

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

DELPHINE ALLEN, et al., )

Plaintiffs, )

VS. )

CITY OF OAKLAND, et al., )

Defendants. )

No. C 00-4599 WHO

San Francisco, California  
Wednesday, January 5, 2022

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (via Zoom Video Conferencing)

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(Appearances continued on next page)

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Official Reporter - U.S. District Court

**APPEARANCES (CONTINUED) :**

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**BY: ROCKNE ANTHONY LUCIA, JR., ESQUIRE**

Also Present: Chief LeRonne Armstrong  
Captain Wilson Lau  
Assistant Chief Darren Allison  
Acting Deputy Chief Clifford Wong  
Deputy Chief Drennon Lindsey  
Mayor Libby Schaaf

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1 Wednesday - January 5, 2022

3:33 p.m.

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

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4 **THE CLERK:** All right. I believe we are set to begin  
5 now in case number 00-4599, Allen, et al. versus  
6 City of Oakland, et al.

7 Counsel, if you would please state your appearance for the  
8 record.

9 **MR. BURRIS:** John Burris for plaintiff.

10 **MR. CHANIN:** Jim Chanin for plaintiff, Your Honor.  
11 Good afternoon.

12 **MR. BURRIS:** Good afternoon, Your Honor.

13 **MS. MARTIN:** Good afternoon, Your Honor. Brigid  
14 Martin for the City of Oakland. Mayor Libby Schaaf, City  
15 Administrator Ed Reiskin, and Police Chief LeRonne Armstrong,  
16 are also present, as well as members of the Department's  
17 Executive Team.

18 **MR. LUCIA:** Good afternoon, Your Honor. Rockne Lucia  
19 for the Oakland POA Intervenor.

20 **THE COURT:** Great. Well, good afternoon to all of  
21 you, and good afternoon to Mayor Schaaf and Chief Armstrong and  
22 everyone else.

23 I'm going to get to my questions in a moment, and after we  
24 do that I'm going to ask the City for its further thoughts and  
25 then go to the OPOA and then the plaintiffs. So please note

1 that I've reviewed everything that you've filed.

2 At the last CMC, I expressed some high hopes that we were  
3 on the path to compliance with the NSA and the end to the  
4 Court's oversight, which is a goal that is shared by most  
5 people and particularly the hardworking, experienced, and wise  
6 monitor and compliance director and his staff in whom I have  
7 the greatest confidence.

8 Despite what I know have been the good-faith efforts and  
9 the hard work of the Chief of the command staff, there still  
10 remain important areas of noncompliance, and some of them seem  
11 to have straightforward fixes. And they need to be fixed in  
12 order to reach substantial compliance, and I'm, frankly,  
13 disappointed that they haven't been as of yet.

14 I'm going to name four identifiable, verifiable areas of  
15 noncompliance; IA timelines, use-of-force investigation  
16 timelines, activation of body-worn cameras, and completion of  
17 the policies that have been identified at the CMCs over time.

18 Now, I don't discount the critical positive achievements  
19 that the City has identified in the CMC statement: a remarkable  
20 decrease in nondispatch stops, the comprehensiveness of the  
21 use-of-force investigations, the reductions in disparity in  
22 discipline, and the success in recruiting diverse officers to  
23 the force. OPD is justified to be very proud of these  
24 accomplishments which are core to the goals of the NSA and to  
25 this Court's oversight.

1 I recognize, also, that given the detail in the NSA, it's  
2 hard to ensure that each part is always in compliance. And I  
3 also acknowledge that we live in challenging times and that  
4 Oakland has been challenged in the last -- since -- since I  
5 took over this case but certainly since the last CMC. But I  
6 don't see any of that as excuses or reasons to set aside the  
7 NSA or the prior orders of the Court.

8 The Instagram investigation spotlighted a number of  
9 troubling problems, but the one that concerns me the most was  
10 the failure of the leadership of the Department to recognize  
11 the corrosive impact of that account and how it undermined  
12 everything that the NSA was intended to accomplish.

13 It evidences cultural rot and it undermines my confidence  
14 that the accomplishments that I was just referring to are  
15 durable accomplishments. And that's the whole purpose of the  
16 NSA in the first place.

17 So I'm going to start my questioning with the Chief.

18 And so, Chief Armstrong, it is good to see you.

19 **CHIEF ARMSTRONG:** Good to see you, Your Honor.

20 **THE COURT:** So, as you know, shortly after the last  
21 CMC I released the comprehensive report of the outside  
22 investigators in the Instagram case.

23 I expect the Department to implement the recommendations  
24 in the report by creating new policies on anti-discrimination  
25 and officer cell phone usage and social media participation.

1           And so I'm interested in what the current status of those  
2 new policies is and what else the Department is doing to  
3 prevent the -- what occurred in this case will ever happen  
4 again.

5           **CHIEF ARMSTRONG:** Your Honor, I think, again, we  
6 share, you know, the same sentiments you've expressed with, you  
7 know, extreme concern about the Instagram investigation and the  
8 behavior of some members of the Department.

9           We recognize that even though the incident was initiated  
10 by a nonOPD member, a former OPD member, it did impact some of  
11 our current members. And we have taken the recommendations in  
12 the investigation very serious.

13           We have already instituted some policies, our zero  
14 tolerance policy for any connection to any extremist group or  
15 racist group or excessives group or any antisemitic behavior  
16 will be met with extreme discipline up to termination.

17           Every officer has been advised. We have pushed out  
18 internal policies and practices as well as met with our staff  
19 regarding that.

20           I personally met with all of our supervisors and our  
21 command staff as well as meeting with all of our officers in  
22 small groups to have this discussion about zero tolerance.

23           I think there's a clear understanding of what the  
24 expectations are for our Department, the members of our  
25 Department, and I'm confident, moving forward, we will continue

1 to see officers and members of our organization complying with  
2 those policies.

3 I think 2021 has been an example of that, Your Honor, with  
4 nothing -- a major scandal or any behavior that we would  
5 consider to be consistent with that type of investigation  
6 occurring over the last 12 months because the new command staff  
7 that has been put in place, as well as our focus on  
8 accountability, I think, is beginning to shift the culture.

9 And so we have created those policies that are  
10 recommended. We will be working with the Police Commission on  
11 our new anti-discrimination policy. We'll also be instituting  
12 a new policy regarding the use of cell phones both on and off  
13 duty and a new social media policy that we'll be working on  
14 with the Police Commission as well.

15 I also have created an internal focus group so that our  
16 officers have an understanding of why some of these things need  
17 to take place and certain behavior shouldn't even occur both on  
18 and off duty in a social media realm.

19 So we are having conversations about cultural change,  
20 expectation in values within the Department, and I'm confident,  
21 moving forward, that 2021 was not a year any different than  
22 what I expect moving forward from this organization.

23 I believe that the culture is changing. I believe this  
24 last 12 months has been an example of what we're about moving  
25 forward.

1           **THE COURT:** Thank you. That's a -- that sounds great,  
2 and I hope that that is the case.

3           I will be asking both Ms. Martin and the Mayor, also, to  
4 just comment on their perspective of that report and where  
5 things stand, because I do think it's fundamental to everything  
6 that you are trying to accomplish.

7           So let me switch gears to something else that's pretty  
8 fundamental, which is risk management. It seems to me that for  
9 the risk management meetings to be sustainable beyond the NSA  
10 the Department needs a policy that provides a framework for the  
11 meetings; what data should be reviewed, how often they should  
12 be run, who should be involved in the meetings, what the  
13 outcomes will be.

14           So I know that you've been working on this policy, Chief.  
15 What's the -- what's the status of the policy and how are you  
16 going to ensure that these processes continue beyond the time  
17 of the NSA when the Department is no longer under federal court  
18 supervision?

19           **CHIEF ARMSTRONG:** Well, I think, Your Honor, we have  
20 taken on a policy working group specifically to work on the  
21 risk management policy, and that includes members of the IMT  
22 team as well.

23           We initially presented a draft to the IMT team. They had  
24 some feedback. And so we then created a group where we could  
25 work directly with the IMT to make sure that the



1 recommendations that the IMT brought forward were included in  
2 the draft that the Department is preparing.

3 I've also placed that at a very high level by assigning  
4 Assistant Chief Allison to lead that group, to be a part of  
5 those discussions to ensure that we're moving forward.

6 I think it is a complex policy that we want to create that  
7 will govern how we do risk management moving into the future  
8 and to make sure this Department is accountable beyond even the  
9 people that sit in the seats of command today.

10 But I will say that I think we have indoctrinated risk  
11 management into our current culture. It is something that all  
12 of our command staff participates in. It is something that we  
13 use as a foundation for assessing risk on an ongoing basis.

14 And so what I think is more important than just policy is  
15 the idea that commanding supervisors actually understand the  
16 value of risk management.

17 While it's codified in policy, it's important that these  
18 drill-downs that we're asking them to do are being done without  
19 being told to do them, without a policy saying it's just the  
20 best practice of how you make sure that officers are not  
21 behaving or showing some type of at-risk behavior that might  
22 lead to potential misconduct.

23 And so we really are saying to supervisors and commanders  
24 it's a part of their leadership requirements that they are  
25 getting in front of these things and that that risk management

1 meeting is just a conversation about how they're assessing  
2 their officers' behavior, using the data to make sure it  
3 supports the strategies that they come up with to intervene in  
4 potential at-risk behavior.

5 But I think as an organization we take it seriously. We  
6 worked closely with Stanford to try to create this risk  
7 management process that I believe is very strong and is  
8 innovative. It's one which nobody else in the country is using  
9 when it comes to the dashboards that we have that we use as a  
10 part of those risk management meetings.

11 And then with the inclusion of our data manager,  
12 Dr. Grossman, she has been a tremendous help for the Department  
13 as she seeks to continue to push us by looking at data in  
14 different ways and doing thorough analysis regarding the data  
15 that's in our VISION system.

16 So we will, I believe, within the next 90 days, have a  
17 completed risk management policy that's prepared to go before  
18 Police Commission for approval.

19 **THE COURT:** That is great to hear. You're taking a  
20 little of my thunder away from me because I'm going to tell you  
21 that that's what I expect before the next case management  
22 conference.

23 All of these policies are -- they're paper. They provide  
24 structure. Much more important that it be built into the blood  
25 of the organization. But without that structure it's easy to

1 forget it. And you have to live by it every day. And that's  
2 the whole purpose of the NSA. A lot of rules.

3 I think Ms. Martin was, when she was an Assistant U.S.  
4 Attorney, involved in a drug court in Oakland, and I was the  
5 one who deals with that in San Francisco. We have a lot of  
6 rules for people who are addicted. And the important thing is,  
7 of course, that they stay sober. But in order to change their  
8 mindset, they have to hit all of the marks of the new structure  
9 that's being built for them.

10 And that's the same thing for OPD in a very different and  
11 equally complicated and challenging environment.

12 Let me ask you about the risk management meetings for a  
13 moment. I went to a couple pre-pandemic, which I was impressed  
14 by. My understanding, from everything that I've heard, is that  
15 they're even more robust and more effective now, which is  
16 great.

17 Can you give me specific examples of how individual  
18 officer's behaviors have been changed as a result of the risk  
19 management meetings?

20 And I'm not talking about the sort of trends like the  
21 decrease in stop data or those sorts of things, but individual  
22 officer's behaviors being modified and improved as a result of  
23 this.

24 **CHIEF ARMSTRONG:** Yes, Your Honor. I can think of  
25 several examples. One example was an officer that was

1 identified during the risk management that he was making stops  
2 outside of his particular beat.

3 He was going into an area where he believed that there  
4 would be more likelihood that somebody may be selling or using  
5 narcotics and things like that, but he or she was leaving their  
6 beat in order to make those stops.

7 So during that risk management process we identified the  
8 officer stops and did a drill-down as to where those stops were  
9 occurring and then, you know, make sure we went and gave the  
10 officer new strategies to stay focused on his or her beat, to  
11 stop engaging in stops that were outside of where the officer  
12 was expected to be.

13 But I think the risk management meeting and the drill-down  
14 was allowing us to not just look at the stops but also look at  
15 where the stops were occurring, what they were for, and were  
16 they in line with the command's direction.

17 I think, also, what we've seen is an influx of supervisors  
18 that are now subject to monitoring as well. So what we've seen  
19 during the risk management process as well is that, as we  
20 assess officers, when we determine that an entire squad is  
21 showing some level of risk, it kicks in for us to do a  
22 supervisor assessment.

23 And so we've put several supervisors on supervisory  
24 monitoring and intervention as a result of the risk management  
25 process and looking at the performance of their teams and

1 recognizing that their teams were showing risk because there  
2 was deficiencies with supervision. And then we were able to  
3 provide the supervisor some development to address that  
4 process.

5 I think, also, one of the things that we've done for the  
6 first time in the last two quarters is that we've actually  
7 included different areas.

8 Mr. Burris had asked us specifically about how are we  
9 looking at the 148s, the resisting arrests, the obstruction of  
10 justice, and how that's being used, is that being used as a  
11 sole reason for charging.

12 We then, through the risk management process, were able to  
13 do an assessment on the entire Department's use of the 148 and  
14 being able to assess the officers who use them the most.

15 Out of that, we better understood that the highest number  
16 of 148 arrests were made during protests. But we also were  
17 able to look at the officers who had the most and actually look  
18 at every single arrest they made for 148 and see if it was  
19 appropriate to use that.

20 So I think we used that in so many different ways to  
21 assess performance in multiple ways but also from a supervisor  
22 and command perspective as well.

23 **THE COURT:** That's great. That's good. Thank you.

24 So since the last CMC, you've made some personnel changes,  
25 I know, in the command staff. And I understand that the new

1 Deputy Chief, who oversees the Bureau of Risk Management, had  
2 been the commander of the Office of Inspector General.

3 Is there a new Inspector General in the Department, and  
4 how has the work of that unit been affected by the absence of a  
5 commanding officer?

6 **CHIEF ARMSTRONG:** So Acting Deputy Chief Cliff Wong,  
7 who has been with the Department for over 24 years, was the  
8 Inspector General, and still is. He has stepped up in acting  
9 role as the acting deputy chief of the Bureau of Risk  
10 Management while still maintaining the roles and  
11 responsibilities related to the OIG.

12 He also has with him on his staff, Kristin Burgess, who is  
13 the manager of our OIG in our auditing area. Kristin Burgess  
14 is supporting Deputy Chief Wong in his role of both taking on  
15 OIG and the Bureau of Risk Management.

16 That is not a long-term position. It is my plan to fill  
17 the deputy chief's position, but I think the opening came as a  
18 result of holding people accountable at the highest level.

19 I've been clear from the beginning that misconduct, no  
20 matter where it comes from, even at the executive level, if it  
21 violates policy, appropriate actions will be taken. And  
22 actions were taken which led to a vacancy in that position.

23 I wasn't in a rush to put somebody into that position  
24 immediately. We've had discussion and we are providing Acting  
25 Deputy Chief Wong the support he needs through Assistant Chief

1 Allison supporting him as well. But the plan is to move  
2 forward with the selection of a Deputy Chief.

3 I spoke to the IMT this week about it and we will be  
4 having further discussion in the month of February about  
5 filling that position.

6 **THE COURT:** Okay. This is advice that you can ignore.  
7 It's not a judicial command. But I have found in life that the  
8 longer people are in acting positions, the less attention that  
9 people pay to them. It really does matter to have the title.  
10 So you have to have the right person.

11 **CHIEF ARMSTRONG:** Yes.

12 **THE COURT:** But it really does matter to have people  
13 who are permanent. The people who are reporting to that person  
14 know this person counts for their life.

15 So then the final thing that I had for you is, I was quite  
16 pleased that the Department has made gains in attracting more  
17 diverse academy classes. I wish there were more women still,  
18 but I understand the difficulties in doing that. But in terms  
19 of gender, race, and ethnicity.

20 And so the next question is, what are you doing to retain  
21 those people?

22 **CHIEF ARMSTRONG:** Yeah, we've been having that  
23 discussion. The Mayor and I have been having that discussion,  
24 as well, about things that we could do to help retain officers.

25 I appreciate the Mayor has taken on even coming into the

1 Department to speak with officers as they exit as well as  
2 holding individual meetings to better understand why we see so  
3 many officers leaving the Department for other departments.

4 Obviously, Oakland is a very challenging city and,  
5 obviously, being here today, you know, obviously we are under  
6 federal oversight and sometime the pressure can get to some  
7 people.

8 And so we're trying to reassure our officers within the  
9 Department that we're going to try new and innovative ways to  
10 continue our progress towards NSA compliance, particularly  
11 utilizing technology.

12 And I think, as you even mentioned earlier when you talked  
13 about the cameras, I believe that the new technology that the  
14 City invested \$8 million in, which is the replacement of our  
15 body-worn cameras for automatic activation, will be a  
16 tremendous help for our offices and will alleviate in some ways  
17 the need to avoid the mishap of human instinct sometime where  
18 you forget to activate, and have automatic activation.

19 I also think that, hopefully, we can eliminate some  
20 reports by automatic activation from the holster when officers  
21 have to actually bring out their weapon. So I think we're  
22 going to use technology to help deal with some of the officers'  
23 concerns.

24 We have personally went to line-ups to hear directly from  
25 them about things that they are concerned about. The



1 administrative tasks are some of the highest -- rank as some of  
2 their highest concerns about how administratively heavy we are.

3 So we're trying to achieve that through technology,  
4 improving the technology that we have. And the City is  
5 upgrading our current communications. Our CAD system, our  
6 digital dispatch -- automated dispatch center will be getting a  
7 new system. That will be helpful.

8 And so I just think the City has invested a lot of money  
9 in helping us improve our technology, and I think that officers  
10 will see the benefit.

11 I think we're also talking to Police Commission about the  
12 potential of having some type of mediation when it comes to  
13 discipline. So maybe we can deal with some discipline issues  
14 by actually having mediation, where officers can meet with  
15 people who have filed complaints and just have a discussion  
16 about how our performance may have been able to be better or  
17 maybe what an officer's reasoning for certain action.

18 I do think that that is much more meaningful to the public  
19 if they're able to share their concerns with the officer. So  
20 we're going to explore some different ways to deal with some of  
21 the officers' concerns.

22 And I hope that as the City takes on a look at what might  
23 be from a financial retention plan, there are some  
24 conversations about that as well, and we'll see what the City  
25 Council and others decide to do with that.

1 But there are some conversations being made to make us  
2 competitive with other cities locally, who are giving officers  
3 significant bonuses to leave Oakland and come to their  
4 departments, bonuses as high as \$30,000.

5 Those are challenges that we have to and the  
6 City of Oakland have to manage. But the first thing is  
7 creating a comfortable work environment for our staff and make  
8 them feel appreciated.

9 And I've expressed that to our City Council, the need for  
10 more appreciation for the hard-working men and women of this  
11 Department that are dealing with challenging times in a  
12 pandemic. But, also, we're asking a lot of a very small  
13 Department where we've seen significant increases in violence.  
14 So it is a lot, but I think we are happy with where we're  
15 moving.

16 And we thank the Mayor because she's personally taken a  
17 lot of time to meet with the POA, meet with the officers as  
18 well as our staff, to hear their concerns.

19 **THE COURT:** Well, thank you, Chief. And thank you for  
20 the -- your hard work and your efforts in all manners, from  
21 what I can see across the Bay, and particularly what I am  
22 seeing within the Department. So thank you for that.

23 Let me go to Captain Lau.

24 Good afternoon, Captain Lau.

25 **CAPTAIN LAU:** Good afternoon, Your Honor.

1           **THE COURT:** I'm confident you have no idea what I'm  
2 going to ask you about.

3           **CAPTAIN LAU:** Let me try to predict.

4           **THE COURT:** So I have to tell you one of my colleagues  
5 in Arizona, a federal district judge in Arizona, I understand  
6 right now has contempt proceedings going on involving the  
7 Maricopa County Sheriff's Office because they are violating  
8 their 85-day time limit for Internal Affairs investigations.

9           The NSA gives Oakland 180 days. You've been struggling  
10 with getting to the requirements of the NSA. And I know that  
11 you understand that delayed investigations are a disservice to  
12 the public and also the employees of the Department.

13           So in the last -- since the last time we met, what changes  
14 have you made to meet the timeliness requirements, and how are  
15 you holding investigators accountable for meeting the required  
16 180-day deadline?

17           **CAPTAIN LAU:** Your Honor, 85 days in Arizona seems  
18 pretty short. I'd like to see how those investigations look if  
19 that's done in 85 days.

20           But I assure you I was just as disappointed, but I  
21 remained optimistic, because this was the closest that we've  
22 got for Task 2.1. We're 2 percent shy from Class 1, we're 83,  
23 and we're 91 percent for Class 2.

24           Everything we've put in place has been working. It just  
25 takes a little bit of time for everything to go, as we have a

1 big organization. But I am very confident that, with  
2 everything that we've put into place, that we'll remain  
3 consistent, because in the 2021 fourth quarter I believe, using  
4 the methodology that we have, that I went over with the IMT,  
5 that we are projecting compliance for the fourth quarter.

6 And I think everything we have in place, it's continuing  
7 to improve and now we're there. And I think as long as -- and  
8 this is all owed to the leadership of the organization from the  
9 top on down. That's everyone's attention to detail.

10 So, Your Honor, I hope the next CMC we will -- I'm keeping  
11 track of the 2021 fourth quarter numbers. As you know, the  
12 fourth quarter ended, and I'm very confident that we're there,  
13 sir.

14 **THE COURT:** All right. Well, so that -- I take you at  
15 your expectation, and I'm pleased to the extent that it turns  
16 out to be correct.

17 And when we meet again, we'll not only -- we will have  
18 finished the first quarter in 2022, and I am -- I want to see  
19 both -- or I hope that I see the fourth quarter the way that  
20 you expect it, and I need to see the first quarter in the way  
21 that you can deliver it.

22 So thank you for making those changes and for making sure  
23 that that happens.

24 **CAPTAIN LAU:** No problem, Your Honor.

25 **THE COURT:** Okay. Thank you.

1 Assistant Chief Allison.

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

3 **THE COURT:** Good afternoon. You have the same  
4 enviable position of knowing exactly what I'm going to ask you.

5 So the -- and I hear the Chief on the technological  
6 potential for the new cameras, which sounds great. Technology  
7 still is going to be as good as the officers.

8 And I don't really understand why this has continued to be  
9 a problem even with the technology that you do have. So I'm  
10 interested in what you have learned about why supervisors  
11 aren't catching what they ought to be catching with respect to  
12 the use of these -- of the body-worn cameras and what you're  
13 doing to address it.

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

15 So, you know, I've obviously had a lot of time to spend on  
16 looking at the body-worn camera activation issue, and it kind  
17 of prompted the move to Axon, which I will say that, as the  
18 Chief indicated, we have our first shipment of 150 body-worn  
19 cameras here before the end of the year, and we're going to  
20 continue to get them through the first quarter of this year.

21 When I look at the culture of activation in the Police  
22 Department, I think back very far where we were and how far  
23 we've come. And I remember just a few short years ago our  
24 issues were really around not activating at all. We had a lot  
25 of incidents of no activation, and those were concerning.

1 As we've progressed forward with training and direction,  
2 and trying to shore up policy, we've seen that gap close. I'll  
3 tell you that when we look at the numbers, even in the last  
4 three assessments, on use-of-force feedback, when you look at  
5 the universe of incidents, I think there were around 340 or so  
6 use-of-force incidents that were assessed involving about 741  
7 officers.

8 There were 75 determined late activations, a little less  
9 than half that were not caught by supervisors. So we're in  
10 about the 90th percentile of actual either activations or  
11 activations if they did not occur were actually caught by the  
12 supervisor.

13 We did our own independent inspection of non-use-of-force  
14 instances, since, obviously, we have to activate in other  
15 occasions other than use-of-force occurrences. Fifty incidents  
16 of 216 officers, and we found 15 late activations. And so  
17 we're about 93 percent officers activating appropriately.

18 And so I think that's that way. We are in the 90s when it  
19 comes to activation or activation that was found by  
20 supervisors, because we have pushed on that accountability,  
21 that high scrutiny and that level of review.

22 I know that when we look at use-of-force investigations,  
23 particularly our Levels 2s and our Levels 3s, which are the  
24 more serious use-of-force incidents, it's very rare that we can  
25 go through those and not find some type of training point.

1           Some cases it's body-worn cameras and some cases it's  
2 tactical issues or demeanor issues, whatever the case may be.  
3 And, again, I think that's, as an organization, paying close  
4 attention and focusing on it.

5           I think, with the body-worn camera upgrades with the new  
6 equipment, we won't really be talking about the delays in  
7 activation because they will be activated by automatic intent.  
8 But we'll be talking about incidences where we are requiring  
9 people to deactivate it for whatever the various reasons are.

10          So I think that we will overcome our hurdle with not only  
11 equipment, but, again, accountability. And I'm just, again,  
12 coming back from where I saw issues of zero accountability,  
13 we're seeing, again, that culture of activation.

14          And I also want to -- just know, Your Honor, that in all  
15 our body-worn cameras and use-of-force encounters, there  
16 weren't any incidences where we found either use of force was  
17 missed or where there was any issue of a zero activation.

18          And, again, I do believe the reviews that we've done, the  
19 risk management meetings that we've had, and the messaging we  
20 pushed on to our supervisors has really kind of closed that gap  
21 from years ago to where we are today.

22          I think there's one other thing that we need to keep  
23 pushing on, and that is really how we develop our new  
24 sergeants.

25          I know you mentioned and discussed with the Chief

1 retention. Not only do we see officers leaving for various  
2 reasons, but we also see folks entering into retirement, which  
3 we are losing a cadre of seasoned officers and supervisors and  
4 commanders.

5 So there is a new learning curve for individuals, so  
6 shoring up our transition course, our development course, will  
7 help better reviews for our supervisors as we move into the  
8 future.

9 **THE COURT:** Okay. Good. Well, so that's all very  
10 positive. I look forward to hearing how the -- how the new  
11 cameras are working at the next session. Thank you.

12 **ASSISTANT CHIEF ALLISON:** Sure.

13 **THE COURT:** Now, how about Acting Deputy Chief Wong,  
14 who would have to turn on his camera and -- there. Something  
15 is happening. There we go.

16 **ACTING DEPUTY CHIEF WONG:** How are you, sir? I  
17 apologize for that. I couldn't get my mask off in time.

18 **THE COURT:** Not a problem.

19 So I'm interested in learning about -- a little bit more  
20 about how the supervisors are using the data dashboards.

21 A couple of years ago I visited the Department and  
22 attended a presentation by a vendor who was developing those  
23 dashboards.

24 Are all of the supervisors using them? And what sort of  
25 feedback are you getting from their use?



1           **ACTING DEPUTY CHIEF WONG:** Well, the vendor you're  
2 talking about is Slalom. And I can't say that every single  
3 supervisor is using them, but they are being used by, at the  
4 very least, the command staff and the area captains.

5           And they're using those to do drill-downs into their  
6 individual squads and officers. And they use that to  
7 supplemental the products created by Dr. Grossman. So she  
8 produces the data, they can use that to look up the line item  
9 details.

10           **THE COURT:** And so is that -- is that the plan?

11           Is that as low as the dashboards were going to be used in  
12 the -- by rank?

13           **ACTING DEPUTY CHIEF WONG:** By "low," you mean at the  
14 captain level?

15           **THE COURT:** Yes. Weren't the dashboards going to be  
16 accessible by more than just the command staff that you  
17 mentioned?

18           **ACTING DEPUTY CHIEF WONG:** Oh, no, they are accessible  
19 all the way down to the supervisor. I'm saying that for sure I  
20 can tell you the captains are using them and the lieutenants  
21 are using them.

22           I couldn't speak for every single sergeant out there, but  
23 we know they're being used. And we're getting feedback that  
24 it's become one of their steps that they use to gather data to  
25 look at details.

1           **THE COURT:** And so any constructive criticism of the  
2 dashboards, or is it all enthusiasm?

3           What kind of feedback are you getting?

4           **ACTING DEPUTY CHIEF WONG:** Well, with any complicated  
5 system, you don't have all enthusiasm. So when there's issues,  
6 they come to us. And, you know, Dr. Grossman and Sergeant Dinh  
7 and their crew can walk them through on how to better use those  
8 tools, so that that occurs regularly.

9           **THE COURT:** So, all right. Well, you have an  
10 exceptionally important and difficult task, and I recognize  
11 that. And so I -- I hope that you grasp it and make it your  
12 own, and make sure that everything is working in compliance  
13 with the NSA and the directions that we've been making.

14           **ACTING DEPUTY CHIEF WONG:** Thank you. Yes, sir.

15           **THE COURT:** Thank you.

16           And how about Deputy Chief Lindsey?

17           I can't hear you, but good afternoon.

18           **DEPUTY CHIEF LINDSEY:** There we are. Can you hear me  
19 now?

20           **THE COURT:** I can.

21           **DEPUTY CHIEF LINDSEY:** Good afternoon, sir.

22           **THE COURT:** Good afternoon.

23           So I'm interested in how the Department, in the wake of  
24 the Hillard Heintze study, is doing with respect to training  
25 and promotional process and disciplinary procedures that

1 address racial disparities.

2 **DEPUTY CHIEF LINDSEY:** So we've been moving forward  
3 quite well. As you probably have read, we're wrapping up all  
4 of the recommendations and implemented them from the Hillard  
5 Heintze study.

6 The last portion is the implementation of the workshop  
7 series which we call Project Reset. That has been received  
8 quite well. We're in the Module 1 where we're doing the Train  
9 The Trainer. And the trainers are very enthused about it.

10 I actually have had people reach out asking if they could  
11 be a part of the training team, which, in this climate, with  
12 all that we have to do and how busy we are, is very, very  
13 fulfilling to see that type of response.

14 A portion of the Project Reset, in conjunction with the  
15 Stanford researchers, is that we have to write Modules 2 and 3.  
16 So we actually have to work with Stanford to come up with the  
17 additional curriculum.

18 But it's been great. We're actually, also, again, working  
19 with the director from the Race and Equity Department, Darlene  
20 Flynn. She's assisting us with writing a policy for the  
21 Oakland Police Department as it relates to race in equity.

22 So we're going to adopt the City's race and equity policy,  
23 and then we're also going to implement an informational  
24 bulletin that just covers the comprehensive report of the  
25 actual Hillard Heintze study, everything that we've done just

1 to further educate the Department on what we've done and some  
2 of the impacts, such as the IAD process, where we've anonymized  
3 the demographics of the individual as we're going through the  
4 discipline process and also as we go through sustained cases.

5 So it's been pretty good so far, yeah.

6 **THE COURT:** You're getting the support you need?

7 **DEPUTY CHIEF LINDSEY:** Yes, absolutely.

8 We have a great team assembled from Captain Lau,  
9 Lieutenant Turner, who's been helping us out with policy and  
10 procedures.

11 We have two new managers that's joined the Department, who  
12 are actually doctorate students, and they're assisting with  
13 just finishing out the workshop series and just the  
14 coordination between the completion of the additional policies  
15 with Director Flynn and just making sure that we're hitting the  
16 mark from the recommendations that came out of the study.

17 So we've got a pretty good committee working towards the  
18 project, and just hopefully grow our internal race and equity  
19 team. So that's been pretty positive.

20 **THE COURT:** That's great. All right. Thank you.

21 **DEPUTY CHIEF LINDSEY:** Thank you.

22 **THE COURT:** So, Mayor Schaaf, I'm interested in your  
23 reaction and response to the Instagram investigation, but  
24 anything else that you wanted to -- that you would like to  
25 share I would be very interested in.

1           **MAYOR SCHAAF:** Well, I'm happy to start there.  
2 Everyone on this call felt the heat of my wrath when that  
3 ungodly, embarrassing, horrific Instagram account was  
4 discovered.

5           I appreciate that no one made excuses even though it was a  
6 very chaotic time in our city. I appreciate that people were  
7 appropriately horrified. I -- I was sharing recently that one  
8 of the command staff I actually thought was -- came to tears  
9 because it was so just antithetical to everything that not just  
10 this Department has been working on but our City stands for.

11           I think we come to Oakland with a particular love for our  
12 city and pride that this is a city that stands for values. And  
13 those values include inclusive diversity, equity, justice,  
14 respect. And that account literally vomited on every one of  
15 those values.

16           I do appreciate the contrition that I believe was  
17 sincerely felt by each and every one of you, and you are all on  
18 this call right now, who had that email in your inbox but did  
19 not open it up or look at it or process the information that  
20 was in it.

21           I do appreciate the efforts of the independent analysis  
22 and the recommendations that have been made, and I am pleased  
23 that the primary perpetrator is someone we fired. And,  
24 obviously, several other people have left the Department since  
25 this all came to light. And that is all appropriate.

1           And, you know, Your Honor, I've lived my life as a woman.  
2           Much of what I discovered in the detailed investigation was  
3           highly disappointing but not entirely surprising nor unique to  
4           police departments.

5           And so I appreciate that this was an opportunity that shed  
6           light on things that were unrelated to the Instagram case, that  
7           allowed us to address those as well. And we will remain ever  
8           vigilant to improve not just the culture of the Police  
9           Department but of the entire City of Oakland.

10           Every workplace needs to be dignified and be equitable.  
11           And so I believe the recommendations of the report will put us  
12           on that path, are well-taken and have been embraced.

13           And I appreciate the -- to the extent that it was horrific  
14           that we went through it, I believe that we will come out better  
15           because of it.

16           I do not have much else to add, Your Honor. I think you  
17           know that this has been a very difficult year not just because  
18           of the pandemic, but because we lost 134 lives to homicides.  
19           And that was an all-time high of homicides for at least a  
20           decade.

21           And we also had an all-time low in this last decade of the  
22           lowest police staffing that we've had. I believe the force got  
23           down to 676 officers. And I, for one, believe that police  
24           reform and excellent performance and professionalism and  
25           culture change requires an adequately staffed Department where

1 officers are not overworked. And I am feeling much better  
2 about our path to correcting that deficiency.

3 I'm pleased the City council has authorized additional  
4 training academy and is even looking for creative ways to  
5 incentivize addressing the staffing challenges.

6 And I appreciate, Chief, your recognition that I'm trying  
7 to invest as much of my own personal time to really digging  
8 into why officers are leaving our Department and how we can  
9 address having adequate staffing and the highest professional  
10 standards.

11 I am very pleased about our new -- both the class that  
12 just graduated and our new class that just started the academy.

13 And I also want to acknowledge it's not just that the  
14 recruitment efforts have improved, but the retention efforts,  
15 the actual retention through the academy and through the field  
16 training process.

17 We've actually had much higher retention rates during  
18 those processes in this recent year. So, Chief, kudos to you  
19 for that.

20 I also want to acknowledge that we welcomed Oakland's  
21 first Inspector General for the Oakland Police Commission,  
22 Michelle Phillips. And so that is yet another partner and  
23 amazing talent that will help in our collective work.

24 Your Honor, I'm available for any questions that you have.  
25 I acknowledge the deficiencies that you listed at the beginning

1 of this hearing, and we will absolutely focus on providing  
2 those things that you very reasonably expect of us.

3 **THE COURT:** Well, thank you, Mayor Schaaf.

4 And I just -- I want to acknowledge your, at least, more  
5 public -- and it's probably taking more of your time, too, but  
6 the energy and efforts that you've put in that have been  
7 particularly evident to me over the last year and a half or so  
8 on these very difficult and important issues. Your leadership  
9 has been very valuable, and so thank you for that.

10 **MAYOR SCHAAF:** Thank you, Judge.

11 **THE COURT:** Ms. Martin, do you have anything that you  
12 would like to add?

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

14 I'm going to echo what Mayor Schaaf just said about the  
15 City and the Department coming out better after the Instagram  
16 investigation.

17 Now, the report does not indicate that the Department's  
18 executive leadership actually saw the Instagram memes before  
19 January 8th. And when they did, to be fair, the Interim Chief  
20 and the IAD captain did immediately recognize the absolute  
21 corrosive nature and how objectionable these memes were and a  
22 full-scale investigation ensued.

23 In very short order, they did confiscate cell phones from  
24 more than 140 officers, not only those officers who appeared to  
25 have followed the Instagram page but also officers who were



1 assigned to the OPD crime reduction team in the past or other  
2 proximate units. And that was in an effort to find and  
3 eradicate bigoted members or members who harbor or encourage  
4 bigots.

5 We absolutely understand that the Department will remain  
6 under court supervision until we root out officers who do not  
7 respect the people they serve and treat them equally. That is  
8 absolutely fair.

9 As part of the City's commitment to exactly that, the  
10 Department is trying to take more proactive approaches and  
11 implement more proactive measures to get ahead of that.

12 One of those, which is included in the new  
13 implementations, is figuring out and making sure that there is  
14 not only the possibility that officers' cell phones may be  
15 confiscated and reviewed, but that that is actually happening  
16 in real time as far as, you know, having officers' phones  
17 actually being looked at on a regular basis so that those  
18 reviews will be happening; there's not just the specter or the  
19 fear that it could happen.

20 And the other is that as Chief Armstrong went around and  
21 spoke to different groups of officers he is also encouraging if  
22 you hear something or see something, do not remain silent.

23 It's important to the future of this Department and to the  
24 Department's values that those folks that hear things do not  
25 remain silent but that they speak up and let their supervisors

1 or let the Executive Team know when they hear or see  
2 objectionable things.

3 And I will say, without getting into specifics, that that  
4 is happening. That is happening in the Department. So I am  
5 hopeful that we will come out of this stronger and we will root  
6 out some of the problem officers.

7 With that said, I also wanted to turn and speak briefly  
8 about risk management and note that when we talk about risk  
9 management, we're not just talking about risk management  
10 meetings. We're talking about every facet of the Department's  
11 work.

12 Risk management is not something that occurs only at  
13 meetings with that title. It really occurs daily throughout  
14 the Department. It's kind of fair to say that risk management  
15 runs through the Department's veins.

16 The monthly risk management report that we previously  
17 previewed with the Court in a prior filing, that's really just  
18 the metaphorical tip of the iceberg, a really easily digestible  
19 report that a supervisor can see and identify particular areas  
20 that they want to dig further into.

21 What comes with that as a supplement created by the risk  
22 analysis unit are a number of trend lines that sort of look  
23 like dashboards or come from the dashboard side of the house  
24 and will show trend lines typically going back about 18 months.

25 But we have to be careful because the -- given the number

1 of policy changes and reporting changes that have occurred in  
2 the last couple of years, some of that does affect what those  
3 numbers might be.

4 So that adds an additional layer of complexity to that,  
5 that the supervisors have to navigate around. And they do  
6 often go back and ask the risk analysis unit for additional  
7 deeper dives into certain -- certain statistics. And some of  
8 that is presented at risk management meetings, but some of it's  
9 not, even though it's all useful.

10 Additionally, we have seen some really significant risk  
11 mitigation impacts that have come out of the Department's risk  
12 management processes. One is the lowest ever African American  
13 stop rate sustained for two consecutive quarters. A second is  
14 a huge reduction in handcuffing people without arrest or  
15 citation, a huge reduction in racial disparities in that  
16 handcuffing.

17 From -- I think, the 2014-to-2015 data showed that 1 in 4  
18 African Americans who were stopped without arresting citation  
19 were handcuffed versus 1 in 15 whites. Fast-forward to 2020  
20 and our data shows that for every one -- it's 1 in 3.3  
21 African Americans in that situation are handcuffed versus 1 in  
22 3.7 whites. So that is a huge reduction in disparity there.

23 Our risk mitigation really is also evident in the  
24 Department's use of force. The Department is in compliance  
25 with its force review boards and executive force review board's

1 tasks. And the monitoring team has agreed with OPD's use-of  
2 force determinations for nearly all uses of force at every  
3 level since it reactivated its review of Task 25.

4 And we also acknowledge that body-worn cameras are  
5 risk-related. We understand and agree that failure to properly  
6 activate a body-worn camera could result in the loss of  
7 critical information regarding community contacts.

8 But it is significant that, in fact, none of the delayed  
9 activations or other deficiencies have actually impacted the  
10 Department's ability to rigorously and appropriately  
11 investigate any uses of force. And I think that is because  
12 there has been overall improvement.

13 The type of delays that we're seeing are a matter of  
14 seconds, and I think that that's important because it does tend  
15 to show that these activations are unintentional human error.  
16 These are not officers who are trying to hide what's going on  
17 or obscure uses of force.

18 It's not to say -- this is absolutely not to say that the  
19 Department will every stop trying to correct behavior to  
20 minimize any and every one of these deficiencies, but reducing  
21 that human error in a Department with several hundred officers  
22 and hundreds of thousands of activations every year to an  
23 amount that doesn't interfere with the Department's ability to  
24 conduct use-of-force investigations is at least a critical  
25 benchmark, and that is a benchmark that the Department has

1 achieved at this point.

2 **THE COURT:** All right. Thank you. Thank you,  
3 Ms. Martin.

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

5 **THE COURT:** Mr. Lucia.

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

7 I just want to just say that, you know, I just first want  
8 to commend Chief Armstrong and Mayor Schaaf. Throughout the  
9 last few, I'd say six, seven, eight, nine, months, they have  
10 repeatedly asked the community, the elected officials, to  
11 support their need for increased staffing.

12 And, as you read in our CMC statement, the staffing  
13 levels, I think, really impact a lot of what you're hearing  
14 today. You know, comparing the turnaround time on  
15 investigations, you know, in Maricopa County 85 days sounds  
16 crazy low. I mean, it's just incredible. I don't know how  
17 they do that. But I'm just thinking in my mind that that's got  
18 to be a function of staffing.

19 And so, you know, the Mayor and the Chief, you know, have  
20 a very difficult job. They've got to control crime in Oakland.  
21 At the same time, you know -- and Mayor Schaaf just said it --  
22 we have to be cognizant of the impact that this is having on  
23 rank and file; the workload, not the NSA requirements and all  
24 of that.

25 And I just want to say to you that, you know, when I

1 prepare the CMC statements, you know, we're the intervenors and  
2 we've basically tried to stay in our lane through the duration  
3 of this, but this time, when I was canvassing members of the  
4 OPOA, I just sensed this general need on their part to just say  
5 to you, through the CMC and right now, that, you know, they're  
6 facing very daunting tasks out there on the street and they're  
7 doing their best, you know, to serve the citizens of Oakland.

8 I will tell you, the Instagram case, all the recent  
9 mishaps, if you will, that does not represent the vast majority  
10 of Oakland police officers who are out there doing their best,  
11 you know, to comply with the NSA, to be respectful, change  
12 culture, but, most importantly, to protect the citizens of  
13 Oakland. And it's got nothing to do with the NSA per se, but I  
14 think staffing morale is part of a cultural process that needs  
15 to continue.

16 And, again, I want to commend Mayor Shaaf because she  
17 stood up, along with the Chief, and demanded, you know, that  
18 the community embrace greater staffing levels so they can serve  
19 the community better.

20 So I just want to thank you for giving me the opportunity,  
21 if you have any questions. But I also want to commend all of  
22 the members of the command staff that have spoken. You see the  
23 professionalism, the effort. You know, it's just remarkable to  
24 me.

25 John and Jim and I have been here from the beginning, and

1 the Department's come a long way, a very long way.

2 **THE COURT:** Thank you, Mr. Lucia.

3 **MR. LUCIA:** Thank you, Your Honor.

4 **THE COURT:** Mr. Chanin.

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

6 **THE COURT:** Good afternoon.

7 **MR. CHANIN:** I would like to start by just commenting  
8 briefly on two things that I heard.

9 One is the absence of mediations. And I know OPD used to  
10 have mediations at some point because I remember going up to  
11 the City Attorney's Office long ago, for some reason, and the  
12 officers and people were in the same elevator I was in, and you  
13 could cut the tension with a knife. It was, like, really  
14 noticeable even to a guy like me who was focusing on the  
15 deposition or whatever it was I was going up there for.

16 And I asked them what -- when I got up there, I asked some  
17 City attorney or some staff person what was going on, and they  
18 told me it was a mediation.

19 And when I came down, just by coincidence, I saw the same  
20 people in the elevator, including the officer, and they were  
21 all, like, laughing and talking, and it obviously was  
22 successful.

23 And, frankly, I'm shocked and I don't understand why these  
24 mediations are no longer done. I think they're a great idea.

25 And, obviously, you have to have the consent of the -- of both

1 parties, but, you know, I think it's a good idea. Sometimes it  
2 doesn't work, but, you know, you can't hit a home run every  
3 time you're at bat. So I would like to echo that.

4 The second thing I want to say is what Assistant Chief  
5 Allison said, and that is that we've come a long way on the  
6 activation of body-worn cameras.

7 I remember a meeting where we were at, John and I or  
8 whatever, it was a long time ago, but we heard that they'd had  
9 eight executive force review boards and in seven of them the  
10 camera wasn't turned on.

11 And I said, you know, the people of Oakland spent money on  
12 this, and I think that maybe I'll go ask Judge Henderson to  
13 shift the burden of proof so when an officer doesn't use his or  
14 her camera, that they'll -- they'll have the burden of proof of  
15 proving they didn't do it rather than the other way around.

16 So everyone said no, no, we'll take care of it and so on  
17 and so forth. And I know the president of the OPOA and others  
18 went to every lineup and told them there would be -- at least  
19 the quote, I was given -- bone-crushing discipline if the  
20 cameras weren't used.

21 And I think there's been a remarkable improvement since  
22 then. We still have a way to go, but we're getting there. And  
23 I support the Department's efforts to the extent we've gotten  
24 this far.

25 So let me say what I was going to say, which was, I want



1 to begin by thanking the men and women of the Oakland Police  
2 Department for staying on the job during this very difficult  
3 period for them and their families.

4 Unlike us, they do not have the prerogative of working on  
5 Zoom. And we appreciate their efforts. And none of the  
6 concerns I'm going to raise today diminishes that.

7 The Instagram investigation is now concluded. I think the  
8 fact that we had a scandal like this in 2021, over 20 years  
9 after this case started, is depressing.

10 We agree with Clarence Dyer's conclusion, which is set  
11 forth, in part, on page 7 of our brief, that this conducts  
12 speaks, at best, to an absence of processes within OPD to  
13 ensure a safe and discrimination-free workplace committed to  
14 court-ordered reforms, and, at worst, bespeaks a culture so  
15 hostile to women and minorities and so wedded to a discredited  
16 model of policing that it cannot identify discrimination and  
17 antireform messaging when it sees it.

18 I sometimes wonder if Mr. BondGraham, a reporter, had not  
19 discovered these memes, that they would have ever become  
20 public. I wonder why this case was not referred to Internal  
21 Affairs nearly four months after nearly every member of OPD was  
22 tipped off by email that the Instagram site had been discovered  
23 by outsiders.

24 Now, I don't know how many people opened that email, and  
25 we'll never know, but at least some of them did, that's for

1 sure.

2 This email was written by an OPD officer who did not  
3 report this misconduct to Internal Affairs as required by OPD  
4 regulations. In fact, as set forth by the -- in the Clarence  
5 Dyer report on pages 9 and 10, the case was not referred to  
6 Internal Affairs until a former -- until the former police  
7 chief found out that I knew about the case. This is obviously  
8 unacceptable, especially at this stage of the negotiated  
9 settlement agreement.

10 One could argue that this is a "boys will be boys" case  
11 and I am taking it too seriously. However, after representing  
12 women police officers from Oakland, Berkeley, Alameda,  
13 San Francisco, and other places throughout the Bay Area, I have  
14 come to the conclusion that there is real harm when these jokes  
15 and cartoons are allowed to be distributed around the Police  
16 Department with no consequences.

17 Moreover, the failure of OPD to develop a social media  
18 policy since this incident was made public is simply  
19 unacceptable.

20 The same can be said for OPD's failure to finalize a risk  
21 management policy, the A171 policy, and a cell phone policy as  
22 to what is permissible on OPD phones.

23 The Instagram case bears an uncanny resemblance to the sex  
24 scandal of 2015-2016. That case was also covered up by an  
25 unknown but large number of Oakland police officers, some of

1 whom had sex with an underage girl.

2 The case was not uncovered until former councilmember  
3 Desley Brooks and I raised concerns about some details of a  
4 police officer suicide and the IMT discovered his suicide note  
5 which implicated other OPD officers' contact with the minor.

6 Plaintiffs' attorneys would like to have OPD in compliance  
7 and begin the sustainability period sometime this year;  
8 however, there are some things that must happen before that  
9 time.

10 We cannot have a scandal like in -- in 2022, particularly  
11 not one that is not brought forth by the OPD itself.

12 Finalizing the risk management policy and the social media  
13 policy also must be done.

14 The Department is still out of compliance with Task 25, as  
15 you said, Your Honor. The noncompliance appears to be focused  
16 on supervisors' failure to note late activation of body-worn  
17 cameras and supervisors' delay in finalizing use-of-force  
18 investigations within stated OPD policy.

19 The OPD will be acquiring new cameras this year which will  
20 automatically activate when the patrol lights are turned on or  
21 some other form of self-activation. Hopefully, this will solve  
22 the problem of delayed activations going forward.

23 The issue with supervisors must be resolved by the IMT and  
24 officers working together to come up with a doable commonsense  
25 solution.

1 I've had officers tell me that there is so much paperwork  
2 for them to do that they are often delayed in arriving at their  
3 next call. If that is true, it's only a matter of time before  
4 someone gets hurt or worse.

5 On the other hand, the supervisors' failure to complete  
6 investigations in time can create significant risk management  
7 problems if use-of-force outliers are not identified in a  
8 timely way so the ways to remedy this conduct can be discussed  
9 at a risk management meeting.

10 There must also be compliance with Task 2. OPD was in  
11 compliance with Task 2 as recently as 2019. At that time  
12 plaintiffs' attorneys long ago sided with the OPD over the  
13 opposition of the first monitor in agreeing to their requests  
14 that they be given 180 days to complete an investigation and  
15 have a compliance rate of only 85 percent.

16 And, Your Honor, we just heard what's going on in  
17 Maricopa, and so this is a generous concession that we stand  
18 behind to this day, but it has to be complied with.

19 OPD and CPRA need to talk to each other and see if the  
20 CPRA investigations that take longer than 180 days can be  
21 minimized to the point where OPD can be in compliance with Task  
22 2 and the CPRA can feel they are pursuing an investigation in a  
23 professional manner as they see fit.

24 My review of recent Police Commission tapes where this  
25 issue was discussed leads me to believe that this issue can be

1 resolved to everybody's satisfaction. If not, we would suggest  
2 that the Court get involved in this issue.

3 I discussed Task 34, stop data vehicle stops, field  
4 investigations and detentions at the last case management  
5 conference and will only dwell on it briefly at this time.  
6 Barring an unforeseen discovery by the IMT, I believe they  
7 should give serious consideration to finding OPD in compliance  
8 with this important task.

9 Not only have African American stops plummeted in recent  
10 years, but Campaign Zero, an organization advocating criminal  
11 justice reform, who uses data to measure progress, has not only  
12 found Oakland leads comparable-size cities in the low number of  
13 officer-involved shootings but also rank first in reducing  
14 black/white disparities and has actually lowered the rate of  
15 African American stops in addition to the raw number of stops.

16 These charts appear in both plaintiffs' and defendant's  
17 portions of the last case management conference statement. The  
18 chart and the City's portion of the CMC statement on page 24  
19 details these developments further. However, the same chart  
20 also shows the stops of Hispanics since 2014 has almost  
21 doubled, from 17 percent to 33 percent, by 2021.

22 Now, Your Honor, this case does not specifically cover  
23 stops of Latinos; however, someone in OPD needs to look at  
24 these figures so that, as our case concludes, there is not  
25 another case involving the OPD and Latinos.

1 Mr. Burris will now discuss Task 45 and other issues of  
2 concern. Thank you.

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

4 Mr. Burris.

5 **MR. BURRIS:** Let me say -- I won't go long on this,  
6 but I will say that I think that the issue that the Court  
7 raised earlier, and one which I have talked about my entire  
8 efforts in police work, is the culture of the Department and  
9 that that culture really carries over into all the other issues  
10 that we make reference to, whether it's stop data disparities,  
11 disrespect, all those areas, seem to me, flow from the culture  
12 that the Department has and how they treat a citizen and the  
13 mindset of the individual officers.

14 And so the Instagram issue and how that's been dealt with  
15 has been very instructive at least as it relates to a mindset  
16 that, I think, exists.

17 The question is how pervasive is it, and that's the part  
18 that's troubling, because when you look at what's going on  
19 around the country in some of these various groups, you know,  
20 protest groups, particularly Republican-type protest groups, a  
21 lot of those are law enforcement people. They've been in the  
22 military and law enforcement, and the question is whether  
23 that's the mindset that's also carried over here in OPD.

24 And we've identified -- at least certain ones  
25 identified -- not we, but it's been identified through

1 Instagram that there was a significant mindset of disrespect  
2 that was taking place. And, to me, that represented a culture  
3 in the Department because it was viewed as okay, it was  
4 acceptable amongst these officers.

5 And so for us as we go forward the question is, do we have  
6 things in place that will identify before it becomes a problem  
7 that culture or that mindset within the Department?

8 Because what we're talking about here -- and I know the  
9 Chief and the Mayor and everyone supports this, and Rockne, as  
10 well -- that we're talking about sustainability. And we want to  
11 know that whatever we do here will have a lasting impact in the  
12 future beyond us.

13 So that's what I want to see, you know, what -- how has  
14 the culture really changed? I mean, I know we got things  
15 perhaps in place and how we can count on them being sustainable  
16 in the future.

17 It is not -- it is easy to identify that there will be  
18 problems. I mean, it's just the way it is. Guys do things,  
19 girls do things. The issue is, do you have a mechanism in  
20 place to identify this before it becomes pervasive and take  
21 appropriate action and send a clear message to the other  
22 officers that that type of conduct is unacceptable.

23 To me, those are questions of how do you deal with a  
24 culture that's within the Department, because they go, to me,  
25 to the whole question of is it an issue of disparities, is that

1 sustainable what we try to get done here? Issue in terms of  
2 the employment questions, which I think that Lindsey -- Chief  
3 Lindsey has done a real great job. I talked to her about the  
4 future of it, and I'm pleased that there's some real efforts  
5 being made to identify what the problems were and how to  
6 prevent them in the future.

7 The question then becomes, what is the audit? How do we  
8 know and who gets to decide in the future whether or not the  
9 data -- that the data is being interpreted in such a way that  
10 allows us to identify the existence of problem; and, if so,  
11 who's going to be held accountable? Who holds people  
12 accountable for it?

13 And, to me, these are mechanisms that we need to have in  
14 place as we go forward, because I do believe -- and I think Jim  
15 has made reference -- that, yeah, we should end sometime in the  
16 near future, you know.

17 And so what are we leaving in place? And that's the part  
18 that I'm more concerned about is what mechanism of  
19 sustainability has been identified for each of these tasks that  
20 we can look to, to say that we can measure and evaluate the  
21 success or failure of these various tasks as we go on to the  
22 next phase.

23 Right now I'm certainly optimistic. There's a lot that's  
24 been done. The Chief and the staff, I think that we have some  
25 reliability. But, at the same time, I have concerns about the



1 next day. And I mean literally the next day, the future. And  
2 so that's what I'm interested in seeing as we go forward here.

3 But, certainly, I think real progress has been made. I  
4 certainly appreciate the numbers that have gone down in the  
5 disparity study and the stop data.

6 I think Jim has raised a significant point. And a point  
7 that he and I talked about, the numbers that have gone down for  
8 the African Americans, is that a function of the policing or is  
9 that a function of the demographics?

10 The demographics means that African Americans have left  
11 the community and have moved, so there's fewer of them. And I  
12 don't know if that's true or not, but that, to me, would raise  
13 a question about whether or not we can rely upon the stop data  
14 that we have as being accurate as it relates to  
15 African Americans if, in fact, we have not looked to see how  
16 much of that is a function of a demographics change. That's  
17 just something that I've been thinking about as we go along.

18 But, on balance, I'm ready for the next CMC that we've got  
19 to do, and the light that I have behind me.

20 **THE COURT:** So the next CMC is going to be on  
21 April 27th at 3:30.

22 By that time I expect to learn that all of the  
23 identifiable problems that I listed at the beginning of this  
24 CMC have been resolved and that OPD has completed and adopted  
25 the risk management, social media, cell phone,

1 anti-discrimination, and Special Order 9208 regarding the Type  
2 32 force reporting policies; they're all done by that date.

3 And to the point that Mr. Burriss was just making, that I  
4 made at the beginning, that the Mayor spoke to, that everybody  
5 in some way or another has spoken to, which is the cultural  
6 issues which are not identifiable within the NSA but infuse  
7 almost all of the issues in the NSA, I want to hear from each  
8 of the parties on what they think we ought to be -- what they  
9 think the Court's oversight should be going forward.

10 Because I'm going to assume that everything -- all of the  
11 structures of the NSA will have been in place and complied with  
12 by April 27th. And I want to know how the Court can be helpful  
13 to assure the permanence of the impressive accomplishments that  
14 have been made thus far and the ultimate substantial compliance  
15 with the NSA. So I want everybody to be thinking about what  
16 that is.

17 I want to see in the joint case management statement what  
18 you think about the best way forward for the Court's oversight  
19 of the NSA and OPD is. You know, are we in a place of  
20 substantial compliance? Is the Court's oversight still  
21 required and valuable? And, if so, in what ways?

22 And so I'm very interested in having you grapple with that  
23 in addition to getting from the 10-yard line across the goal  
24 line with respect to all of the matters within the NSA.

25 So thank you, all. I'm glad to see everybody as healthy

1 as you seem to be. And I hope that -- I have every hope and  
2 expectation that this year is going to exceed last year in so  
3 many ways but particularly in this way.

4 And, again, Chief Armstrong, I want to thank you for the  
5 efforts that you are making to ensure that that happens.

6 So I'll be interested in everybody's input for the next  
7 session.

8 **MR. LUCIA:** Your Honor.

9 **THE COURT:** Yes.

10 **MR. LUCIA:** Judge Orrick, if I may, the process that  
11 you just referred to in terms of reporting out, you used the  
12 term "parties." Technically, the OPOA is not a party.

13 **THE COURT:** I am very interested in hearing from the  
14 OPOA.

15 **MR. LUCIA:** All right.

16 **THE COURT:** I consider you integral to making all of  
17 this work in the long term. So I'm very interested in that.

18 And if it's not clear to the members of your organization,  
19 I have the greatest respect for the men and women who serve the  
20 people of Oakland in the Oakland Police Department. I am  
21 impressed every day with the valor that they show and their  
22 commitment to public service.

23 And I think I mentioned a couple years ago I had the  
24 opportunity to talk with some of the newer members of the force  
25 during a seminar in Berkeley for a couple of hours. They're

1 very impressive people, so -- and that's what I expect from  
2 everybody.

3 So I will look forward to your input.

4 **MR. LUCIA:** All right. Thank you, Your Honor.

5 **THE COURT:** All right.

6 All right, everybody. Thank you very much. I will see  
7 you in April.

8 (Counsel thank the Court.)

9 **UNIDENTIFIED SPEAKER:** Thank you, Your Honor. Happy  
10 New Year.

11 **THE COURT:** Happy New Year.

12 (At 4:54 p.m. the proceedings were adjourned.)

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16 **CERTIFICATE OF REPORTER**

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

19 DATE: Thursday, January 20, 2022

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24 \_\_\_\_\_  
25 Katherine Powell Sullivan, CSR #5812, RMR, CRR  
U.S. Court Reporter