

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

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

San Francisco, California
Thursday, October 13, 2022

TRANSCRIPT OF REMOTE ZOOM VIDEO CONFERENCE PROCEEDINGS

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13 Also Present:

14 **Mayor Libby Schaaf**

15 **Chief LeRonne Armstrong**

16 **Assistant Chief Darren Allison**

17 **Deputy Chief Clifford Wong**

18 **Captain Kevin Kaney**

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1 Thursday - October 13, 2022

3:47 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** A reminder to those who don't know already:
5 We do ask that you not stream these proceedings out live or
6 make any audio or visual recording of the proceedings,
7 including screenshots.

8 And I believe we are set to get underway in Case
9 Number 00-4599, Allen, et al. vs. City of Oakland, et al,
10 although I don't see the judge. So let me see what is
11 happening. I thought I did and then I didn't.

12 (Pause in proceedings.)

13 **THE CLERK:** All right. We have decided that the easiest
14 way around this is to just have the Court appear in the well at
15 the microphones. So, right here.

16 **THE COURT:** This one here?

17 **THE CLERK:** Yes.

18 **THE COURT:** All right. Good afternoon, everybody. Can
19 you hear me?

20 **THE CLERK:** Let me get this on.

21 There. Okay.

22 **THE COURT:** All right. We're going to try this again.
23 Can you all hear me?

24 **MR. CHANIN:** Yes, we can.

25 **MS. MARTIN:** Yes, Your Honor.

1 **THE COURT:** All right. So, my apologies to you. My
2 criminal calendar ran late, and then we have apparently too
3 many Zoom cameras on or not working or something. But I am
4 glad to see you all.

5 So during the past several CMCs, I've tried to focus the
6 parties on the issues of particular importance to me in the
7 oversight of the Oakland Police Department.

8 Number one is reducing racial disparities in vehicle,
9 pedestrian, and bicycle stops with continued use of
10 intelligence-led policing.

11 The second was implementing Vision and its associated
12 dashboards in a technologically straightforward way so that the
13 tools are used effectively in the risk management process.

14 Number three was recruiting officers who reflect the
15 diversity, in terms of gender, race, ethnicity, and other, of
16 the City of Oakland.

17 Number four was ensuring that all uses of force and
18 instances of potential misconduct are accurately reported and
19 rigorously investigated within set timeliness standards.

20 And, fifth, to ensure that disciplinary decisions and the
21 disciplinary process are fair and equitable.

22 And I just want to start by saying, I'm glad that it
23 appears to me that the Police Department is meeting the first
24 three of those goals in a way that seems sustainable.

25 I'm also happy that the Police Department is meeting the

1 timeliness standards for uses of force and instances of
2 potential misconduct and that most of the NSA tasks remain in
3 compliance. The body-worn cameras issue seems to have been
4 resolved with the cameras all being rolled out.

5 And it's worth noting that all of this comes at what I
6 know has been a very challenging time for the City of Oakland,
7 given the surge of violence and the attrition in the force.

8 So I just want to start there and then pivot, because the
9 work is not done. I've been informed about the investigations
10 that relate to two internal OPD investigations and its
11 discipline process that the Compliance Director Monitor has
12 called "deeply troubling."

13 I know that the investigations are ongoing. I'm going to
14 withhold judgment until they're completed. But the information
15 that I do know is concerning.

16 I want to underscore for the parties now how important
17 full and timely cooperation with the requests of the outside
18 law firm handling the investigations is. I'm very hopeful that
19 the investigations will be completed well in advance of our
20 next CMC, which I'm going to set for January 10th at 2:00 p.m.
21 Actually, we'll make it January 10th at 3:30 p.m. That can't
22 happen without very timely responses from OPD.

23 I've directed the Compliance Director Monitor to advise me
24 if there's any lack of cooperation by the City or
25 the Department with these investigations; and if there are any

1 roadblocks, I'm going to order that the outside law firm be
2 answerable to the Compliance Director Monitor directly.

3 I also note the debate about whether Task 45 is in
4 compliance. I will note that the Police Department has taken
5 real steps to analyze the issues. What I'm interested in is
6 how OPD will address the racial disparities shown in the
7 disciplinary data, such as black officers being more likely to
8 receive suspensions and less likely to receive counseling than
9 their white counterparts. So I'll look forward to hearing a
10 little bit more about that.

11 So before I go to the parties, I do have a few questions,
12 as I'm wont to have, and I would like to start with the Chief.

13 Chief, good afternoon.

14 **CHIEF ARMSTRONG:** Good afternoon, Your Honor.

15 **THE COURT:** It's good to see you.

16 **CHIEF ARMSTRONG:** Good to see you, sir.

17 **THE COURT:** Would you give me your current assessment of
18 where we stand on each of those five goals that I laid out at
19 the beginning of the CMC, where you're expecting improvement
20 and how sustainable you think the Department's compliance is?

21 **CHIEF ARMSTRONG:** Well, Your Honor, I'd first like to say
22 that the work of the Oakland Police Department continues to be
23 ongoing, and I am proud that we have really focused our efforts
24 on compliance in a way that I haven't seen before. And I say
25 that because the things that you brought before us in our last

1 appearance before you, we went back and took very seriously.
2 When it came to the completion of policies, when it came to the
3 issuing of a survey, those things we made a priority and got
4 done.

5 I'll say that from our standpoint, I think our use of
6 force review process has definitely improved. We have put
7 together a review panel of commanders that actually do
8 spot-checks and random checks to ensure that we are catching
9 things within our use of force investigative review process.

10 One of the things that we've learned, Your Honor, is that
11 we have a fairly young command staff. 50 percent of our
12 command staff have been promoted in the last year. But that's
13 required Assistant Chief Allison and I to really focus on
14 developing those commanders to better understand the thorough
15 level of review that we expect.

16 So we've had our Training Division begin to provide
17 specific training for review of use of force and IAD
18 investigations for supervisors and commanders. We've also put
19 together an IAD review case group, essentially command staff,
20 that also conducts spot-checks.

21 And so when we talk about our ability to be sustainable,
22 I believe that the processes that we've set in place will help
23 ensure that sustainability continues.

24 I think the effort that we partner with the
25 Police Commission and their OIG has been helpful as well.

1 She's been involved in conversations with our Bureau of Risk
2 Management about continuing to perform audits as well.

3 I also think, Your Honor, that the culture of
4 the Department is rooted in compliance now. Nearly 70 percent
5 of our officers have been here less than ten years; so all they
6 know is compliance with these high standards that we have at
7 the Oakland Police Department.

8 And I think if you look at the body-worn camera issue,
9 I think it's one in which we have really moved forward on.
10 I think today Assistant Chief Allison will present numbers that
11 will issue around 250,000 activations. The Department takes it
12 very seriously that these cameras are used every time they have
13 an interaction and that they're actually activated on time. We
14 have internal processes to better assess whether these things
15 are done. And we've held several people accountable when these
16 cameras haven't been activated. And so I think it's something
17 that we take very seriously.

18 Our Stop Data Program continues to be one of the
19 nationally recognized programs across the country.

20 Our intelligence-led policing is leading to a huge focus
21 on gun violence. We've recovered 27 percent more firearms than
22 we recovered at the same time last year. So our focus has been
23 on those that are engaged in violence, and I believe that
24 focused effort will continue.

25 Although we now, you know, have begun to focus more on

1 traffic safety, it still will be intelligence led, focused on
2 areas, working with our Department of Transportation of giving
3 us specific locations where we call "high-injury networks"
4 where we want to make stops that actually make Oakland safer.

5 So everything that we're doing is intelligence led and
6 focused. I think our command staff are all prepared to
7 continue to maintain this high level of accountability, and
8 it's actually a part of the culture of the Department.

9 I think one of the things that we did that I think will
10 prove helpful in the future, in preparing future leaders in
11 this department, is that we're putting commanders on our
12 assessment teams so that they can personally get the experience
13 of reviewing use of force, IAD complaints, and policy
14 development. So those are key things that we're doing,
15 Your Honor.

16 And then our Vision system is fully implemented. We are
17 fully in use of our Vision system. Our external dashboards are
18 working. Our internal dashboards are working. We have -- our
19 ITD Unit, the City's ITD Unit, has a staff that is supporting
20 the Department. That staff is actually able to now maintain
21 those dashboards for us. Previously, we did have some issues
22 with ensuring that these dashboards were maintained on an
23 ongoing basis. We've now fixed that.

24 The only need that we have now is to secure some technical
25 assistance from the company on how we allow supervisors and

1 commanders to be limited to their actual staff that they
2 review. So I think it doesn't prevent us from doing any of the
3 work. The systems are working.

4 And I'm confident with the changes that we've made to our
5 discipline process, that we are issuing fair and equitable
6 discipline. We've anonymized all of our discipline processes
7 as well as our case processes. So essentially, we don't talk
8 about race or gender in those meetings. Everything's
9 anonymized.

10 And I think the analysis that, I think, Bridgid Martin
11 will speak to at some point will speak to the work that we've
12 done over the last several months with Dr. Grossman and her
13 analysis of our data that shows that we haven't seen disparity
14 in our 2020 and 2021 data.

15 Also during the survey, I think one of the interesting
16 things that we learned is that some people questioned fairness,
17 but we believe that's attributed to the fact that people don't
18 like discipline, Your Honor. That's natural. But I think it
19 is about the organization holding people accountable.

20 So one of the things that we did is that we mandated by
21 policy that captains meet with every officer or member who's
22 given discipline to ensure that they understand why they were
23 sustained for a complaint and why they received a certain level
24 of discipline. And so we hope that that makes the process much
25 more transparent and people to be much more open to our

1 discipline process and at least trust the process.

2 And then lastly, Your Honor, I feel good about our
3 recruiting efforts. We have been making tremendous success
4 with the hiring of women. We've had a very diverse class over
5 the last two classes that we have graduated. They've been some
6 of the most diverse classes that we've seen in years, with both
7 multicultural and multiple genders; we have women as well as --
8 a significant number of women, up to about 20 percent, which is
9 good for us. So we'll continue to focus our efforts. We
10 joined the 30 by 30 Initiative, which is the Department's
11 commitment to hire 30 percent women by the year 2030, and we
12 are continuing to work on that effort of our recruiting of
13 women.

14 So, Your Honor, I feel like we are making a lot of
15 progress. I know there's more work to do. I'm also concerned
16 about the cases that are being reviewed. But as a result of
17 that, we've even stricted our processes even more to ensure
18 that we are doing better internal reviews of IAD
19 investigations.

20 **THE COURT:** All right. Well, so that's a very positive
21 and impressive survey of everything that's going on, Chief.

22 I am glad to hear you say that there is -- institutional
23 reform requires all of those policies being in place and
24 rigorously followed. It requires the strong leadership of
25 people up and down the chain. And as people leave -- I'm

1 looking at the Mayor right now. I'm not sure that I'm going to
2 see her at the next session that we have -- but the commitment
3 from the top to make sure that constitutional policing and
4 transparency and accountability and integrity, all of the
5 things that are wrapped up in a positive culture, continue over
6 time. And that's long after the Court and some of the players
7 who are on this screen are gone. That's going to be the
8 challenge for the Department.

9 So thank you very much for your review.

10 I'm interested in talking to Captain Kaney next, if I
11 could.

12 **CAPTAIN KANEY:** Good afternoon, Your Honor.

13 **THE COURT:** Good afternoon. So, welcome. I'm not sure
14 that we have met before, but I understand that you're now in
15 charge of Internal Affairs.

16 **CAPTAIN KANEY:** I am.

17 **THE COURT:** And one of the very positive things that was
18 reported is, the timeliness in IAD investigations now seems
19 to -- first of all, you're in compliance, which is great. How
20 are you going to maintain that?

21 **CAPTAIN KANEY:** For timeliness, for the Task 2?

22 So right now, we do have some newer sergeants that are
23 coming through. And so to give them a little more time in
24 their review process, we have pushed out our 30-day normal
25 timelines when a case is due to IAD and we pushed it out to

1 45 days. That gives us a little more of a cushion if a newer
2 sergeant is missing something.

3 The other thing about the new sergeants is, next week we
4 have an IAD training course being put on by Third Degree that
5 is going to put -- I think we're at 35 supervisors going
6 through this IAD training course, which should help the
7 completeness for Task 5, as well as for our timelines, so that
8 when a case comes into our DLI coordinators and it's complete,
9 it makes the process a lot faster and a lot easier and we don't
10 have to push back for more investigation. And so that is very
11 helpful with our newer sergeants and our newer reviewers.

12 But the policies and the practices that we've had that
13 have been set up for quite a while now seem to have been
14 working, and we are continuing to push on with those timelines
15 and with those, you know, benchmarks for our -- to make sure
16 that our cases are completed within our 180 time frame.

17 **THE COURT:** And is it your intent that these steps will
18 remain past the sustainability period, that this is going to be
19 an ongoing policy and practice?

20 **CAPTAIN KANEY:** Yeah, absolutely. I think that it's been
21 working. We have been -- with the processes we've been doing,
22 reviewing our -- we do a 180 report every week which tells us
23 which cases are getting close to our 180 date, and I review
24 those with the lieutenants of Internal Affairs, and I ask about
25 every case that's within 21 days.

1 And I think that these processes that have been set up and
2 that have been working so far will continue to work and
3 continue to keep us in timeliness for our investigations.

4 **THE COURT:** Great. Well, thank you. And thank you for
5 your efforts in this.

6 **CAPTAIN KANEY:** Thank you, Your Honor.

7 **THE COURT:** Let me go to Deputy Chief Wong.

8 **DEPUTY CHIEF WONG:** Good afternoon, Your Honor.

9 **THE COURT:** Afternoon. How are you?

10 **DEPUTY CHIEF WONG:** Very well, sir. How are you?

11 **THE COURT:** I'm very well.

12 The stop data story is, obviously, as the Chief was
13 saying, it's one of the -- it's a crown jewel, if not the crown
14 jewel, of the reforms. And I want to just find out from you
15 how the Department intends to ensure that the risk management
16 meetings, which are critical to the ongoing success in this
17 area, are going to continue once oversight is no more from
18 the Court and transferred to the Police Commission.

19 **DEPUTY CHIEF WONG:** Well, aside from the fact that we have
20 ingrained that process into the Department or into our
21 organizational culture, it's already in policy. I'm sure you
22 remember DGO R-01, our risk management policy, which contains
23 all the requirements that these meetings be held. In fact, if
24 a meeting is not held, it has to be approved by the Chief to
25 skip one. So that process is in place. We've been following

1 it.

2 Our Risk Analysis Unit actually keeps track of those
3 meetings. They schedule them. Not only the area meetings, but
4 also the Department-wide meetings. So they keep track of every
5 single one of those. And the Office of Internal Accountability
6 will be the body that keeps an eye on it.

7 Of course, all that lies under BRM. So ultimately, I or
8 my successor will be accountable to make sure that that
9 continues on as an ongoing process.

10 **THE COURT:** And how are you monitoring the quality as well
11 as the quantity of those meetings?

12 **DEPUTY CHIEF WONG:** The area-wide meetings that only --
13 have the Deputy Chief involved. So if an Area 1 meeting
14 occurs, obviously, the captain, lieutenants, and the sergeants
15 will all be there. But the Deputy Chief will oversee it to
16 make sure that the discussion is substantial and of quality.

17 And when those meetings then roll into the area-wide
18 meeting, it's, once again, reviewed with all the deputy chiefs,
19 including the Chief and the Assistant Chief. So there's --
20 anything that's missed in the lower-level meetings will be
21 covered in the bigger group setting.

22 **THE COURT:** Okay. So this may be a question that I'm
23 going to hear more from -- in fact, I'm confident I will --
24 from Ms. Martin. But with respect to the Department's most
25 recent analysis on discipline, I was concerned about black

1 officers being more likely than their white counterparts to be
2 sustained for discovered violations and, also, that they were
3 more likely to receive suspensions and less likely to receive
4 counseling than their white counterparts.

5 How do you explain that, those findings, and what plans
6 are there to address them?

7 **DEPUTY CHIEF WONG:** Referring back to the 2019 DLI
8 findings that we did some extra work on, we were not able to
9 actually get to the root cause of the issue. You know, as with
10 all social science type of research, you can get a good
11 indication of what you're looking at, but you can never truly
12 get to the root cause of it.

13 But what we did identify were some essential areas --
14 potential appears where -- sorry.

15 **MR. BURRIS:** I'm sorry.

16 **THE COURT:** I think Mr. Burris was trying to interrupt you
17 in your answer there.

18 (Laughter.)

19 **THE COURT:** Go ahead.

20 **DEPUTY CHIEF WONG:** My headphones are a little too loud.

21 So, actually, what we're able to do is determine that
22 there were some areas where we can make some improvements, such
23 as self-identified or internally identified allegations.

24 Right?

25 So we know, like -- for example, profanity; how you

1 determine what's a discovered allegation or just profanity when
2 you're, you know, sitting by yourself in a car or if you're in
3 front of a citizen. The way you determine if that's an
4 allegation or not has a little bit of variability in it. So
5 we're going to focus in on those and try to get them more
6 consistent among our supervisors.

7 The hard part about the study is, we couldn't figure out,
8 of the allegations, if they came from within or if they were
9 made by citizens outside, because that's not something that was
10 tracked in the older cases. So to remedy that situation, we
11 actually added fields into Vision to track that so, going
12 forward, we can actually see if the complaint came from within
13 or externally; we can see if the allegation was one of the
14 original allegations or if it was discovered by an
15 investigator.

16 And if we're able to track that data, we can now tell if
17 there's any kind of, you know, bias or disparity created from
18 within or by the investigators or by even the, you know, DLI
19 staff reviewing these cases.

20 So that's how we're going to address the issue going
21 forward. And we're going to keep an eye on it and study it,
22 because we don't see the numbers right now in 2020, in 2021,
23 but we don't want to see it come back in the future either.

24 **THE COURT:** All right. Okay. Thank you. I appreciate
25 it.

1 And now Assistant Chief Allison.

2 **ASSISTANT CHIEF ALLISON:** Good afternoon, Your Honor.

3 **THE COURT:** Good afternoon. I'm glad I don't have to
4 harass you about the body-worn cameras.

5 Tell me, how are the new cameras functioning? What
6 issues, if any, do you have at this point?

7 **ASSISTANT CHIEF ALLISON:** So, Your Honor, the cameras are
8 functioning well. We are a hundred percent rolled out with the
9 body-worn -- new body-worn cameras through Axon. So every
10 field officer has the new cameras in play. They -- there's a
11 lot of good feedback on the quality and usability and ease and
12 even the review process of the cameras in the system itself.

13 One of the challenges we encountered with the cameras is
14 with some uniform types -- we have a wool uniform as well as
15 our utility uniform, so a little thicker, as well as outer
16 carrier vests that we can wear. And in some cases, the magnet
17 that holds the camera in place can become dislodged, when it
18 comes to thicker uniforms.

19 And so we are purchasing new hooks and adhesions to keep
20 the camera in place. And for those that are experiencing
21 trouble of holding their camera in place, you know, it getting
22 dislodged during struggles or whatnot, we have equipment to be
23 able to give to those officers to replace that holder, so to
24 speak.

25 So from the camera systems, they are working well.

1 They're easier to annotate; so we can find mile markers for use
2 of force investigations or other internal audits or reviews.
3 And, again, the feedback has been positive.

4 **THE COURT:** Good. And what's the status of revisions to
5 the body-worn camera policy?

6 **ASSISTANT CHIEF ALLISON:** Your Honor, we have completed
7 the ad hoc development process with the ad hoc
8 Police Commission. That will then move into the next phase,
9 which is presentation to the Commission; and then, certainly,
10 if there's any modifications or changes, we can make those. If
11 there are no modifications and it's voted to move forward, then
12 we can move to the stakeholder review piece of it.

13 **THE COURT:** All right. So do you think that'll be done by
14 the next CMC?

15 **ASSISTANT CHIEF ALLISON:** I am anticipation --
16 anticipating completion by the next CMC.

17 **THE COURT:** Great. Great.

18 And then let me ask you. The Compliance Director Monitor
19 has noted some recent use of force incidents in which he
20 believed that a supervisor should have caught violations of
21 Department policy. In three cases, those incidents were
22 eventually sent over to IAD. Two of the cases have now been
23 completed. There have been some sustained findings.

24 What are you doing to ensure that first-line supervisors
25 and their commanders are more vigilant in their reviews of

1 these cases?

2 **ASSISTANT CHIEF ALLISON:** Thank you for that, Your Honor.

3 As I've stated before, within our organization, I see the
4 foundational principles as being policy, training and
5 experience, and accountability, particularly for our
6 supervisors.

7 So certainly, we have our policies. One of our more
8 recent policies when it came to use of force was K3, which was
9 published last December and trained and rolled out in January.
10 We also implemented a new Type 32 policy that went into effect
11 for reporting in division around June.

12 So now that we have a policy foundation, we certainly need
13 to ensure that our staff, particularly our supervisors, are
14 commanders, are properly trained.

15 We recognized that there were some areas -- new areas of
16 policy requirements when it came to use of force that we
17 outlined in K3, Use of Force Policy, when it came to language
18 around active and assaultive resistance; particularly, also,
19 uses of intermediate use of force specifically around our
20 tasers, our electronic control weapon equipment.

21 And so we rolled out training in the spring for staff
22 around the use of tasers. We then rolled out training
23 specifically around assaultive and active resistance, again, to
24 make sure that it was crystallized on the use of intermediate
25 force. And then we are in process of rolling out training on

1 how to be a good reviewer and investigator when it comes to use
2 of force investigations.

3 On top of that, we recognize, with our new supervisors,
4 that they not only needed classroom training, but they needed
5 experiential training. And as I've reported out before, we do
6 have our field training process. But what we are seeing is,
7 going to singular supervisors during that process wasn't
8 getting a far and wide exposure to that training. And so we
9 are now rotating among supervisors so they have an opportunity
10 to engage in investigations while supervised, to learn a little
11 bit better.

12 And at the same time, for our commander training, not only
13 did they roll out the review training that's in process; we are
14 incorporating them into our inspection teams, which not only
15 helps us look from an auditing perspective, but gets them
16 exposure to what we see as deficient investigations that need
17 improvement, as well as quality investigations that can be
18 sustained through the organization so they could go back to
19 their divisions, back to their commands and look for those
20 areas in real-time chain of reviews.

21 And then certainly, we do have ongoing command-level
22 training through the FBI National Academy, the Senior
23 Management Institute for Police Executives, to develop our
24 commanders in the future, again, not only to be good leaders,
25 but to be good reviewers, to know the best practices that are

1 not only in policy, but constitutional practices throughout the
2 organization.

3 **THE COURT:** Great. You will not have the backup
4 eventually, and I'm not saying it's going to be immediate, but
5 you won't have the backup of the Independent Monitoring Team to
6 do this really fundamental and important work. So I'm glad to
7 hear all of those things, and continued focus on it will be
8 great.

9 Thank you.

10 **ASSISTANT CHIEF ALLISON:** Thank you, Your Honor.

11 **THE COURT:** So let me go now to Mr. Chanin and Mr. Burris
12 for their comments on where things stand.

13 **MR. CHANIN:** Thank you, Your Honor.

14 The Monitor has moved Task 5 from "In Compliance" to
15 "Deferred Compliance."

16 We have no real knowledge as to what this case is about,
17 and we feel obligated to protect the due process rights of all
18 involved until this matter is resolved.

19 The Monitor has found that the information developed in
20 the OPD's internal investigation and discipline process is, as
21 you say, Your Honor, deeply troubling. Accordingly, we also
22 are concerned about this matter.

23 The defendants have stated that Task 5 should not have
24 been deferred on the basis that these two cases have not been
25 investigated yet; in other words, the Monitor should just

1 ignore these two cases and we should move on to the
2 sustainability period and perhaps even finish it and dismiss
3 this case with this matter hanging out here -- out there.

4 We choose to wait for these findings to be made and to
5 discuss them at an appropriate time. We remind the
6 City of Oakland that we are in the sustainability period, which
7 is scheduled to end in eight months. We simply must have time
8 to evaluate this problem and see how it impacts the
9 sustainability period.

10 Accordingly, we must agree with the Monitor's decision to
11 defer Task 5. And as we have stated in our brief, we reserve
12 the right to ask the Court to modify the sustainability period
13 or, if necessary, to ask that it be revoked, depending on what
14 the finding is.

15 Now, moving on to Task 45, OPD believes it is in
16 compliance with that task as well. The Monitor has determined
17 that it should be in partial compliance. We agree with
18 the Monitor's assessment.

19 The OPD has gone into detail on how it can discover and
20 monitor Task 45 problems on its own. And it is totally true
21 that they have come a long way on this issue. In fact,
22 I believe if they follow their own recommendations in the
23 report they just published and set up a plan to implement the
24 recommendations that they have, in fact, recommended
25 themselves, that we may be able to attain compliance by the

1 next case management conference.

2 Of course, the Monitoring team and the plaintiffs'
3 attorneys will have to examine this document and approve it, as
4 will the Court. But the OPD has Dr. Grossman, Dr. Monin, and
5 Dr. Eberhardt to assist them. And I think if they use these
6 people, particularly the Stanford team that has specifically
7 reached out to OPD, they can do a satisfactory report and
8 attain compliance.

9 Some of the problems identified in the OPD Office of
10 Internal Accountability, Discipline, Equity, and Internal
11 Procedural Justice Report, which had no plan of action or
12 correction, include: The report does not deal with their own
13 finding that African Americans and Latinos were overcharged.
14 The report admits that black officers are more likely to have
15 one allegation sustained than any other race. The City has
16 made no real response to this, both in its report and
17 subsequently. The report did not deal with the fact that five
18 out of six officers in OPD feel the disciplinary process is not
19 fair and based on more who you know and your rank than any
20 other ethical standard.

21 Now, the Chief has just said, in effect, that this is sour
22 grapes; and he may, in fact, be right. But there's no point in
23 making this finding if you're not going to do anything about it
24 or say what you think about it. That's not okay, at least in
25 my opinion.

1 In short, the recent report did identify real problems in
2 the OPD. But that is not the problem. The problem is that
3 there was no action or proposed action on many of the most
4 important issues that were identified.

5 And, Your Honor, in closing, I'd like to say that I was
6 recently on a ride-along. I am very impressed with the job,
7 the very difficult job, that the police have, especially in
8 East Oakland where I was. They performed it with compassion
9 and humanity, and I was impressed. It's certainly a long way
10 from the point they were when I started. And I just want to
11 throw that in there as a compliment to the Oakland Police
12 Department.

13 Thank you.

14 **THE COURT:** Thank you, Mr. Chanin.

15 Mr. Burris?

16 **MR. BURRIS:** Thank you, Your Honor.

17 I only have a couple of points to follow up on, a couple
18 of issues that I traditionally follow up on. And this goes to
19 the non-dispatch stops, given that I'm seeing some changes in
20 the percentages.

21 But two things. I'm noting that the number is fairly
22 consistently high for African Americans in terms of the highest
23 number of stops, which is troubling inasmuch as the African
24 American population in the city is reducing significantly,
25 almost daily, but the numbers for non-dispatch stops don't seem

1 to be dropping, seems to me, a proportionate rate. I also see
2 where the non-dispatch stops are increasing for the Hispanic
3 population.

4 So I'm wondering if there's any kind of drill-down on that
5 by the Department and the Risk Management Committee, to see if
6 you can attribute any particular events or conduct to any
7 particular officer on either one of these, because I do think
8 that, you know, it's troubling to me that the non-dispatch
9 rates for African Americans are still pretty significant. And
10 that question is: What kind of stops are those, aside from, I
11 assume, traffic violations?

12 But that's an area that I have some concern about, even
13 though, on balance, we're a long ways from where we were, and
14 I'm really pleased about that. A lot of good work has taken
15 place, particularly when I've seen drill-down and talking about
16 intelligent-led policing.

17 But non-dispatch stops is an important area because that's
18 where people are being stopped, and an officer has
19 arbitrariness or great discretion to make those stops. So I'd
20 like to see, before we finish, whether or not there's some
21 consistency in terms of a reduction in the non-dispatch stops.

22 Then, next, if you go to consistency of discipline, I
23 certainly have been troubled, okay, by the -- and the Court has
24 made reference to it earlier, in terms of the abilities and
25 discoverabilities -- discovering of new complaints after

1 starting and the impact that it's had on the African Americans
2 at a different rate than it has on other ethnic groups.

3 That is significant, although I do and have heard what
4 the City, the defendants, have said about it. And it may be
5 that they're at a point where you can only reconcile and narrow
6 it down, in one sense, but not really necessarily find a
7 consistent path in cause and effect of it. That may be.

8 I have certainly been impressed by the efforts that have
9 been made by the committees to try to address itself to this.
10 And it may be, futuristically, that this issue may have been
11 curtailed and, certainly, the clear direction for the future
12 had been set forth. I surely hope so, because I really have a
13 strong belief -- and everyone should recognize that -- that
14 when -- that the punishment, the discipline that one receives
15 in part of their careers can affect how they progress through
16 the Department, and that affects all kind of efforts on their
17 part.

18 So for me, it looks like a real effort is being made.
19 We're a long ways from where we started out when this issue
20 first came forward three or four years ago. And I think we're
21 close, but I hope that by the next hearing, the issues that we
22 were concerned about in 2019 have been put to bed and that
23 those issues will not be forward -- not something that we'll
24 have to worry about in the future, particularly, as we said,
25 after we're gone. We'd like to know that it's being done now

1 and corrected and put on the right path. So that's just my
2 feeling.

3 So otherwise, I think that a lot of progress is being
4 made. I'm very happy about some of the programs that have
5 developed. One which caught my attention was the
6 management-level liaison committee. It's one of the first
7 things we talked about at the very, very beginning. I think
8 Rocky and people will -- Jim will remember this. And to see
9 that it's still functioning and the public defenders and the
10 D.A. and the court system are working together, at least
11 working together in a sense that they're identifying misconduct
12 when it occurs, is a very positive statement.

13 And that's the kind of long-term sustainability that
14 I think we're looking to have here.

15 So, thank you.

16 **THE COURT:** Great. Thank you, Mr. Burris.

17 And, Deputy Chief Wong, I'll look forward to your response
18 to Mr. Burris on the non-dispatch stops stats in January. That
19 would be an interesting response.

20 So, Ms. Martin, I don't know how you want to organize the
21 presentation, whether you want Mayor Schaaf to go or you. But
22 obviously, one of the issues that I think you're going to be
23 addressing is the second issue that Mr. Burris raised.

24 **MS. MARTIN:** Yes, Your Honor. Thank you. I think it
25 would make sense for me to go first while we're discussing the

1 disparity study work and some of the findings so that I can
2 address that now, and then go to Mayor Schaaf.

3 **THE COURT:** Great.

4 **MS. MARTIN:** So to address Your Honor's questions first
5 about the disparity study work, I just think we ought to get
6 clear and be on the same page, starting, that the only place
7 that we have found statistically significant disparities thus
8 far, meaningful differences in the data, were in those 2019 DLI
9 investigations.

10 And so when Mr. Chanin is also talking about black
11 officers being more likely to have more than one sustained
12 case, that was in the 2019 DLIs. It's on page 16 of the
13 report.

14 And the reason that we drilled down on that and found
15 these other differences is because we were trying to find out
16 if there were correlating factors that maybe rose to the level
17 of contributing enough that we could call them causal factors.
18 We couldn't, but these were correlating factors.

19 So we did find things like black officers had more than
20 one sustained case in the 2019 DLIs. We also correlated the
21 sustained findings in DLIs with discovered violations. So that
22 was our most significant finding, is that black officers, in
23 those 2019 DLIs, they were much more likely to have a
24 discovered violation added to their initial allegations. And
25 it's common sense and supported by our follow-up work that,

1 actually, discovered violations are more often sustained. And
2 that's because if it's first seen by an investigator, it's
3 likely that what they're seeing is likely misconduct. So it
4 would make sense that if you have more discovered violations,
5 you also have more sustained violations there.

6 And this is something that the correlation is what we're
7 going to pick up and run with moving forward and looking in
8 places where, even if we haven't seen statistically significant
9 differences and racial disparities, which we haven't yet, if we
10 do see that or even if we don't, we will also be looking at the
11 discovered violations and seeing if there are differences
12 there. And so while that might not be creating a disparity,
13 that's an area that we can look to, to see if there's a way to
14 remove some of the discretion.

15 And removing discretion in a lot of these bias studies
16 that have been done, finding where discretion is and removing
17 discretion, if possible and appropriate, is sometimes the only
18 way to really have an effective impact on, particularly,
19 unconscious bias.

20 So that's -- I just wanted to be clear about what we found
21 in 2019 and what we're not finding necessarily now.

22 And then in light of Your Honor's statements and some of
23 the things we've heard from plaintiffs' counsel, I think it
24 also makes sense for me to focus on what we are looking at, now
25 and going forward, and what the Court and the parties might

1 expect from the City as we move forward.

2 So I have one specific item that addresses Task 45 that
3 I think will be topical here, and then another more general
4 item.

5 **THE COURT:** Okay.

6 **MS. MARTIN:** But first, so, likely the most significant
7 step that we have moving forward involving Task 45 is going to
8 be the Department's development of what's now called, in the
9 Office of Internal Accountability documents, as the "working
10 methodology."

11 And that's going to be, as stated in those reports,
12 maneuvered into a more concise, final either flow chart or
13 recipe-type document so that anyone who wants to do a disparity
14 study on OPD's data, including OPD, because the Department is
15 required by policy now to be doing this on an ongoing basis,
16 can follow that recipe and do that analysis, not only to
17 identify if there are statistically significant disparities but
18 address those disparities.

19 Now, the Department has discussed the importance of doing
20 this with both the Monitoring Team and the Stanford
21 researchers, and the two use different terms to describe it.
22 Dr. Klofas, on the Monitoring Team, will call it a methodology.
23 Dr. Monin, from Stanford, will refer to it as a playbook. But
24 in any event, we all agree that this is a significant item that
25 needs to be completed moving forward.

1 And at this point, there isn't really a debate that
2 the Department has a solid, written, recipe-style methodology
3 that it now uses to pull reliable data sets and assess the data
4 to identify meaningful or statistically significant
5 disparities. We have that down to a science.

6 And we're able to get there by working, last year, with
7 the Stanford team to pull the reliable data sets. That's
8 around the time that we -- when we tried to replicate the 2019
9 Hillard-Heintze study, we learned that the data was not pulled
10 reliably. So we figured out how to make sure we could always
11 do that moving forward.

12 And moving forward from that, we need to now add to that
13 solid identification methodology a second piece, and that's:
14 What do we do if we see a statistically significant disparity?
15 So we need to join those together.

16 And once we have that, then we will have sort of the
17 working playbook, working final methodology going forward so
18 that we can not only identify solidly and with trust whether
19 there is a disparity, a meaningful disparity, but then what
20 steps are we going to take to address that and eradicate it and
21 impact it effectively.

22 Another thing just to reference is, when we're talking
23 about meaningful differences, I did note that when we talk
24 about differences in discipline, particularly more black
25 officers receiving suspensions, that is something that

1 the Department has acknowledged and is continuing to look into.
2 But at this point, there hasn't been any findings that that's
3 statistically significant, or meaningful differences in that
4 data. But we did see it; we do acknowledge it; we've reported
5 it. We want to be transparent about it. But at this point,
6 those data sets are very small. So it is something that we're
7 keeping our eye on moving forward.

8 And it is certainly my sincere hope that once we have this
9 sort of down to a specific science, not only the identification
10 piece, but the next steps to address if we do find disparities,
11 that no one will disagree that we're not in substantial
12 compliance with Task 45.

13 It's also --

14 **THE COURT:** So let me -- may I stop you there for just a
15 sec?

16 **MS. MARTIN:** Of course, Your Honor.

17 **THE COURT:** I assume that those looking-forward,
18 going-forward steps that you're describing are ones which
19 you're discussing with Dr. Monin or Dr. -- whoever you're
20 discussing them with at Stanford, and also Dr. Klofas; that
21 those are -- your goal is to have everybody on that same page
22 as to what needs to happen, what the recipe needs to be, and
23 how this is going to work on a going-forward basis. Is that
24 right?

25 **MS. MARTIN:** Yes, Your Honor. That's exactly what we did

1 with the identification of disparities back about a year, year
2 and a half ago, in pulling the data. We worked with Stanford
3 to get that down cleanly. And so this is the next step.

4 And we're waiting to finish the 2019 DLI investigation,
5 which we have completed that now, in order to figure out which
6 additional data we are going to hard code, if any, so that we
7 could pull that data as well as part of -- so we'd have that as
8 part of the recipe or protocol, if you will, so we could use
9 that.

10 Both Dr. Monin and Dr. Klofas have talked about the
11 importance of having such a sort of recipe going forward and
12 what we're going to do to address disparities. That is
13 something that we'll work on. We have not yet worked on the
14 actual content of that yet.

15 So we've got our working methodology. And then the next
16 step is now to work with outside folks to get that down to kind
17 of the same recipe style that we have for identifying
18 disparities.

19 **THE COURT:** Great. Okay. Now, I interrupted you. What
20 else did you have to say?

21 **MS. MARTIN:** One other thing that I wanted to follow up
22 that was mentioned today, it's something that Your Honor said
23 about the Court ultimately transferring the oversight reins,
24 because it is important to note that when court oversight ends
25 at some point down the line, OPD will not simply be left,

1 you know, on its own to ensure that all of its progress on the
2 51 tasks remain.

3 As a starting point, the Department, as AC Allison talked
4 about earlier, does have measures in place to monitor and
5 self-correct on its own, not only to sustain the progress it
6 has made, but to continue to advance its procedural justice
7 priorities in the community and inside the Department.

8 The oversight bodies to ensure sustainability and
9 continued advancement of constitutional policing principles are
10 what the City has enabled over the past several years, and
11 the City is not going to have to do this alone. We have the
12 Police Commission, the Commission's independent Inspector
13 General, and the Community Police Review Agency, who all have
14 express authority over areas, including Department policy,
15 auditing NSA tasks, and investigations and discipline.

16 The oversight bodies are in addition to City Council,
17 which includes a Council Public Safety Committee, the Mayor,
18 the City Administrator, and the City Attorney, all who
19 regularly and closely engage with the Department on
20 accountability measures.

21 So who watches the watchman or who polices the police,
22 well, in the City of Oakland, the answer to that is at least
23 three direct oversight bodies and four additional city offices.

24 And the City is prepared to take the reins on oversight.
25 And as it edges closer to that eventuality, it's important to

1 acknowledge this is a Department and a City that are
2 extraordinarily different, not only from the Department and
3 the City at the start of this case in 2000, but even
4 the Department and the City of six years ago.

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

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

7 **THE COURT:** Mayor Schaaf.

8 **MAYOR SCHAAF:** Thank you, Your Honor.

9 This will be my last time addressing you. So it's been an
10 honor to be on this journey for our community and for a sense
11 of justice together.

12 I get asked, about a hundred times a day, what am I doing
13 next, and my answer is I am 1000 percent focused on being the
14 Mayor of Oakland to my very last day, which will be January 2nd
15 at 9:59 a.m. And so you have my continued commitment to stay
16 laser focused on this work.

17 I will not stop holding this department accountable not
18 for compliance. Everybody in this organization knows I bristle
19 at that word because this is about continual improvement. It
20 is work that will never end, and it is the work that we must be
21 committed to.

22 And I promise, as well, that when my successor is known,
23 which should be in about four weeks, that I will also work to
24 transition them and to clearly impart to them the importance of
25 staying personally and deeply engaged in this work. That is my

1 commitment to you and to the people of Oakland.

2 I do want to acknowledge our challenges, particularly the
3 huge increase in homicides and the sense of frustration from
4 our public that there is a rising lawlessness.

5 But I do want to acknowledge that our problems with
6 attrition, for example, have improved. We are starting to see
7 that slow down.

8 And our success in recruiting the right kind of new
9 officers, who have raised their hand for public service for all
10 the right reasons and are here to be the guardians of our
11 community, not lawyers, we are very pleased to see the results
12 of recruitment and training.

13 I do want to address head-on the two related disciplinary
14 matters that were raised in the Monitor's recent report. City
15 Administrator Reiskin and I are fully versed on the matters.
16 We take them extremely seriously. We took swift action to hire
17 external expert investigators as soon as there was any question
18 about the sufficiency of OPD's internal investigations. And we
19 will continue to stay vigilant to instances where the nature of
20 certain matters clearly will warrant independent review. And
21 as always, we look forward to finding the truth in these
22 matters and addressing any issues that are uncovered, both in
23 terms of personal accountability of officers as well as
24 improving OPD's processes.

25 My departing thoughts for you is just to express my deep,

1 deep gratitude to the Court and, of course, to the plaintiffs'
2 counsel who have been incredible partners in this work. And
3 because of you, our city is safer; it has more dignity; it has
4 more justice. So thank you for that.

5 And I also want to say that we are going to continue to
6 embrace -- it's who Oakland is -- the opportunities to make our
7 public safety system stronger and involve community
8 organizations, community members, both the formal and informal
9 organizations and structures that Oakland is so well-known for,
10 who will continue to insist that we reimagine public safety,
11 that we strengthen civilian oversight. And that will, of
12 course, include the continuing and very important and effective
13 role of the Office of the Inspector General that is independent
14 and under our Police Commission.

15 I guess I want to just to end with one parting
16 observation. You've seen in these reports that there is clear
17 evidence of cultural change in the Department. You see it in
18 the statistics around racial disparities. Not to say that the
19 work is ever done, but we see it. But I want you to know that
20 I also have felt it.

21 Every new class of police recruits -- and it's actually
22 captured in the documentary *The Force*. My very first day as
23 the Mayor of Oakland eight years ago, I walk up and down the
24 line, while they are still in their training, before graduation
25 day, and I asked each one individually: Why have you chosen to

1 come work for the Oakland Police Department?

2 And I want you to know that the quality and the nature of
3 those answers has changed during my time as Mayor. And every
4 graduation, when I address that class, I ask them to remember
5 their "why" and to hold it deeply in their hearts as they do
6 this incredibly difficult work.

7 I hear those answers so differently now, so many more
8 officers who have grown up in Oakland, that want to ensure that
9 their communities, that often don't have a voice, have someone
10 they can trust within government that they feel will be fair
11 and hear their particular concerns. And that is what I'm
12 hearing more and more, and that is what I am feeling.

13 And so, Your Honor, again, I thank you for your incredible
14 contribution to Oakland's safety and justice. And I want to
15 just say it has been a pleasure. It has been hard, but this
16 work is the most important work that any leader can do.

17 And I thank you for everything that you have done for
18 Oakland.

19 **THE COURT:** Well, thank you.

20 **MAYOR SCHAAF:** And, of course, I welcome your questions.

21 **THE COURT:** Thank you. I don't have any questions for
22 you.

23 I want to send thanks back to you, particularly in the
24 last few years, which is not to denigrate anything before, but
25 in the last few years, your personal engagement and commitment

1 to accountability and integrity as part of this process of
2 constitutional policing. It's not that you shouldn't have been
3 doing that anyway. It is the job of the mayor. The buck does
4 always stop with you. But you have been particularly engaged
5 in this process, and the City has been very well-served by
6 that, as has the OPD.

7 And it is my hope that you will be able to pass that
8 commitment along to the next mayor who, if anything, will need
9 to do it more than you have.

10 So I thank you very much for your service, and I look
11 forward to reading about what you end up doing in life. So,
12 thank you.

13 **MAYOR SCHAAF:** Thank you, Your Honor.

14 **THE COURT:** All right. Mr. Lucia.

15 **MR. LUCIA:** Good afternoon, Your Honor.

16 **THE COURT:** Good afternoon.

17 **MR. LUCIA:** I really don't have much to offer in terms of
18 the substantive issues that have been discussed; so I'll leave
19 it at that.

20 **THE COURT:** Okay. I think that's very wise. It's hard
21 to -- you don't want to step on the last act.

22 So with that, I will tell you that we are going to meet
23 again on January 10th. We are in the sustainability period,
24 and it is my firm expectation that everyone on this call will
25 keep their eyes firmly on the prize and make sure that all of

1 the things that the Chief described earlier maintain their
2 state of sustainability and improvement and all of the things
3 that are necessary for OPD.

4 So I will look forward to seeing you on January 10th.
5 Thank you all very much.

6 **MS. MARTIN:** Thank you very much, Your Honor.

7 **ALL:** Thank you, Your Honor.

8 **THE CLERK:** Thank you all.

9 (Proceedings adjourned at 4:54 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: Friday, October 21, 2022

17
18 

19 _____
20 Ana Dub, CSR No. 7445, RDR, RMR, CRR, CCRR, CRG, CCG
21 Official United States Reporter
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