, Assistant Police Chief James Beere, Deputy Chief Angelica Mendoza, who I know have been identified as folks to speak today.

And then also here are the City Administrator, Jestin

1 Johnson; Police Commission Chair, Marsha Carpenter Peterson;
2 the Inspector General, Charlotte Jones; and the Community
3 Police Review Agency Director, Mac Muir.

4 **THE COURT:** Terrific. Thank you.

5 **MR. LUCIA:** Good afternoon, Your Honor. Rockne Lucia
6 for intervenor, Oakland Police Officers Association. And with
7 me today in the courtroom is the new POA President, Huy Nguyen.

8 **THE COURT:** Great.

9 All right. Good afternoon, everybody. And, Chief
10 Mitchell, would you mind coming up here? I have -- I want to
11 put you on the hot seat for a little bit.

12 So, hello. It's nice to meet you. And I -- the first
13 thing I want to do is thank you for your decision to become
14 Chief of the Oakland Police Department. The Department and the
15 City deserve an excellent leader. There are so many challenges
16 and so many opportunities to make a lasting, positive
17 difference for a great city. So I'm glad you're doing this.

18 **CHIEF MITCHELL:** Thank you, sir.

19 **THE COURT:** So you have served in, I guess, three
20 other agencies before coming to Oakland. Tell me what your
21 initial impressions are of OPD, what you like, and what you
22 think needs fixing.

23 **CHIEF MITCHELL:** Thank you, Your Honor.

24 And I've prepared some remarks because I didn't know if
25 you wanted me to have an opening statement or not. But I do --

1 I have prepared some remarks for that. And I could go into
2 that, and it would cover some of the questions --

3 **THE COURT:** Well, if you'd like to do that, feel free.

4 **CHIEF MITCHELL:** Yes, sir.

5 Again, good afternoon, Your Honor. And thank you for
6 giving me the opportunity to address the Court.

7 First and foremost, I want to start by expressing how
8 honored I am to have the opportunity to lead the members of the
9 Oakland Police Department and become an integral part of the
10 Oakland community. Throughout my short time here, I've been
11 asked in several different settings why I chose to become the
12 police chief of the Oakland Police Department. My decision to
13 move halfway across the country was an easy one. I enjoy
14 public service and I've dedicated by life to public service.

15 Oakland has a very diverse, rich, and oftentimes
16 controversial history as it relates to the relationship it has
17 between the Police Department and the community it serves. The
18 residents of Oakland are a very proud community, active, and
19 hardworking, no-nonsense, progressive city willing to take a
20 deeper look at the issues facing our society and work to
21 identify alternative paths forward. This aligns with who I am
22 as a person and as a law enforcement professional.

23 Oakland also understands it is willing to publicly call
24 out sometimes when things aren't working as they should be and
25 chart a new course, if necessary, to find a better way to

1 accomplish its mission or task at public safety. This, too,
2 aligns with my personal and professional approach to leadership
3 and policing.

4 Over the last four months, I've had the opportunity to
5 interact with and observe a number of our sworn law enforcement
6 and non-sworn professional staff of the Police Department. I'd
7 like to truly emphasize to you and the members of the Oakland
8 community that we have some of the most professional, dedicated
9 human beings that I've ever come across, providing the highest
10 level of professional policing to its community.

11 I'm extremely proud to be leading the Department that has
12 done so much incredible and impactful work over this last
13 decade to advance policing and its relationship to the
14 community. Yet, we all know there's still much work to be
15 done.

16 During this last 18 months, there have been several
17 different failures on the part of the executive staff as it
18 relates to internal affairs investigations that could have been
19 avoided had we just followed the policy and procedures that
20 were in place; however, we know that it's not just written
21 policy or procedure.

22 It's about the true culture of the organization and making
23 it extremely clear from the top of the organization to the
24 newest employee on the Department what we expect out of our
25 organization; what will be tolerated and what will not be

1 tolerated by members on the job no matter what your rank is or
2 your position or authority within the organization.

3 It's about devoting the time and effort it takes to
4 develop the culture of constitutional, procedurally just, and
5 mirrors the expectation of not only its governing body, but its
6 community. It's about treating people with dignity and respect
7 for me.

8 It's about my newly established executive team setting the
9 tone of organizational professionalism and accountability and
10 modeling the behavior and organizational culture that we expect
11 from each member of the Department to uphold. It's about being
12 firm but fair when it comes to upholding -- or holding -- our
13 members accountable to the highest standard of professional
14 policing and providing more than just what's required when it
15 comes to the continued education and training to those members.

16 It's not about checking a box to get out of the negotiated
17 settlement agreement or court-mandated oversight. It's about
18 true organizational change of the Oakland Police Department and
19 how we view our responsibility and relationship with our
20 community.

21 My priorities for the Oakland Police Department are as
22 follows: Provide the best level of public safety to the
23 residents of Oakland that we can, based on the resources that
24 we have. This includes working with all our judicial partners
25 to prevent, fight, and ultimately bring those accountable that

1 cause harm to our community to justice. It's also -- it also
2 includes working with our counsel, our commission, our civilian
3 review agency to develop a long-term strategic plan to address
4 the issues facing Oakland and its Police Department.

5 It includes properly staffing and resourcing our
6 department to accomplish this mission of public safety. It's
7 creating a sustainable culture of organizational excellence,
8 accountability, and personal ownership in everything we do.
9 It's working to continue and improve community trust, ensure
10 sustained compliance with the NSA, which will ultimately lead
11 to the formal removal of Court oversight. This is something
12 that we cannot and will not rush through.

13 And, finally, it's caring for the health and mental
14 wellness of the members who choose to take on this very
15 difficult profession that we call "public safety." We must
16 never lose sight that the men and women of this Police
17 Department are the heart of the organization, and the overall
18 success of our public safety lies with them.

19 I am truly honored to be here in front of you and
20 represent this Police Department.

21 **THE COURT:** Well, thank you, Chief. That's a very
22 thoughtful and comprehensive statement.

23 So tell me, what has surprised you about the Police
24 Department since you've begun your work?

25 **CHIEF MITCHELL:** I would say one of the most important

1 things or interesting things that's surprised me is how much
2 work gets done with the amount of resources that we have.

3 Coming up through the Kansas City, Missouri Police
4 Department, a city very much like Oakland in size and in scope
5 when you look at population -- it's a city just under
6 500,000 -- it is staffed with a law enforcement staff of about
7 1,400 and 600 civilians. It has -- it faces the same crime
8 issues that we see here in Oakland. And when you look at the
9 Oakland Police Department, they're doing yeoman's work, the
10 same amount of work, with half of that.

11 So I've been very surprised and impressed by the
12 dedication that the men and women of this Department have
13 toward this city and its safety.

14 **THE COURT:** And so what are the biggest problems that
15 you've identified that you're hoping to be tackling?

16 **CHIEF MITCHELL:** Well, I'll keep my comments towards
17 the negotiated settlement agreement. And in my review of the
18 incidents that Attorney Martin has shared with me and I
19 reviewed, we have good policy. We have strong policy. And
20 policy is ever-evolving as we as a society evolves with new
21 technology and new equipment.

22 When I look at some of the failures that are going to be
23 identified and have been identified in the documents that have
24 been submitted to the Court, it -- to me, it's not following
25 policy is probably the key factor that I see. It's also not

1 creating an environment where people understand that they're
2 going to be held to a level of excellence. And I think that's
3 something that me and my new executive team, which all the
4 members are new, are going to continue to strive to work hard
5 for and continue to strive to make sure that we're taking
6 everything into account and looking at every facet of the
7 requirements of the NSA.

8 Because, again, I think it's important for us not to just
9 feel like we're going through this checklist to check the box,
10 but we're truly trying to affect the culture of the
11 organization so, long past me and any of the people on the
12 executive staff, the organization survives as opposed to just a
13 person surviving.

14 **THE COURT:** So let me tell you -- give you my
15 perspective about where things sit. Then I've got a couple
16 more questions for you. But I have -- I have sort of two
17 different -- and they're somewhat conflicting thoughts. First
18 of all, one is based on the public-facing achievements of the
19 Department and the other is the continued failure to be able to
20 police itself.

21 So, first, I think that the Department does not get the
22 credit it deserves for the implementation of numerous policies
23 and hard work that have radically reduced negative and
24 potentially dangerous, racially charged interactions with the
25 people that it serves. The most obvious metric is in traffic

1 stops initiated by officers, which is down 81 percent from 2015
2 for blacks and 73 percent city-wide. And the percentage of
3 blacks stopped has decreased from 62 percent to 41 percent
4 within that other reduction.

5 And this has led to reductions in handcuffing and deadly
6 use of force, among other things. It's not to say that all is
7 well. Racial disparity and handcuffing still exists, for
8 example, and constitutional policing, as you just said,
9 requires continued progress and focus. But much has been
10 accomplished during this period while the overall crime
11 statistics show a real decline.

12 **CHIEF MITCHELL:** Yes.

13 **THE COURT:** So the basis, I think, of that progress
14 comes from several factors, including utilizing truly
15 intelligence-led stops; identifying officers and precincts and
16 risk management meetings that need additional training,
17 support, and attention; and training up and down the ranks on
18 racial bias and on successful ways to interact with the public.

19 I think this was implemented by following the NSA,
20 improving technology and data collection, analyzing the data to
21 identify places where disparities and problems exist. This
22 allowed interventions and evaluations of those interventions to
23 determine if they were successful. And I also believe that
24 increasing the diversity of the force by gender as well as race
25 and ethnicity has something to do with this progress.

1 So one thing I want to credit is the work of Dr. Eberhardt
2 and her team from Stanford. They've done an outstanding job
3 for the City. I hope OPD will continue to embrace them and
4 their work. I understand they want to set up a data use
5 agreement between Stanford and the City that would allow the
6 Stanford team to continue conducting novel research on police
7 community interactions without any financial cost to the City.
8 I hope that's going to be finalized quickly.

9 And I hope the City will continue to work with
10 Dr. Eberhardt, to the extent that she and the City can identify
11 additional projects to which they can commit time and
12 resources.

13 Because I think the public-facing work of the NSA and OPD
14 deserves so much credit, I don't understand why there has been
15 such a lack of commitment and failure of oversight to hold
16 members of OPD accountable for their violations of OPD rules
17 and the law. And this has been a leadership failure.

18 There are always going to be screw-ups. Officers will act
19 badly from time to time. But the failure to be honest and
20 transparent when addressing these problems is inexcusable.
21 It's what allowed the writers to flourish when this case began.
22 And the manner in which Sergeant Chung's and Officer Tran's
23 cases were handled is intolerable.

24 So the issue is, how do I address -- how do you address --
25 this leadership failure? I assume the goodwill of everybody

1 here and everybody's commitment to fully implement the NSA and
2 to end court oversight. The City pointed out that the policies
3 recently implemented as a result of the Clarence Dyer
4 investigation haven't gone into effect when the Tran fiasco
5 occurred.

6 So maybe those policies have efficacy. But I'm concerned
7 that OPD leadership just wanted to sweep these issues under the
8 rug because that's what they've always done, because they liked
9 or supported the officers involved, or because they wanted to
10 conceal this from the monitor and the Court in its assessment
11 of the NSA. And, of course, it's had the opposite effect.

12 And that's what always -- you know -- the concealment is
13 often a lot worse than the crime itself. And, apparently, some
14 of the chiefs say that they weren't aware of these issues. But
15 why not? It's this area, Chief, that compels continued court
16 oversight, which is well overdue to be terminated. And this is
17 a result that no one wants here.

18 So, tell me this, why doesn't Internal Affairs report
19 directly to you?

20 **CHIEF MITCHELL:** Well, I will tell you, jokingly, I've
21 had a conversation with my chief of staff. And I will tell
22 you, I believe I am the Chief of Police of the Internal Affairs
23 Unit. I spend a great deal of my time, in the short three
24 months that I've been here, going through Internal Affairs
25 cases. I spend a great deal of my time reading each and every

1 case that is presented to me.

2 I can't answer you as to why this failure occurred in the
3 past. I can't. And I'm not here to make any excuses for why
4 it occurred in the past. What I can tell you, though, is, at
5 this point, Internal Affairs has my undivided attention. I
6 have established, since I've gotten here in the last three and
7 a half months, an executive team that understands where it is.
8 And I am still learning. And I am learning from them.

9 I've assigned Assistant Chief Angela Mendoza as the
10 captain of the Bureau of Risk Management, which Internal
11 Affairs falls under her purview. I can tell you, I have
12 learned, in the short time that we have been together, is she
13 is a stickler for the rules. So I think it's going to be very
14 beneficial for our department as we move forward.

15 Again, I am still learning the processes, and she has
16 helped in guiding me through that, as well as Assistant Chief
17 Beere. These are two of the long-term commanders within this
18 department, but they're both new to their roles as Assistant
19 Chief and that of BRM -- well, I guess, Chief Mendoza's coming
20 back to that position.

21 So what I can tell you is Internal Affairs has my
22 undivided attention. And we will work to make sure that we not
23 only prove to this Court, but to the plaintiff's attorney and
24 our community as we move forward, that we are serious about
25 meeting all of the tasks lined out in the NSA.

1 **THE COURT:** So if this is the sticking point for
2 completing the compliance with the NSA, why don't they report
3 directly to you? Did they report -- in Kansas City, did
4 Internal Affairs report directly to the chief?

5 **CHIEF MITCHELL:** No, sir. I will tell you, I believe,
6 basically, sheer volume here -- with the responsibilities of
7 running an entire police department -- they didn't report
8 directly to the police chief. My duties take me across the
9 city. And that's why I believe it's important to have trust
10 that you have, you know, talented and competent command staff
11 in place to help you lead a department. And I think we can get
12 that done.

13 Again, I don't know why the failures were -- you know --
14 for the previous administration, but I believe the
15 organizational structure that I have in place will do that. I
16 will add this though: As I have spent some time here, the
17 resources of this department are woefully understaffed, period.
18 The way that we dole out investigations leads to too many chefs
19 in the kitchen. But we cannot change it right now based on the
20 staffing that we have.

21 We ship lower-level, division-level investigations out to
22 patrols for people to handle. And I would love to change that.
23 But we just do not have the capacity to change that right now.
24 So we spend the extra -- we spend extra time -- I spend extra
25 time looking at these cases, looking at it through my lens of

1 what did we miss.

2 Before this hearing, I had an IAD investigation in which
3 we went over four cases. That's how I spend every Wednesday
4 that I'm here, is going over IAD investigations. It is an
5 integral part of what I do weekly.

6 But there are some issues -- some fundamental resource
7 issues -- bodies. Pure and simple. You have to have the
8 bodies to do this if you want to change the way that you're
9 doing it that we cannot overcome yet. And based on our current
10 financial situation, I think it's going to be a while before we
11 are able to overcome that, in my view. This is the guy, who's
12 just been here four months, looking from the outside in.

13 **THE COURT:** Okay. And you agree with me -- and I
14 think you said it in your report -- that ensuring the integrity
15 of the work of IAD and of the work of the Department is pivotal
16 to making -- ensuring that the mission is taken care of;
17 correct?

18 **CHIEF MITCHELL:** Yes, sir.

19 **THE COURT:** So I have a second set of questions, and
20 they're only partly for you, which is where has the City been
21 in all of this? The City is the defendant here, not OPD. The
22 City -- if the City recognizes that this culture issue, this
23 problem with the OPD policing itself, exists, which it has for
24 most of the time that I've been a judge, the issue is, what has
25 it done to address it? That's a rhetorical question for you,

1 not so much for -- for the City.

2 But let me ask you, Chief, since you've been here, are
3 there regular scheduled meetings between you and
4 representatives of the Mayor's and the City Administrator's
5 office to review and finalize IAD -- Internal Affairs --
6 findings and disciplinary determinations?

7 **CHIEF MITCHELL:** We have -- I have a regular scheduled
8 meeting with the City Administrator -- City Administrator
9 Jestin Johnson. It's on our calendars that we meet every
10 Friday -- either in person or via Zoom or a conference call --
11 that we talk about different things that the City -- that I, as
12 a Police Chief, are facing as the department head of the Police
13 Department.

14 Administrator Johnson has been more than accommodating in
15 having conversations with me as I navigate my way through this
16 onboarding period. And I couldn't say anything -- nothing but
17 great things about his communication with me and his support of
18 me.

19 I also have these meetings set up with the Mayor. I have
20 actually two weekly meetings with the Mayor. One's to talk
21 about crime. And that's all we talk about during that meeting,
22 is crime. She, Assistant Chief Beere, and Chief of Education
23 Brooklyn Williams -- that's all we talk about, is crime. But I
24 have another meeting with the Mayor in which we talk about
25 specific issues as it relates to the Police Department and my

1 leadership and management of that Police Department.

2 As it relates to individual cases, we have not discussed
3 individual cases per se in regards to that. But they are on
4 notifications of our most critical cases -- our M4.1s -- that
5 they are notified that, hey, we have had a serious violation of
6 policy or allegation. This is the notification of that. And
7 we will keep you up to date as things progress should the need
8 come to inform you of an arrest or a high-publicity case.

9 So -- but, in regards to the day-to-day -- this specific
10 thing is happening and this is where we are -- we don't do that
11 on a day-to-day basis. I believe they entrust me to run the
12 Police Department and keep them abreast of anything that I
13 believe is important to them and that could affect the overall
14 health and welfare of the City and how its community views the
15 city leadership and the leadership of the Police Department.

16 **THE COURT:** So -- and I understand that philosophy.
17 It hasn't worked for the last -- for your predecessors. And it
18 can't be the responsibility -- it is the responsibility of the
19 City. The City's the defendant here. It is the responsibility
20 of OPD. It can't be the responsibility of the media or, you
21 know, some whistleblower somewhere or the monitor to figure out
22 what -- to identify the problems that exist. And there have
23 been -- these have been big problems. And they've been going
24 on for years. So it is concerning to me.

25 I'm trying to figure out how I can no longer see the Mayor

1 and you and particularly Mr. Chanin and Mr. Burris. I don't
2 want to see you anymore. I want this to be over. And -- but
3 it can't be over until there's full compliance. And that means
4 everybody living into their roles. And you're new, so you get
5 the benefit of not -- of not having the history. But you also
6 have the obligation, because you're the man on the hot seat
7 right now.

8 All right. So the issues involve -- that -- involving
9 Officer Tran require the Court to continue to extend the
10 oversight. I am -- I have a real question in my mind whether
11 it's necessary to mandate that Internal Affairs report directly
12 to you. Because, I think, with great respect to Chief
13 Mendoza -- Deputy Chief Mendoza -- maybe she and you
14 together -- but I want -- I don't want another chief to say,
15 gee, I didn't know about it. It wasn't my responsibility -- I
16 couldn't -- I have too many things to do. How could I possibly
17 know about this? You own the Department at this point. You --

18 **CHIEF MITCHELL:** Absolutely.

19 **THE COURT:** -- own the problems that exist. And I
20 want to make sure that that happens.

21 I'm also thinking about mandating some structure where the
22 City knows exactly what's going on with Internal Affairs. If
23 you want to get -- finish with the court oversight, that is the
24 issue that is -- that is stopping us. And there has to be
25 something that -- done that is different. And -- and I would

1 have -- I had a lot of faith in the ability of people who have
2 appeared before me, before, to stand up and deal with the
3 problems as they existed. It hasn't quite happened with
4 respect to the internal policing, and it needs to.

5 So, Chief, it's my hope and expectation that you're going
6 to be the Chief who's going to celebrate OPD's successful
7 conclusion of the Court's oversight with a commitment to
8 implementing the NSA, as you laid out in your speech, and to
9 holding OPD members accountable when it's necessary. Without
10 fear or favor, you will succeed.

11 And I want you to feel free to reach out to the Court any
12 time that you think there's something that I can do that will
13 make you successful in doing this. So, thank you.

14 **CHIEF MITCHELL:** Thank you, Your Honor. I appreciate
15 you.

16 **THE COURT:** You may leave the mic.

17 **CHIEF MITCHELL:** Thank you.

18 **THE COURT:** All right. So now I want to hear from the
19 plaintiffs, the Commission, OPOA, and the City in that order.
20 I want you to throw away whatever speeches you have to give me,
21 because I'm not interested in them. Thank you.

22 I've read everything that you've written. And I don't
23 want to hear about how we got here. Unless you fundamentally
24 disagree with what I've laid out so far, what I want you to do
25 is address the reporting and the meeting obligations that I was

1 just discussing and any forward-looking solutions to this
2 problem. I just don't want to hear or regurgitation of what
3 I've already read. I really want to focus on how we can move
4 this forward.

5 So, with that, Mr. Chanin.

6 **MR. CHANIN:** Good afternoon, Your Honor.

7 **THE COURT:** Good afternoon.

8 **MR. CHANIN:** I do have some ideas that are written
9 down, so I hope you'll indulge me.

10 **THE COURT:** I will indulge you to the extent that
11 you're talking about the forward-looking things. I just don't
12 want --

13 **MR. CHANIN:** I agree.

14 **THE COURT:** -- a spiel.

15 **MR. CHANIN:** I agree.

16 I just have a couple things I want to say about what
17 happened between you and the Chief. And -- so I agree with the
18 Chief that the Department has a woeful lack of resources. And
19 my wife was recently -- had her purse stolen while she was in
20 her car. And -- you know -- and I've been a victim of a crime
21 also. So it's not as though we don't understand what it's like
22 to live in Oakland, which I've done for 47 years.

23 But I also wrote down, if they had less scandals, they
24 would have more resources. Because they -- these scandals cost
25 money, time, effort. I mean, the investigations, the money to

1 hire outside investigators -- it's all -- could -- you could
2 pay for more police and, you know, a reduction in crime, which
3 we certainly need in Oakland.

4 I mean, I know that being a cop is a hard job. I've
5 represented police officers, so I understand. Maybe not as
6 much as they do, but pretty close. But you can't use the
7 problems we have as an excuse, even though it's a good excuse.
8 But it's still an excuse.

9 And that's -- that's what I have to say to the Chief. I'm
10 not saying that he's doing that, but he -- we can't do that.
11 We just can't. We have to -- with the resources we have, we
12 have to move forward.

13 So I'm requesting that defendants be ordered to come up
14 with a plan within 90 days to address the problems set forth in
15 the Tran case and the reports written by the Chief Investigator
16 of the CPRA and Ms. Callaghan. That they need to respond to
17 this in a public way, and we need to know that they are
18 responding. It's not enough to assure us or for the City
19 Attorney to assure us that this is happening. We need to see
20 it.

21 And we understand -- and I've signed endless
22 confidentiality agreements -- never been accused of violating
23 one. So I'm willing to do that if that's what it takes. I'm
24 not sure it does take that for many of the things that they
25 need to do, but I'm willing to do that.

1 This report would be written with input by the monitor,
2 the plaintiffs' attorneys, and the Police Commission. During
3 the time that's being -- the report is being written, I'm not
4 saying that that's a vacation. The parties should keep working
5 on solving the problems created by the Tran case. That
6 includes cooperating with all the parties in this room and
7 exchanging information.

8 The report would give an analysis of why the Tran case
9 happened and propose appropriate training and policies to make
10 sure this case did not happen in the future.

11 And maybe there are no policies. Maybe, as the Chief
12 says, they just ignored the policies. So, in that case, they
13 need to have training that somehow convinces these officers,
14 most of whom are command staff -- in fact, I haven't found a
15 single case in the whole Tran case where it's been done by an
16 officer. This is all sergeant and above. So they, of all
17 people, should know what the rules are. And the --

18 **THE COURT:** Right. Which is -- which is what makes me
19 wonder whether more plans and more policies are the solution to
20 the problem. And because we do have a lot of plans and
21 policies, and OPD has implemented state-of-the-art policies on
22 so many different issues, and it's great, and it's been very
23 effective on the public-facing issues. And -- and it hasn't
24 worked internally.

25 **MR. CHANIN:** Well, you're right. And I, frankly, want

1 to try one more time before I propose the receivership remedy,
2 which is, I think, something that should be on the table so
3 they understand how really, really important this is and how --
4 I've been here, in this case, for 25 years -- 24 years -- I
5 can't even believe that. I -- you know -- it's not acceptable
6 to me.

7 And I am sure -- I would love to not have to come here,
8 but I am going to come here, just like you are, until this is
9 solved, until there's compliance. I'm never going away unless
10 I'm dead or they're in compliance, which is preferable to being
11 dead, definitely.

12 **THE COURT:** You don't want to be incentivizing people,
13 Mr. Chanin. So --

14 **MR. CHANIN:** So I'm asking for -- I'm asking for a
15 further case management conference in January where there will
16 be specific reports to you, whether it's in report form or
17 testimony form, about what they have done to implement what
18 went wrong in the Tran case. I think a report is appropriate,
19 because it has to be identified, in writing, by the police so
20 we have them on record admitting the problem existed and, more
21 importantly, why it didn't work. Why all these wonderful
22 policies that I've worked years on -- that everyone in this
23 room has worked years on -- have failed. Why has that
24 happened? We need an answer. And we need it from the Police
25 Department and the City of Oakland.

1 It is important to remember that the Oakland Police
2 Department attained compliance with the consent of this Court,
3 the monitor, and us. The Oakland Police Department has proven
4 that compliance is not some sort of onerous, unattainable
5 dream.

6 In fact, if OPD had gone through the sustainability period
7 for one year with no major issues -- or even if they had major
8 issues -- if they had come in here and reported those issues to
9 the monitor, to the plaintiffs' attorneys, to the Police
10 Department who were not involved in this mess, then that would
11 be acceptable. But they haven't done that, and it's not
12 acceptable. It's simply not.

13 The latest case involving Officer Tran may be unique in
14 that only officers with ranks above sergeant were really
15 involved. In fact, no police officer was involved in the Tran
16 matter as far as I'm aware. They're doing a great job under
17 very difficult circumstances. All -- all -- they need to be in
18 charge, maybe, instead of their leaders, who are screwing this
19 up real bad. That's my opinion.

20 I believe -- if the -- if the Oakland Police Department
21 unreasonably delays what I hope is their very last chance, or
22 another major scandal goes unreported, the Court should
23 entertain placing the Oakland Police Department in
24 receivership. Receivership is a harsh remedy, but it has been
25 used before in the law enforcement setting.

1 In fact, it was used by Thelton Henderson in the prisons.
2 And he -- and the prisons were in receivership from 1995 to
3 2011. And maybe that's what it will take. We only didn't do
4 it last time because of the outrageous expense that Oakland was
5 going to be incumbered with to pay for the receivership. But
6 that's, at this point, become preferable to continuation of the
7 status quo. It just is unacceptable.

8 And so it's -- the City is moving backwards with
9 compliance. They really are. And despite everything that
10 we're all doing, the City is moving backwards. And this is the
11 last time that I personally am going to agree to some plan --
12 anything -- without urging the Court to put the Department in
13 full receivership.

14 **THE COURT:** Okay.

15 **MR. BURRIS:** If the Oakland Police Department were put
16 in receivership --

17 **THE COURT:** Well, let's not go to --

18 **MR. BURRIS:** Okay. Let's not go there.

19 **THE COURT:** Give me anything else that you think will
20 move this ball forward. I understand the threat that -- of
21 receivership that you're interested in --

22 **MR. BURRIS:** Well, let's start with candor by the City
23 Attorney moving forward; okay? Let's discuss how this thing
24 became visible to the parties, other than -- even including the
25 Police Department; okay? The City Attorney withheld this

1 information from the Police Department itself; from the Police
2 Commission, who still haven't seen --

3 **THE COURT:** You're not helping me on what I'm
4 interested in hearing, Mr. Chanin, which is how are we going to
5 solve the problem with respect to the police not policing
6 itself?

7 I don't want to hear about problems that you have with
8 individuals here, because I take the good-faith commitment of
9 everyone here to ensuring that the NSA is complied with. So I
10 don't want you to use this as a forum for attacking
11 individuals. That's just not -- I'm not interested in that.

12 **MR. BURRIS:** I'm not attacking individuals. I'm
13 attacking the fact that we would have not known about this case
14 if it weren't for the press. No one --

15 **THE COURT:** That is -- that point has been made in
16 your papers -- the point that I made in my statements. Is
17 there anything else that you would like to add?

18 **MR. CHANIN:** Yes. What's going to happen moving
19 forward to prevent this from happening again in the future?
20 That's what I would like to hear some discussion about.

21 We've seen this happen over and over and over again. It's
22 time for it to end. I don't care what you say or what they
23 decide, it has to end. This can't go on for -- year after year
24 after year.

25 **THE COURT:** You and I are -- and I think everybody

1 here -- is on that same page.

2 MR. CHANIN: I mean, John and I --

3 THE COURT: Is there anything else?

4 MR. CHANIN: John and I were talking the other day
5 about what this would be like in 50 years when I'm 127. And he
6 sort of --

7 MR. BURRIS: 125.

8 MR. CHANIN: 125. And he sort of imitated me hobbling
9 up to the Court and saying -- you know, probably being out of
10 it -- but just saying, "Objection, Your Honor, this can't go
11 on." We were laughing about it, but it's deadly serious.

12 THE COURT: It is deadly -- I could not agree with you
13 more. It is deadly serious. It's very important.

14 Is there anything else that you want to add?

15 MR. CHANIN: So I would like you to order that the
16 Police Commission -- who will speak later -- that they don't
17 even have access to these reports -- one of which was written
18 by their own employee -- I'd like you to order that they get to
19 see it just like you ordered that we got to see it. Because
20 people need to know what's happening in their Police
21 Department, especially a commission that was passed with 85 --
22 with 80 percent of the votes of the people of Oakland. They
23 still don't have the reports. They still are being kept in the
24 dark. And I would like you to do something about it. Thank
25 you.

1 **THE COURT:** Okay. Thank you, Mr. Chanin.

2 Mr. Burris?

3 **MR. BURRIS:** You know, I was listening to the Chief,
4 as I've listened to all the other chiefs down through the
5 years, all of whom, as the Court has said, and I also believe,
6 has exercised good faith. And I've got to come to know a lot
7 of. All generally excellent people who all had the best
8 intentions in mind.

9 But in listening to it -- and today I was thinking about
10 the Titanic and shuffling the cards and the tables on the
11 Titanic and expecting a different result than we've had in the
12 past. And that part is troubling.

13 And I think the Court has mentioned a lot of those
14 positive things that I feel very positive about and very
15 excellent points that have been made. And I think that -- I
16 feel good that -- the commitment that OPD has made in dealing
17 with the community itself -- that part has been good.

18 The problem is it can't deal with itself. And that's what
19 you and -- you're trying to deal with and I'm trying to deal
20 with. And it raises two questions that have not -- two
21 sections -- one is how the police, police themselves. That
22 issue is there. But, also, as a subset of that, which the
23 Court did not mention, and that is in the consistency of
24 discipline. And I just want to say, that is as extraordinarily
25 important as anything else.

1 And you've seen the data around it. There's still issues
2 about whether African American officers receive disparate
3 treatment along the way in certain areas. But I think as we
4 look at the totality of how do we get into the last areas --
5 done -- get it done -- thought has to be given to how that's
6 done. Policies and procedures -- I see all of that. I see all
7 of the things. And I think the Court is right. You can write
8 consistent policies and we could see all the numbers, but, at
9 the end of the day, the numbers tell a different story about
10 the policies.

11 I think that one of the things we have to keep in mind --
12 I don't think it's a question of policies and procedures. It's
13 about people. It's about the people and the integrity of the
14 people in their position. And the question is, how do you --
15 what kind of checks and balances exist in order to know an
16 investigation has taken place that has been reviewed properly
17 and that we know that it's not being influenced by the person
18 of bias that an officer may have toward the people involved?

19 And that's where we are here. And I think that goes
20 through the lines. And we talk about culture. That is the
21 culture that we're trying to attack. And how do we get to
22 that? And I think the Court has raised that and has asked for
23 a report. I don't know how that gets done without more direct
24 Court involvement.

25 And I don't mean a receivership, because I think that

1 that's more complicated. You know, we've tried that. Because
2 the Department's come a long ways. That part is not necessary.
3 But it has not come a long ways on these two parts, which
4 could -- the Court could be more involved in.

5 And I would think that what that means to me is that the
6 Court, through its own staff, would look at and have individual
7 meetings not only with the Chief -- because the Chief is the
8 Chief -- but there are people who are doing that work. And the
9 Chief has to know, along with the checks and balances along the
10 way, and the Court has to be satisfied that those checks and
11 balances are something that are in place for real and not
12 necessarily rubber-stamped.

13 Because what we've seen in the past when we saw people --
14 there's been a rubber-stamping of things. And it goes all the
15 way up the line. So how do we get control of that? Because,
16 at the end of the day, it's the people.

17 And so I'm only suggesting to the Court that if you look
18 at these issues, that the Court has more of a hands-on
19 involvement and more individual meetings. Not enough for the
20 Chief to meet with this person and that person and get reports.
21 The question is who's going to hold the Chief accountable for
22 what has taken place? That's you. That's the Judge. And
23 that's the Court.

24 And so I'm suggesting that the Court involve itself more
25 so -- either regularly scheduled meetings or random-time

1 meetings -- but, somehow, through its own staff -- it might not
2 be you personally -- but have checks and balances on these
3 things to see whether or not the employees, themselves, are
4 being properly looked at, at the early stages. Not later. Not
5 when there have been four or five officers and command people
6 have rubber-stamped it, but, along the way, how has that taken
7 place? And that's what I'm concerned about.

8 Because, to me, it's not the policies and procedures.
9 It's the integrity of the people who are doing the
10 investigations. And how do you check those people early enough
11 so they are in line with the policies and procedures? And it
12 goes all the way up the line.

13 **THE COURT:** Well, so, Mr. Burris, on that idea -- not
14 that I want the --

15 **MR. BURRIS:** I got -- I got --

16 **THE COURT:** -- the Court to not have responsibility --
17 but don't you think that the first line past the Chief is the
18 City? Isn't that -- doesn't the City have -- employ the Chief?
19 Isn't OPD under the arm of the City? Isn't that the -- isn't
20 that the place --

21 **MR. BURRIS:** Yes.

22 **THE COURT:** -- where -- where things should at least
23 start --

24 **MR. BURRIS:** Having been involved in a number of
25 questions in cities about pattern and practice, the official

1 policymaker is the City. You know, it's the City Manager.
2 And, from there, it's the Mayor. They can designate, which
3 they apparently have done to the Chief. But I think that it
4 really gets down to the City Manager and the Mayor has the
5 ultimate responsibility of reporting to you on the checks and
6 balances that have taken place so that a proper evaluation can
7 take place.

8 The feet must be held to the fire on this, otherwise we'll
9 never get out of this. And I'm using an analogy, but I think
10 there's some truth to it. If you do the same -- you know -- I
11 think Einstein said, before anyone else, doing the same old
12 thing expecting a different result is insanity. Well, that's
13 how I feel after 25 years -- or 24 years.

14 Well, that's my thought about -- in response to the
15 Court's question about what do we do next, because what we've
16 done in the past has not worked. They've got all the good
17 intentions. They all sound great. We all got good intentions.
18 But that doesn't get you the result I think we need now.

19 **THE COURT:** Okay.

20 **MR. BURRIS:** Thank you.

21 **THE COURT:** Thank you, Mr. Burris.

22 All right. So let's go to the Commission.

23 **MS. CARPENTER PETERSON:** Thank you, Your Honor.

24 May it please the Court. I'm Marsha Carpenter Peterson,
25 and I am the Chair of the Police Commission. I will not also

1 go over what I'm sure you already read in our statement. And I
2 will refer you to pages 55 to 60, where, as a commission and
3 our ad hoc made up of our community members, we are always
4 looking forward to what has to happen. Because we are the
5 entity that will replace the Court and the monitor. So it's
6 very important that we conceive and perceive of ways to make
7 this work.

8 We're not interested in receiving something that is just a
9 sham, if you will, because boxes have been checked. We want,
10 of course, real and sustained, demonstrated cultural change
11 with the department. And, for that reason, we try very hard to
12 submit to --

13 **THE COURT REPORTER:** I'm sorry. "We try very hard to
14 submit to" and then you kind of cut out.

15 **THE COURT:** That was the court reporter who is
16 reporting this remotely.

17 **MS. CARPENTER PETERSON:** Okay. We've tried very hard
18 to submit to forward-thinking remedies for what we see are the
19 problems within the Oakland Police Department. So I only want
20 to list two things that are very important, especially since
21 the monitor has called them out. And that's the culture within
22 the Department.

23 We feel as though the City and OPD has to demonstrate
24 cultural change. I listened to the Chief. I'm thankful that
25 you saw that the philosophy he laid out had been tried under

1 predecessors, but it hasn't worked. And, of course, cliché is
2 when you continue to do the same thing over and over and expect
3 a different result. That's insanity. And that's what we find
4 ourselves in for 21 years trying the same thing. Let's try
5 something different. Let's think outside of the box about what
6 can be done to actually find that officers embrace oversight,
7 constitutional policing in a very real, everyday way.

8 So there needs to be a laser focus on the need for OPD to
9 align its culture with the values of the Oakland community. We
10 want just and fair policing. How do we get that? Well, we
11 believe, as a commission, this will begin with rigorous,
12 comprehensive training programs -- new training. Get in their
13 heads about what we're trying to do here and why.

14 We found out, as a Commission, just this past academy was
15 the first time the Commission was introduced to the cadets.
16 They didn't know anything about the Commission. How can that
17 be when we are the ones that will be holding them accountable
18 for their misconduct and their violations?

19 So we think this training should include the Department's
20 historical context. How do we get here? Required reading.
21 Read "The Riders" [sic] book, if nothing else. And to
22 understand current ethical standards, they need to address the
23 history, they need to foster empathy, they need to uphold
24 professionalism, and they need to rebuild trust with the
25 community.

1 So we feel like that enduring compliance requires that OPD
2 integrate those NSA 52 tasks into its cultural identity.
3 You're going to have to change the way you're thinking about
4 this. And I would just say, to quote James Baldwin, "Not
5 everything that is faced can be changed, but nothing can be
6 changed unless you face it." So they need to know why we're
7 here.

8 The second thing I want to lift up is the City and OPD
9 need to prioritize civilian oversight. We are here, and we are
10 here for a reason. Measure LL was passed with 83 percent of
11 the voters in Oakland. S1 by another large percentage. So
12 we're here. So stop advancing charter amendments or ordinance
13 changes to diminish our authority.

14 We need our vacancies on the Commission to be taken
15 seriously and filled with haste. We need full-throttle support
16 of CPRA, the Office of the Inspector General, and the
17 Commission's mission and funding. And I understand the City is
18 under deficits. But, at the same time, things need to happen.
19 And this should be prioritized -- oversight.

20 And cooperate in our document requests. We started
21 requesting documents in IAD Case 23-0477 back in April of 2023.
22 And we sent the request to the Interim Chief, Darren Allison.
23 Crickets. We've sent another request -- we, in fact, sent a
24 total of four requests -- three to the City Administrator, CC'd
25 the Chief, and everyone else -- the City Attorney and everyone

1 else -- can we have these documents? We finally got an answer
2 last Thursday. And it was, no, you're looking at the wrong
3 office. Not the City Administrator, not OCA, but ask the
4 Police Department -- the Chief -- directly, which we had done
5 back -- last year.

6 So I think they have to understand that -- and the City
7 and OPD -- that they have to fully embrace the Commission's
8 work, as well, as part of this transition that we're looking
9 for. Not -- and as the Court said, not only OPD and the City,
10 but also the Commission and its divisions -- OIG and CPRA --
11 are integral to the success of NSA.

12 So I would just say that the training -- we've suggested a
13 list of trainers that can be accessed that -- some are
14 community-based. So you can understand the community wants to
15 work with you for this to be successful. So those are the two
16 things I would say that we have offered to the Court. And I'm
17 willing to answer any questions you have.

18 **THE COURT:** I appreciate your statement. Thank you
19 very much, Ms. Carpenter Peterson.

20 **MS. CARPENTER PETERSON:** Okay. Thank you.

21 **THE COURT:** Mr. Lucia?

22 **MR. LUCIA:** Afternoon, again, Your Honor.

23 I've been thinking about your comments to Chief Mitchell
24 and your two specific suggestions. So I want to respond to
25 those.

1 **THE COURT:** Okay.

2 **MR. LUCIA:** But, before, if you can indulge me, I want
3 to just say a few things about who I am, because my comments
4 need to be put in context.

5 So my entire adult life -- 40-something years -- I've
6 worked with and for police officers. I'm used to dealing with
7 their command structure. I'm used to dealing with things like
8 the affairs of internal -- internal affairs function. And what
9 you've proposed is intriguing to me. But, as you said, it's
10 out of the box. So I haven't had a chance to speak to my
11 client, obviously, about this, but I'm going to make these
12 comments based on what I think he would agree with.

13 But -- so two other things. One, as to cultural change,
14 Brigid Martin, I think, statistically shows the Court that
15 there is cultural change. You and others today have commented
16 on the line workers at OPD and the fantastic, incredible work
17 they do. They are woefully understaffed, as Chief Mitchell
18 said, and they're doing an incredible job, one. So she, I
19 think, has done an incredible job doing that.

20 Two, I've had the opportunity to meet with Chief Mitchell
21 just twice. But, both times, I've found him to be very
22 sincere, focused, and caring about the City of Oakland and the
23 Police Department. So he's been here, I think, about 100 days
24 or so, and I think that the rank and file support him and his
25 efforts. Because he has shown us that he does care about the

1 City and the Police Department.

2 So, that being said, what you've proposed is that there be
3 a direct line of reporting from Internal Affairs to the Chief
4 of Police. That's not typically done. I think the Chief kind
5 of alluded to that. There's usually layers of command, as you
6 know from the cases, between the Chief.

7 In my younger days, when I was representing individual
8 officers in discipline cases, termination cases, very serious
9 cases, it was quite often -- and in Oakland -- where I would
10 bring -- the Deputy Chief would come in, or the Chief would
11 come in, in defense of the City's position. And I would
12 cross-examine that individual and oftentimes find out that
13 perhaps they didn't read the entire file. Perhaps they weren't
14 familiar with the facts, because they were getting it third
15 hand. And, as Chief Mitchell says, they have to read a lot of
16 paper. And, in Oakland, it's voluminous.

17 So I think it's a little bit out of the box. It's nothing
18 I've ever heard of in my 40-plus years of an Internal Affairs
19 Division having a direct report to the Chief of Police. I
20 actually think it's a great idea, because you're talking about
21 cultural change, this Chief of Police brings a different
22 culture. He brings a different set of values. One that --
23 where I think we all share. But his life experiences have
24 brought a different approach.

25 So I personally believe -- he may not like me to say this.

1 But if he was able to spend more time dealing directly with the
2 IA Commander, going over cases more than once a week for an
3 hour or two, that I think that he would now start to embrace,
4 really, the function, the line investigation -- he talked about
5 divisional investigations. Basically, those are farmed out to
6 sergeants out in the field. They don't have time. So if he
7 can embrace some of that -- bring some of it into IA -- but, at
8 a minimum, I think what he will do is he will start to see the
9 problems and he will be embedded in the actual disciplinary
10 process.

11 Because if I'm a Sergeant of Police, and I'm doing an
12 Internal Affairs investigation, and I know that the Chief of
13 Police, early on -- not at the end when we go to arbitration to
14 adjudicate the discipline -- but, early on, that the Chief of
15 Police is going to be reviewing my work, I think I may take a
16 different approach, maybe. So I actually think that's a really
17 good idea.

18 Now, your second idea about -- or your concept of
19 reporting to the City -- by the way, I don't think we need to
20 make dramatic changes. I believe that the cultural change has
21 occurred. We have policies and procedures at OPD like no other
22 department in the country. I'm 100 percent confident of that.
23 So that's an accomplishment that you, the City, the Department,
24 the plaintiffs can take pride in.

25 But in terms of the City intervening and taking

1 responsibility, of course. Chief Mitchell is a department
2 head. And the City Administrator has many department heads.
3 Do I think the Police Department's the most important
4 department? Of course I do, because it's public safety.

5 So I think it's actually a good idea to have the Chief --
6 now I'm layering more work on him -- to have more contact with
7 the City. In my humble opinion -- I am not embedded at OPD. I
8 don't know how it works. I've dealt with Brigid. I have a lot
9 of respect for her. She is the City Attorney's Office at OPD.
10 Again, I don't know what her role exactly is. But it wouldn't
11 hurt -- my view -- to have the lawyer, who works with the
12 Department, have more communication with the Chief.

13 And she might -- I'm assuming she does. But you're
14 talking about raising it to a different level. So I'm thinking
15 that Brigid Martin, or whoever sits at her chair, and the IA
16 Commander and the Chief of Police -- if we have more synergy
17 between those three people, I think we could have avoided the
18 Phong Tran case. I think we can avoid some of these things.

19 So, I think, in real terms, very practical terms, I think
20 it's a super interesting idea -- one that I've not heard of.
21 There's a lot at stake here. I, too, have been here for 25
22 years. I don't want to come here anymore. I like seeing you,
23 but I don't want to see you again. I like these two guys, but
24 we're all old, and we're ready to go. So I think change --
25 your idea of just that change with a new chief who we have a

1 lot of confidence in -- I think, might lead to some really
2 great results.

3 It's not to diminish Deputy Chief Mendoza or anybody else
4 in the command staff. But when you start layering in folks --
5 and then you said it earlier, you don't want to hear the Chief
6 say, "I didn't know." Well, if you put Chief Mitchell in
7 direct contact with IAD on a regular basis, he'll have to know.
8 And I don't know him that well, but I think, personally, he
9 will do that.

10 **THE COURT:** Thank you.

11 **MR. LUCIA:** Okay. You're welcome.

12 **THE COURT:** Ms. Martin?

13 **MS. MARTIN:** Thank you, Your Honor.

14 So you asked where has the City been in all this? Where
15 has the City been? We have all met so many times in the last
16 several months that we haven't necessarily had regular standing
17 meetings, because we've just been meeting constantly about what
18 we're doing and where we're going and how to get there in this
19 case.

20 And we've been asking ourselves not just what went wrong
21 in this case, what were the deficiencies, how do we make sure
22 these issues don't happen again? We've all been asking
23 ourselves, what is the deeper issue in the system? That every
24 year or two, with different groups of people, is failing -- is
25 enabling and fostering these failures? What is that problem

1 and how do we get at that problem, identify it, and fix it?
2 Because that's what we're seeing; right?

3 It's not these individual deficiencies. It's this
4 repeated issue. I believe the monitor referred to it as
5 "systemic." Maybe the definition of "systemic." You've got
6 groups of different people making essentially similar failures
7 every couple of years. So we agree. We are all trying to
8 figure this out.

9 And we have, in the past, had what we call "tri-weekly
10 meetings" with the City Administrator, City Attorney's Office,
11 the Mayor, the Chief of Police, and Assistant Chief of Police.
12 As I've said, since Chief Mitchell joined and since we've had
13 so many other irregular meetings, we haven't continued that.
14 But that is something that we can continue to do, once again,
15 and revive our regular standing meetings, because we have
16 always had those types of meetings.

17 The City Administrator did come to an Internal Affairs
18 meeting a couple of weeks ago. So that is something that
19 happens. It's not necessarily regular. That's something that
20 we could talk about -- making it regular. But it does happen.
21 We've also had the City Administrator's Office hire a
22 consultant who is looking into what the potential transfer of
23 some responsibilities from IA to the CPRA would look like.

24 That's something that our City Council ordered us to look
25 into a couple of years ago. And it's not something that's

1 going to happen tomorrow or probably, hopefully, while we're
2 still under oversight. But it is something that shows that we
3 are looking at how to make us better at policing ourselves.

4 We also have the Mayor or the City Administrator,
5 generally, regularly attend our risk management meetings. So
6 we are all on the same page and all in this together.
7 Certainly, we can talk about additional standing meetings or
8 regular participation of more folks in the City. But it is
9 something that we're doing.

10 I --

11 **THE COURT:** But I assume, with all of these meetings,
12 that -- that Officer Tran's issues didn't come up, that
13 Sergeant Chung's issues didn't come up. And so --

14 **MS. MARTIN:** Yes.

15 **THE COURT:** So help me out there, Ms. Martin --

16 **MS. MARTIN:** Yes.

17 **THE COURT:** -- on how this is going to -- what you're
18 suggesting is going to impact this.

19 **MS. MARTIN:** Well, that specifically was in response
20 to Your Honor's suggestions about making sure the City is
21 participating and that whatever message is coming down is not
22 only coming down from the Chief, but from city leadership
23 itself -- the Mayor, the City Administrator.

24 And part of this is there's a theme of consistency. It's
25 something that I think everyone, if not almost every speaker up

1 here, has said the word "consistent" or "consistency" today.
2 Consistency is key. We've got the policies. The Department
3 just needs to consistently follow the policies. Now, how are
4 we going to do that? It's not as simple as just saying "do it
5 or you'll get in trouble," because that doesn't work.

6 So there are two parts to this. One is that every member
7 of the Department needs to know the policies. But the second
8 part, which is probably the most important part and might be
9 why we are in this predicament, is they have to understand, at
10 a deeper level, why these policies are important; why they
11 should care, as individuals, that they should be following
12 these policies; how these policies can lead to increased trust
13 with the community if they are followed; and how these
14 policies, if not followed, can lead to a breach of public
15 trust. That's why they're important. And that's the piece
16 that's missing.

17 And there is movement in the Department to restart its
18 quarterly command staff retreat, as well as its monthly command
19 staff and professional staff meetings, to agendize specific NSA
20 items, starting with task five and starting with Internal
21 Investigations, to send that message. And it's got to come --
22 the belief and the respect for these policies has to be felt
23 and communicated from the top. From the Mayor, from the City
24 Administrator, and from the Police Chief.

25 But, at these meetings, it's not going to be just a

1 discussion of what the policy is and you've got to follow it,
2 but getting to the heart of why we should all care and why we
3 do all care about these policies, and why we have to follow
4 them and why we should want to follow them. And so that is
5 where the Department is, and that's what we're trying to do.
6 Because, again, it is about culture.

7 And it's great that we all get up here and say we've got
8 to change culture. Great. That is not, by definition, a
9 check-the-box thing to do. It is probably the opposite. So,
10 yes, we know what we have to do that. But this is how we see
11 our way forward right now. This is what we're doing to the
12 best of our ability. And, again, this is something everyone in
13 the City has asked themselves and each other a million times,
14 because we do care and we are working at this.

15 And I believe that we'll get there, because all of the
16 great things that the Police Department has accomplished when
17 they put their mind to it -- that shows me -- that is evidence
18 that they can do it if they put their mind to it and they put
19 their hearts in it. We will get there. We will.

20 And maybe -- maybe this is the most difficult thing
21 because we've all talked a lot about how policing yourselves in
22 any organization, but particularly a police department, is
23 difficult. Maybe that's why it's been easier for them to
24 embrace the spirit of the NSA when it comes to the outward
25 policing, because it's easier to understand how those things

1 impact the community. But we need to also make sure that
2 everybody understands how the Internal Affairs issues impact
3 the community. And, sadly, with this last and most recent
4 failure, I think that it's pretty clear how that impacts the
5 community. So maybe that will be an easier example to help
6 people start that understanding.

7 I think, in addition to, you know, getting that off the
8 ground, to try to get that message coming through about why
9 these things matter -- I don't know that a separate report
10 about what we're going to do and how we're going to solve this
11 would be helpful. I feel like the monitor is already that
12 device or mechanism for the Department. We do report and the
13 City reports to the monitoring team, which provides an
14 assessment.

15 **THE COURT:** Although the monitor didn't -- wasn't made
16 aware of the Tran matters until well after they were being
17 investigated; right?

18 **MS. MARTIN:** Well, my understanding is the monitor was
19 aware of the initial investigation, but not all of the
20 misconduct that occurred. That the investigation was
21 underway -- the one that failed -- the initial investigation.
22 But, yes. But that's also something that the City sees as kind
23 of a positive step in the right direction. The fact that --

24 **THE COURT:** Well, I don't think that it's positive
25 that the monitor wasn't made aware of what the problems were.

1 Because the monitor -- because it means that I have no idea.
2 It means that I'm assessing how the City and the NSA is being
3 implemented or not without a full picture. And it is a
4 problem. So I -- so I wouldn't -- that's not something where I
5 agree with you.

6 **MS. MARTIN:** And I'll clarify, Your Honor. I'm not
7 saying -- I'm -- my intent was to say that the City directed
8 the outside investigation. But I don't want to get into
9 exactly what the monitor knew when. But the monitor and the
10 City and everyone knew once the Court order came out on the
11 habeas petition that sort of shed light on everything that was
12 then brought to light in the press.

13 So we -- we all -- many of us -- found out at the same
14 time. And we never kept that from the monitor and folks who
15 were aware. So -- but that's -- that's really -- we don't need
16 to go into the past. We're looking toward the future on this.

17 And I think another thing that could be helpful in this
18 case is allowing us to focus more on these tasks. And we have
19 built a wonderful model for force and force review. And it's
20 very different -- the internal investigation side is very
21 different in many ways. But we're hoping we can sort of pick
22 up that same sort of modeling after what the monitor has sort
23 of given us with the force review -- doing that with internal
24 investigations.

25 So another thing that might be helpful is if we could end

1 our affirmative assessment by the monitor of tasks 24 and 25.
2 While the Department will still be doing all of its own
3 independent assessment, which is exactly what it would be doing
4 if the monitor was still here, the little bit that it wouldn't
5 be doing -- like sending the reports for the case numbers and
6 figuring out which IA cases correspond to the use-of-force
7 cases -- to send that to the monitor -- even though it would be
8 doing its own assessment still, there is the persistent
9 administrative overhead that would be cut out and also,
10 possibly, it would allow the monitoring team to provide that
11 assistance on the other tasks -- on task five or on the
12 internal investigations instead of focusing on tasks 24 and 25.

13 Because we do -- even in our -- in our site visit
14 meetings, we have a specific meeting where we talk for multiple
15 hours about use of force and force review, but we don't have a
16 similar meeting with a conversation about our Internal Affairs
17 investigations. And part of that consistency is that we have
18 to make sure that we're following policy on even the smaller
19 cases or not the big, significant cases, because it has to be
20 all the way through so that when we have a big, significant
21 case, we have the muscle memory in place to make sure that
22 we're following those policies.

23 And I will say, based on the changes to policy that we had
24 in -- that were memorialized in policy in November of 2023 --
25 there have been a lot of changes that I can see every day in

1 how the Department handles its business. We have a lot more
2 meetings with note takers on any criminal investigation of an
3 employee and parallel Internal Affairs investigations that are
4 attached to those. So the big, important cases and the
5 significant wrongdoing -- there is -- there are a lot more
6 meetings, people are looped in, and there is documentation of
7 that.

8 So I do think that it is moving in the right direction. I
9 do think that there has been progress since -- especially since
10 November 2023. But, again, I think that message from the top
11 of this Department and the leadership in the City about why
12 we're doing this and why these policies matter is the key.

13 **THE COURT:** It's big. But the -- and I -- so I agree
14 with -- with all of that. And the -- it comes down to why --
15 why does it continue to happen? And it is -- and the policies,
16 I think, are important. But it comes down to integrity. It
17 comes down to courage. Because I think it's really -- I think
18 policing -- policing yourself in any institution is hard. And
19 I imagine it's particularly hard in the Police Department just
20 because of the important work that is done public-facing.

21 So -- but -- but the -- this failure of being able to --
22 and maybe some of it is sweeping things under the rug. I don't
23 know. But I think it is this sort of human failure, which I
24 think only changes if there are -- if there is clear leadership
25 at the top and involved leadership so that everybody knows that

1 this is -- this is a really big deal. I think it's -- I don't
2 think it's anything else than that. And that's -- that's why
3 I'm thinking about what I'm thinking about. Because I know
4 there's so many other problems and issues and things going on
5 with respect to what I have to deal with, which is the
6 monitoring of the NSA.

7 This is the one big issue. This is -- and it is -- and it
8 has existed in one form or other since the writers. And it's
9 got to stop. So -- and that means some change somewhere. And
10 how that works is what I'm concerned about.

11 **MS. MARTIN:** Thank you, Your Honor.

12 **THE COURT:** All right. Thank you.

13 Mayor Thao, welcome. And I appreciate -- I know that
14 there are a few things going on. And so I appreciate the fact
15 that you've come here, because it does show your commitment to
16 the issues that are involved.

17 **MAYOR THAO:** Absolutely. Thank you, Your Honor, for
18 having us today.

19 In the last time that we met, you said to me "I want you
20 to have a Chief next time." And so we have our Chief. But
21 what you stated -- and I'm just going to throw out everything
22 that my staff has written for me to say -- because what you
23 stated is incredibly important.

24 I agree with Mr. Burris around the fact that this is
25 around people and having that true integrity. And it is about,

1 you know, having the wherewithal to, yes, reprimand and have
2 consequences for those who may have a lot of political pull
3 within the community, whether it's -- because there's a lot of
4 nuances; right? It's just not that you are the Chief of
5 Police, and that's where you sit, and that's all you are. You
6 could be seen within the community as a bigger entity, as a
7 more influential entity. But that's not good enough to hold
8 that and not have the integrity part.

9 And so, with that being said, you know, what I can assure
10 to you is that I have been -- what I have learned in this
11 position in my short less than two years as mayor is that all
12 departments -- they -- they need strong leadership. They need
13 to know where they're headed. Not just that, but they need
14 consistent -- consistent, face-to-face meetings to ensure that,
15 yes, I am still watching what you're doing. I'm still
16 measuring what you're doing. You know, and that has been the
17 case and I -- you know -- with all departments. So I wouldn't
18 say that it's not the case with OPD. Because it's why I do
19 have so many -- I have a lot of meetings with, you know, the
20 Police Chief, with Assistant Chief Beere.

21 I do commend that this is a whole new executive team that
22 the Police Chief has. You've heard from the Police Chief
23 himself. And, you know, I've -- you know -- when I'm out on
24 the streets, I ask rank and file how they feel about the Chief.
25 And they all say that they feel good about the Chief. That

1 they feel like he's fair -- that he's fair. And that is the
2 minimum.

3 What we have seen -- that the change here in the most
4 recent case is that it's no longer the rank and file who are --
5 you know -- who are causing these little gaps in regards to how
6 we're moving forward. It is actually the top-tier -- the exec
7 team; right?

8 And so, with that being said, you know, coming into --
9 I -- I want to be very clear, for the public to know, too --
10 that this case involves the previous chief -- Chief LeRonne
11 Armstrong -- and the previous mayor; however, with that being
12 said, this could happen again. It could.

13 But what I can commit to you today is that either my
14 office -- I have my Chief of Education and Community Safety,
15 Brooklyn Williams, here who works with me at the OPD very
16 closely, and then Jestin Johnson, the City Administrator. If
17 it's not someone from my office, then it has to be someone from
18 Mr. Johnson's office to attend these IAD meetings, you know,
19 just to make sure that we are still on track.

20 But, to the other point, if OPD's exec team does not lift
21 it up, we would never know about it. So there needs to be that
22 integrity piece held by these directors. And, for me, that's
23 exactly what I look for when I do my hiring. As you know, we
24 went through this whole debacle of getting the next police
25 chief. And, yes, it wasn't a popular thing to do for me to

1 say, "Absolutely" -- you know -- "I'm going to ask for another
2 list," and "Yes, it's going to take more time." But that's
3 what I was looking for. I was looking for that integrity
4 piece. I was looking for fresh eyes to come in to say, you
5 know what, whatever culture is here that is not headed in the
6 right direction, that this person wasn't born out of that
7 culture. Because we're talking over 25 years. I mean, you're
8 talking about people who were born through this culture. And
9 so if that's what you're born into, maybe that's all you know.

10 And so, for me, understanding that there is a
11 cost-benefit -- you know, we always talk about cost-benefit --
12 the analysis of that -- what is the cost to not having the
13 integrity? The cost is a bunch of things. We, the City, pay
14 the monitor. That money could be used for OPD or anything
15 else. We -- I'm spending hours here with you. These hours
16 could be spent getting money for the City.

17 And so, you know, with that being said, you know, it is --
18 I've only been mayor for, you know, less than two years. But
19 I've been with the City -- worked from the smallest rank --
20 from an intern -- and now I am mayor. And I can tell you that
21 I am sick and tired of coming here, as well.

22 And so, with that being said, that is my commitment to
23 you. I'm not going to talk a lot, because you hear the same
24 thing over and over. You're frustrated, I'm frustrated,
25 everybody's frustrated at the point that we're here today.

1 You know, the frustration is that we need to do better.
2 And this is why, right when I came in, I funded the beginning
3 works of making sure that the internal investigation is with
4 CPRA. You know, it's very hard -- I get it. It's very hard to
5 police yourself when you're all friends; right? But in order
6 to make this process, you know, a little bit better, we're
7 funding that process. You know, so we're taking that part very
8 seriously.

9 But, in the interim, I will commit to working more closely
10 with the Chief on IAD. And if someone from my office is not
11 present, then there will be someone from Mr. Johnson's office
12 to be present. But, again, we really demand for our executive
13 team at OPD to be -- to have that integrity. And I believe and
14 I know that, under Chief Mitchell, we have that. Because, as I
15 told him earlier, just jokingly, he has the long experience.
16 You know? He gains nothing for sweeping things under the rug.
17 This is what I like about him; right? He's already an
18 established person who has been Chief in many different cities.

19 You know, coming to be Chief here -- we thank him for
20 coming here -- bringing that new perspective -- but he gains
21 nothing for sweeping things under the rug. This could be his
22 last Chief job; right? And he's okay with that. But that's
23 important to note, that that is the big difference with this
24 Chief. Thank you.

25 **THE COURT:** All right. Thank you.

1 All right. So it's time to go. The -- I'm -- tomorrow or
2 Friday, I'm going to issue an order, maybe in the minute order,
3 maybe in a separate order, and I'm going to think about what
4 everybody has said today. I'm -- I'm planning to do something
5 that changes the paradigm a little bit here. And I'm going to
6 ask that -- and it has to do with the reporting and the meeting
7 obligations. I just -- I want to think about how I'm going to
8 articulate it. But I am going to articulate it by tomorrow or
9 Friday.

10 I'm going to ask that the City provide me with a status
11 report on my -- on what I have directed them to implement.
12 Because I don't want to wait three months for a plan. I want
13 this happening this month. And I want, on October 8th, to know
14 what -- where -- where things are. We'll have another CMC on
15 January 8th at 3:30. But I want to -- I suspect that there is
16 good momentum in the Department now on these issues. And --
17 and I want to make -- I want to make this happen for all of us.
18 So -- and particularly for the City of Oakland, because the
19 City deserves me being out of the picture, full compliance with
20 an agreement that was comprehensive and well -- has served the
21 City well -- but it's time to -- it's time for the City to be
22 running it.

23 And with the political -- I'm not cutting the Commission
24 out of this, because "the City" includes the Commission. "The
25 City" includes -- includes the entire polity. And how the

1 politics work, I'm not dealing with. But to make sure that the
2 constitutional policing from top to bottom is occurring in
3 Oakland is my domain, and I want to make sure that that
4 happens. And that then Mr. Chanin and Mr. Burris and Mr. Lucia
5 and I can go off into the sunset somewhere and everybody else
6 can deal with the things that really matter.

7 So thank you all for being here. I will look forward to
8 seeing you in January.

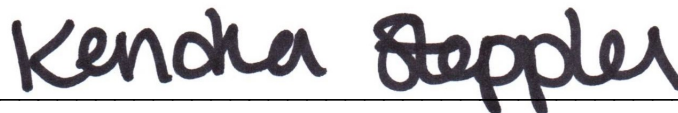
9 (Proceedings adjourned at 5:06 p.m.)

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12 CERTIFICATE OF REPORTER

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.

15
16 DATE: Monday, October 7, 2024

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20 Kendra A. Steppler, RPR, CRR

21 Official Reporter, U.S. District Court
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