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OAKLAND

2015 APR -1 PM 9:19

## AGENDA REPORT

**TO:** JOHN A. FLORES  
INTERIM CITY ADMINISTRATOR

**FROM:** Sean Whent

**SUBJECT:** Status Report on the Oakland Police  
Department's Efforts to Address Racial and  
Religious Profiling Concerns and to Ensure  
Constitutional Policing

**DATE:** March 31, 2015

City Administrator  
Approval

Date

4-1-15

**COUNCIL DISTRICT:** City-Wide

### **RECOMMENDATION**

Staff recommends that the Public Safety Committee:

Accept this Informational Report from the Oakland Police Department (OPD) regarding efforts to address concerns of racial profiling and to ensure constitutional policing.

### **OUTCOME**

This report will help facilitate discussion between OPD, the Public Safety Committee and the public at large regarding concerns of racial and religious profiling in the City of Oakland as well as OPD's procedures to ensure constitutional policing.

### **BACKGROUND / LEGISLATIVE HISTORY**

The National Institute of Justice (NIJ) defines racial profiling as "a practice that targets people for suspicion of crime based on their race, ethnicity, religion or national origin."<sup>1</sup> Racial profiling does not however refer to instances in which law enforcement officers pursue suspects with specific descriptors, based on evidence, that define race or ethnicity. As stated in OPD "Stop Data Annual Report July 1, 2013 to June 30, 2014," (*Attachment D*), "The Department recognizes the complexities, challenges, and responsibilities associated with the presentation of Stop Data statistics. Stop activity can be influenced by variables of beat demographics, crime trends, deployment patterns, Department staffing, traffic levels, and transit patterns in the City (pg.1)."

<sup>1</sup> <http://www.nij.gov/topics/law-enforcement/legitimacy/Pages/racial-profiling.aspx>

Item: **5**  
Public Safety Committee  
April 14, 2015

The American Civil Liberties Union documents national cases and associated lawsuits in which law enforcement and private security organizations have been shown to disproportionately target people of color for investigation and enforcement<sup>2</sup>. The recent high profile cases of police officer-involved deaths in Ferguson, Missouri and New York City have only heightened community concern about police practices.

OPD is acutely aware of its responsibility to ensure that enforcement efforts protect the civil liberties of all. In 2004, the Police Department instituted an explicit policy of prohibiting racial profiling or any bias-based policing, as part of Departmental General Order M-19 (*Attachment A*). Correspondingly, OPD is committed to collecting data related to all proactive, discretionary stops, including the reason for the stop and the race of individuals contacted. The Stop Data Policy and data collection program was implemented with the intention of creating an internal culture of accountability, allowing for assessments and identification of biased behaviors, and increasing transparency. OPD is committed to progressive, fair, and unbiased policing. In addition to collecting Stop Data information, OPD has implemented the following strategies:

- Consistent monitoring Stop Data analysis during regular internal risk management meetings and externally by the court appointed monitor.
- Expanded focus on and investment in the Ceasefire Strategy with intelligence-driven policing. Intelligence-based policing relies on credible information about who is committing crimes so that our enforcement actions are more specific and targeted.
- Procedural Justice Training. Modeled after a program developed by the Chicago Police Department and Yale University professors, the goal of this training is to enhance positive interactions with our community and to increase OPD's ability to communicate in a way that is perceived as fair and respectful. The effectiveness of the concept is supported by research and the training is being implemented by agencies throughout the country.
- The formation of a Community Advisory Board as an additional layer of accountability and partnership.

#### *NSA-Related Protocols*

As a result of the Negotiated Settlement Agreement (NSA) resulting from *Delphine Allen, et al., v. City of Oakland, et al.* – and subsequent agreements – the City of Oakland and OPD are required to collect and maintain demographic data concerning persons with whom OPD has contact. TASK 34 of the NSA (Section VI) "Vehicle Stops, Field Investigation, and Detentions" states:

1. OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include:
  - a. Time, date and location;

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<sup>2</sup> <https://www.aclu.org/racial-justice/racial-profiling>

- b. Identification of the initiating member or employee commencing after the first year of data collection;
  - c. Reason for stop;
  - d. Apparent race or ethnicity, and gender of individual(s) stopped;
  - e. Outcome of stop (arrest or arrest);
  - f. Whether a search was conducted and outcome of search;
  - g. Offense categories (felony, misdemeanor or infraction).
2. This data shall be entered into a database that can be summarized, searched, queried and reported by authorized OPD personnel.
  3. The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."

The Oakland Police Department incorporated the above requirements and additional best practices in departmental policy. General Order M-19 "Prohibitions Regarding Racial Profiling and Other Bias-Based Policing" (*Attachment A*) explicitly prohibits racial profiling and other bias-based policing<sup>3</sup>. The policy further states the limited circumstances in which OPD personnel can consider a number of other factors such as religion in making law enforcement decisions and actions.

The Department continues to work closely with the Independent Monitor, who oversees NSA compliance, to insure Stop Data is utilized in a manner that promotes Constitutional and effective policing practices. Stop Data is presented and reviewed for one of the five policing areas at monthly Risk Management Meetings (RMM) chaired by the Deputy Chief of the Bureau of Services. Stop Data is analyzed in conjunction with performance indicators such as use of force, vehicle pursuits, sick leave and Personal Digital Recording Devices (PDRD) usage. Area Captains and Lieutenants are responsible for conducting in-depth analyses of officers' performance and implementing intervention plans when deficiencies are identified.

The Oakland Police Department does not request or collect information on religion. Even in situations where a member of OPD is aware of one's religion, policy prohibits consideration of this information in making decisions about interacting with an individual. As provided in General Order M-19, Section III, C:

Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

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<sup>3</sup> The American Military University defines bias-based policing as "intentional practice by an individual law enforcement officer who incorporates prejudicial judgments based on race, ethnicity, gender, sexual orientation, economic status, religious beliefs, or age": <http://inpublicsafety.com/2014/04/bias-based-policing-a-felony-in-some-states/>

Special Order No. 9042, New Procedures Regarding Stop Data Collection (*Attachment B*) and Special Order No. 9101, Revised Stop Data Collection Procedures (*Attachment C*) modify requirements governing circumstances under which Stop Data (which includes information on race) is to be collected.

Additionally, the Federal Court Order dated December 12, 2012 (*Attachment E*) related to the NSA calls for OPD “to address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting (2) incidents of racial profiling and bias-based policing (3) citizen complaints (4) high-speed pursuits.”

The Oakland Police Department publishes Stop Data Reports online (<http://www2.oaklandnet.com/Government/o/OPD/a/PublicReports/index.htm>). The most recent annual report (*Attachment D*) covers the period of July 2013 through June 2014. The goals of the report were to present Stop Data statistics for this period; to create transparency regarding stops, including the racial/ethnic identify of those stopped by officers; and to build a solid foundation for ongoing analysis and discussion. The report provides the following categories of stop data:

- Race and gender
- Stop reasons by race
- Search percentages by race
- Search recovery percentages by race (including and excluding incident to arrest searches)
- Search types by race
- Stop results by race

## ANALYSIS

The 19<sup>th</sup> Quarterly Report, from the Independent Assessment Monitoring Team (IMT) which oversees OPD’s compliance with the NSA, covers the period of April 1 through June 30, 2014 and provides the following information concerning Task 34: Vehicle Stops, Field Investigation<sup>4</sup>, and Detentions:

- Compliance had been achieved for completion of Stop Data Forms for every vehicle stop, field investigation and detention.
- Compliance had been achieved for providing specific information in Stop Data Forms.
- Compliance had not been achieved for a stop database that can be summarized, searched, queried, and reported by personnel authorized by OPD. Even though the data collection process was recognized as reliably accurate, the IMT found

<sup>4</sup> A Field investigation is when officers conduct investigations at the scene of a crime or in the public right of way

OPD not in compliance because OPD needs to address indicators of disparate treatment among population groups to determine whether or not there is a constitutionally valid basis for the disparity or a need for corrective action.

The 20<sup>th</sup> Quarterly Report cover the period of July 1 through September 30, 2014 and is the most recent available. Concerning Task 34: Vehicle Stops, Field Investigation, and Detentions:

- Compliance had been achieved for completion of Stop Data Forms for every vehicle stop, field investigation and detention.
- Compliance had been achieved for providing specific information in Stop Data Forms.
- Compliance was partially achieved for a stop database that can be summarized, searched, queried, and reported by personnel authorized by OPD. Even though the data collection process was recognized as reliably accurate, the IMT found OPD in partial compliance because the Department audits were insufficient, as they have not identified issues relating to the search recovery rate nor the large percentage of stops involving individuals on probation or parole. The IMT again found that OPD needs to address indicators of disparate treatment among population groups to determine whether or not there is a constitutionally valid basis for the disparity or a need for corrective action.

OPD collects Stop Data for all discretionary stops. Non-discretionary stops are defined by Special Order No. 9042 (*Attachment B*) as cases where arrests are required based on particular evidence and probable cause. OPD does not collect Stop Data on non-discretionary stops because in these cases officers do not need to use discretion or judgment to decide whether limited available information justifies a stop. Discretionary stops, whether of a pedestrian, bicyclist or motorist, are those incidents where police officers stop individuals based on apparent evidence (e.g. match description of a suspect, traffic violation) or based on reasonable suspicion. The data below highlights stop data from OPD's "Stop Data Annual Report July 1, 2013 to June 30, 2014" (*Attachment D*).

Table 1: Stop Data by Race

Race	Stops	Percentage
African American	16,542	59%
Asian	1,905	7%
Hispanic	4,839	17%
White	3,801	14%
Other	904	3%
Total	27,991	100%

**Table 2: Stop Data by Gender**

Gender	Count	Percentage
Male	20,870	75%
Female	7,112	25%
Total	9	0%
Total	27,991	100%

**Table 3: Reasons Cited for Stops, by Race**

Race	Consensual Encounter		Reasonable Suspicion		Probable Cause		Probation/ Parole		Traffic Violation		Grand Total
	#	%	#	%	#	%	#	%	#	%	
African American	778	5%	1,636	10%	3,794	23%	446	3%	9,888	60%	16,542
Asian	51	3%	94	5%	254	13%	25	1%	1,481	78%	1,905
Hispanic	155	3%	289	6%	669	14%	69	1%	3,657	76%	4,839
White	113	3%	164	4%	570	15%	29	1%	2,925	77%	3,801
Other	28	3%	37	4%	126	14%	9	1%	704	78%	904
Grand Total	1,125	4%	2,220	8%	5,413	19%	578	2%	18,655	67%	27,991

African Americans were stopped most often for discretionary stops (59%) with Hispanics at 17%, Whites at 14% and Asians at 7%. As Table 3 above shows, traffic violations were the most common reason for stops for any race.

Analysis of this data which does not account for context – such as geographic data and connections to crime patterns – can lead to conclusions that point to racial profiling. But drawing conclusions from Stop Data must be informed by comprehensive data and analysis; contemporary research is utilizing different approaches to assess racial profiling in traffic stops. The study “Police Officers’ Decision Making and Discretion: Forming Suspicion and Making a Stop, Final Report to the National Institute of Justice, February 2006<sup>5</sup>” was conducted in Savannah, Georgia where trained observers accompanied police officers on 132 tours and focused on officers’ decision-making and discretion prior to a traffic stop. Observers questioned officers for each instance of expressed officer suspicion and officers stopped individuals when they had suspicion 59% of the time. Minorities accounted for 71% of officer suspicion, and the majority of reasons cited for officer suspicion was perceived nervousness or similar behavior as well as traffic violations.

The RAND Corporation Study, “Police-Community Relations in Cincinnati Year Three Evaluation Report,” 2007<sup>6</sup>, looked at progress from a collaboration of the Cincinnati Police Department, the Fraternal Order of Police, and the American Civil Liberties Union to resolve social conflict, improve community relations, and avoid litigation in Cincinnati. In particular, the study looked at “whether there is a department-wide pattern of bias against black drivers, the

<sup>5</sup> <https://www.ncjrs.gov/pdffiles1/nij/grants/213004.pdf>

<sup>6</sup> [http://www.rand.org/pubs/technical\\_reports/TR535.html](http://www.rand.org/pubs/technical_reports/TR535.html)

fraction of officers who disproportionately stop black drivers, and whether there is evidence of racial biases in post-stop outcomes. The study found that black drivers had longer stops and higher search rates than white drivers, but that the disproportionate share of citywide stops was mostly due to the “clustering of crime, calls for service, and policing in predominantly black neighborhoods” page No. XV.

The NIJ also suggests that if racial bias is present in a police department, such bias could be the result of a few problem officers among a majority of race-neutral officers.

*The Stop Data Analysis Project*

OPD is authorized under the NSA to collect stop data. OPD is now working with Stanford University Professor Jennifer Eberhardt to analyze Stop Data. Professor Eberhardt, a 2014 MacArthur Award Fellow, is considered an expert in researching the effects of racial profiling.

The Stop Data Analysis Project, designed to identify and address tensions between OPD and the Oakland residents will last one year or more. Eberhardt’s analysis will be conducted citywide and for each of the five police Areas. The Professor’s analysis will follow industry standards using a variety of different benchmarks and variables including, but not limited to, racial demographics and crime rates. The analysis will consider, measure, and compare the following factors:

- Differences in stop rates, relative to the race of the persons stopped.
- Differences in search rates and types of searches relative to the race of the persons searched.
- Differences in recovery rates relative to the race of the persons searched.
- Stop results relative the race of the persons stopped.

Professor Eberhardt is analyzing decision-making leading to the initiation of stops and actions during stops, as reported on Stop Data forms, other reports and audio/video recordings. Additionally, the expert analysis will consider variables such as officer race, experience and squad diversity.

In July of 2014, OPD received valuable feedback from community members regarding the data collection process and the anticipated end result. Attendees included members of the Citizens Police Review Board, the American Civil Liberties Union, Youth Uprising, People United for a Better Oakland, Men of Valor, and Acts Gospel Church. Attendees agreed to participate in an ongoing Stop Data Community Advisory Board.

This Stop Data Analysis Project will further OPD’s efforts of becoming a national leader in addressing racial profiling, bias-based policing and stop data analysis. OPD looks forward to the completion of the report in anticipation of enhancing its current practices and protocols.

**PUBLIC OUTREACH/INTEREST**

Racial profiling as it relates to police procedures for stopping residents and visitors is of public interest as it directly relates to equity, fairness and safety within the Oakland community.

**COORDINATION**

The Office of the City Attorney was consulted in preparation of this report.

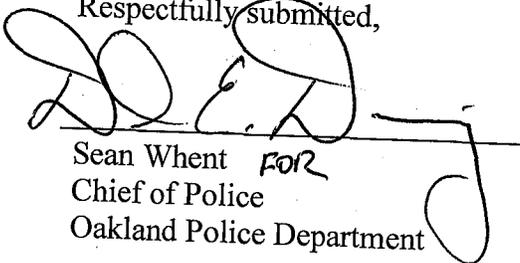
**SUSTAINABLE OPPORTUNITIES**

*Economic:* There are no economic opportunities identified in this report.

*Environmental:* No environmental opportunities have been identified.

*Social Equity:* This report provides valuable information to the Oakland community regarding social equity.

For questions regarding this report, please contact Timothy Birch, Police Services Manager I, Research and Planning, at (510) 238-6443.

Respectfully submitted,  
  
Sean Whent FOR  
Chief of Police  
Oakland Police Department

Prepared by:  
Timothy Birch  
Police Services Manager I  
Research and Planning  
Office of the Chief  
Oakland Police Department

- Attachment A: Departmental General Order
- Attachment B: Special Order No. 9042
- Attachment C: Special Order No. 9101
- Attachment D: Stop Data Annual Report
- Attachment E: Fourth Progress Report of the Compliance Director



DEPARTMENTAL  
GENERAL  
ORDER

New Order  
Effective Date  
15 Nov 04

M-19

Index as:

Bias-Based Policing  
Prohibitions Regarding Racial Profiling  
and Other Bias-Based Policing  
Racial Profiling

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**PROHIBITIONS REGARDING RACIAL PROFILING AND  
OTHER BIAS-BASED POLICING**

**I. PURPOSE**

- A. The purpose of this policy is to reaffirm the Oakland Police Department's commitment to providing service and enforcing laws in a fair and equitable manner, and to establish a relationship with the community based on trust and respect. Whenever our practices are, or are perceived to be, biased, unfair, or disrespectful, we lose public trust and support and diminish our effectiveness.
- B. The Department recognizes that there has been a growing national perception that law enforcement action is too often based on racial stereotypes ("racial profiling") or other bias-based policing - whether it is against African Americans, Latinos, Asians, Middle Easterners, South Asians, or any other race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability. In Oakland, there is concern within our communities that some members may engage in this behavior. Whether individual members agree or not, we, as an organization, must recognize that this concern exists and be responsive to it.
- C. California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This Department policy explicitly prohibits racial profiling and other bias-based policing. It also states the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in making law enforcement decisions and actions.

## II. DEFINITION OF RACIAL PROFILING

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

## III. POLICY

- A. Investigative detentions, traffic stops, arrests, searches and property seizures by officers shall be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution.
- B. Members shall articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, pedestrian, bicycle, or vehicle stops, arrests, non-consensual searches and property seizures.
- C. Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity.

Members seeking one or more specific persons who have been identified or described in part by any of the above listed characteristics may rely on these characteristics in part and only in combination with other appropriate factors.

## IV. CONSENT SEARCHES

- A. A consent search refers to searches conducted not based on probable cause, incident to arrest or pursuant to a search warrant, but based on permission granted from the person being searched.
- B. Consent searches are permissible law enforcement tools; however, their use shall not be:

1. Arbitrary. In other words, the request to conduct a consent search must be reasonable and members should be able to articulate the suspicion that formed the basis for the request.
  2. Based on actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability.
- C. Members shall complete a Field Contact Report (836-314) for each consent search conducted articulating the reason for the search.
- D. Pursuant to Report Writing Manual Insert R-2, members shall complete a Stop-Data Collection Form (Scantron) for each consent search conducted.
- E. Members shall advise individuals of their right to refuse a consent search.

#### **V. CONDUCTING STOPS**

In conducting pedestrian, bicycle, or vehicle stops, members shall:

- A. be courteous, respectful, polite and professional.
- B. explain the reason for the stop while asking for identification, unless impractical.
- C. identify yourself.
- D. ensure the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense, and explain the reason for any delays.
- E. answer questions the person may have regarding the stop and explain the disposition of the stop.
- F. apologize for the inconvenience when appropriate.
- G. if asked, provide the procedures for filing a complaint about police services or conduct outlined in DGO M-3 COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES.

## VI. EXAMPLES OF RACIAL PROFILING

A. Examples of racial profiling include but are not limited to the following:

1. Example #1

While on patrol an officer observes a black male driving a new, expensive Mercedes Benz in a low-income neighborhood. The vehicle is not listed on the "hot sheet" nor is it entered in the Stolen Vehicle System (SVS). The officer decides to stop the vehicle to further investigate because he feels the car may be stolen because it appears too expensive for the driver and the neighborhood.

Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity or national origin is unlikely to own or possess a specific model of vehicle is prohibited.

In this particular example, the officer had neither reasonable suspicion nor probable cause to detain the vehicle. Absent additional information or observations that would lead a "reasonable" officer to believe the vehicle was stolen, such as a smashed window or signs that the vehicle was hot-wired, the officer's stop constitutes racial profiling.

2. Example #2

An officer is assigned to a predominately "white" residential neighborhood. While on patrol, the officer observes a Hispanic male driving a truck late at night. The officer knows most of the residents in the area and does not recognize the Hispanic driver. Recently there have been burglaries in that area. Based on the fact that there have been burglaries in the area, and the driver is Hispanic and the residents in the area are white, the officer stops the vehicle to further investigate.

Detaining the driver of a vehicle based on the determination a person of that race, ethnicity or national origin does not belong in a particular part of town constitutes racial profiling and is prohibited.

In this particular example, the officer's knowledge of the residents and the driver's race, even though the race differs from most of the residents in that area, does not provide reasonable suspicion. The

fact that there have been burglaries in the area may raise an officer's suspicion to vehicles driving late at night; however, even when this information is considered with the other factors discussed, it is an insufficient basis for a detention.

## VII. STOP-DATA COLLECTION

Pursuant to Department Report Writing Manual Insert R-2, members shall:

- A. complete a Stop-Data Collection Form for every vehicle, walking, and bicycle stop conducted during their shift. Members shall also complete a Stop-Data Collection Form for every consent search conducted.
- B. print his/her name and serial number at the bottom of every Stop-Data Collection Form completed.
- C. submit completed Stop-Data Collection forms to their assigned supervisor or, in the absence of the assigned supervisor, an available field sergeant or Watch Commander for review and approval.
- D. deposit all completed (and approved) forms in the report writing receptacle at the end of their shift.

## VIII. MEMBER RESPONSIBILITIES

Members shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. report incidents of racial profiling as defined in this policy.
- D. be subject to disciplinary action if deemed not in compliance with this order.

## **IX. COMPLAINTS**

Complaints of racial profiling and other bias-based policing against members shall be:

- A. considered complaints of discrimination (Class 1 violation as defined in DGO M-3) and, as such, immediately forwarded to the Internal Affairs Department.
- B. immediately referred to the member's supervisor, or if the officer's supervisor is not available, to the Watch Commander.

## **X. TRAINING**

- A. Pursuant to California Penal Code Section 13519.4, each member shall:
  - 1. attend POST racial profiling training; and
  - 2. complete an approved refresher course every five (5) years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends.
- B. The Racial Profiling Program Manager shall ensure line-up training on racial profiling and this policy is provided to sworn personnel at least once annually. This training may also be provided to non-sworn personnel.

## **XI. SUPERVISORY RESPONSIBILITIES**

Supervisors shall:

- A. not engage in, ignore, or condone racial profiling or other bias-based policing.
- B. be responsible for knowing and complying with this policy.
- C. ensure that subordinates under their command know and understand the content and application of this policy.
- D. periodically monitor subordinates under their supervision to ensure compliance with this policy.
- E. review all forms submitted by members to ensure the forms are completed in accordance with this order and Report Writing Manual Insert R-2.

- F. print his/her name and serial number in the appropriate boxes signifying the form has been reviewed and approved, and return the form to the appropriate member.
- G. conduct periodic audits to ensure compliance with this order.

Supervisors and commanders who fail to comply with this order shall be subject to disciplinary action.

If it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known, the supervisors and/or commander shall be subject to disciplinary action.

## **XII. BUREAU OF FIELD OPERATIONS**

The Bureau of Field Operations (BFO) is responsible for data collection processing. Accordingly, BFO shall:

- A. ensure Stop-Data Collection Forms are available in the Patrol Line-up Room.
- B. enter the Stop-Data Collection Forms into the SCANTRON system within five working days of receipt.
- C. retain completed and scanned forms for period of not less than three years unless otherwise instructed by the Chief of Police.
- D. conduct periodic audits to ensure members comply with the provisions of this order and RWM Insert R-2.

## **XIII. OFFICE OF INSPECTOR GENERAL (OIG)**

Pursuant to the provisions of DGO N-12, Departmental Audits and Inspections, the OIG shall conduct annual reviews and audits of the Department's data collection efforts to ensure compliance with the Settlement Agreement. The OIG shall report all findings to the Chief of Police and the Program Manager.

**XIV. RACIAL PROFILING PROGRAM MANAGER**

A. The Racial Profiling Program Manager is responsible for the following:

1. Racial profiling grant management;
2. Coordination of stop-data collection and analysis;
3. Completion of all reports pertaining to racial profiling; and
4. Coordination with the OIG to ensure compliance with the Settlement Agreement.

B. The Racial Profiling Program Manager shall:

1. produce a written report to the Chief of Police at least twice per year that includes an analysis of the data collected, and appropriate policy recommendations.
2. periodically meet with the Oakland Racial Profiling Task Force, which is comprised of representatives of the following organizations:
  - a. Oakland Police Officers' Association (OPOA);
  - b. Citizens' Police Review Board (CPRB);
  - c. American Civil Liberties Union (ACLU);
  - d. National Association for the Advancement of Colored People (NAACP); and
  - e. People United for a Better Oakland (PUEBLO).

By order of

Richard L. Word  
Chief of Police

Date Signed: 26 Oct 04

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER NO. 9042

TO: All Personnel

SUBJECT: New Procedures Regarding Stop Data Collection

EFFECTIVE DATE: 11 Jun 10

TERMINATION: Upon Revision of DGO M-19, RACIAL PROFILING  
(Rev. 15 Nov 04) and RWM Insert R-2, COMPLETING THE  
STOP DATA COLLECTION FORM (Rev. 15 Jan 10)

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The purpose of this order is to revise Department policy and procedure to ensure that all investigative police encounters with the public are properly documented and that required information is collected and entered into the Field Based Reporting (FBR) and Computer Aided Dispatch (CAD) systems. The provisions of this Special Order apply to all members including the Traffic Section, Crime Reduction Teams and Violence Suppression Teams.

Effective immediately, Department General Order M-19, RACIAL PROFILING and RWM Insert R-2 are revised as indicated.

**New DGO M-19, Part II, B**

**II. DEFINITION OF RACIAL PROFILING**

**B. Investigative Encounter**

An investigative encounter is any police encounter with a member of the public when the officer contacts a person to confirm or dispel a suspicion that the person may be involved in criminal activity. This includes detentions, vehicle stops, walking stops and consensual encounters (contacts).

**Revised DGO M-19, Part III, A and RWM Insert R-2, Introduction**

**III. POLICY**

**A. When FBR Stop Data is Collected**

Members shall complete an electronic **FBR Stop Data Collection Form (SDF)** for certain arrests, every detention not resulting in an arrest (vehicle, walking, and bicycle stops), every consent search of a person conducted and any other investigative encounter. A SDF shall also be completed for consensual encounters (contacts) where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave. The nature of the contact and the intent of the member is relevant in the determination to complete an FC and Stop Data Collection Form (in FBR). When in doubt, members should complete an FC and Stop Data Form.

1. The following non-discretionary arrests do not require collection of stop data. The purpose of collecting data is to examine discretionary police encounters with the public. Non-discretionary arrests are limited to arrests where:
  - a The member receives the arrest from private person (citizen's arrest);
  - b The member receives the arrest from a member of a law enforcement agency (BART, ACSO, Parole, etc.);
  - c Arrests where the officer is directed to the arrested person by a credible witness, complainant, or other person who is on the scene of the arrest;
  - d Arrests where the officer is directed to the arrested person by the Communications Section or a law enforcement officer AND the physical description, location (example: proximity to crime scene or last known location), timeliness and criminal activity sufficiently and reasonably identifies the arrestee to the exclusion of anyone else;

- e Self-initiated arrests where the arrested person is known to the arresting officer and known to be wanted for a specific offense. Persons are "known" based on photographs, previous encounters, biological data and physical descriptions sufficiently identifying the arrestee, or the arrestee self-identified;
  - f Arrests resulting from an arrestee's unsolicited surrender; and
  - g Arrests incident to a search warrant service.
2. Mere contact with a person does not require the completion of a form. (e.g., an officer contacts a person to exchange greetings or provide assistance answering questions.)
  3. Members shall document the reason(s) whenever, following an arrest, stop data is not collected, in the Consolidated Arrest Report (CAR).

**IV. New DGO M-19, Part III, D-K**

- D. Members shall complete all Field Contact (FC) Reports in FBR by the end of the reporting member's shift via the MDT or desk top computer. Hard copy or paper FCs are no longer authorized, except when the FBR system is not operating, in which case paper FCs and paper Stop Data forms shall be completed and submitted to a supervisor for review and delayed data entry by office staff if the system is not operational by the end of the reporting member's shift.
- E. Members shall complete an FBR Field Contact Report for each investigative encounter and consent search not resulting in an arrest documenting the reason for the encounter or search. Each FBR Field Contact Report shall also contain the Computer Aided Dispatch (CAD) incident number and RD number if one is assigned.
- F. The collection of Stop Data information attached to the Notice to Appear (NTA) is no longer required. However, the citation number from the NTA shall be entered into the RD Number field in the FBR Stop Data Collection Form. Members shall enter the number "0" at the beginning of the RD number field when a citation number is entered.

**NOTE:** If a "0" is not entered, the FBR system will not accept the citation number which requires an eight character entry.

- G. Members shall enter the entire CAD incident number into the FBR Stop Data Collection Form.
- H. Members shall advise the Communication Section of any investigative encounter in the field including a detention, arrest, or a consensual encounter to confirm or dispel a suspicion that the person may be involved in criminal activity. This requirement includes all walking stops, car stops, bicycle stops and consensual encounters where the member talks with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, although the person is free to leave.
- I. Members conducting any investigative encounter shall provide the Communications Section via the radio with the reason for the encounter at the initiation of the encounter (red light violation, 11500, 459 suspect, truant, 5150, 647f, loitering, etc).
- J. Members shall document **ALL** investigative encounters in the Data Driven Approaches to Crime and Traffic Safety (DDACTS) Activity Summary Report (TF3220) in the "Self- Initiated Activity Record" including the CAD incident number, and, if applicable, the RD number. Self-initiated activity shall be identified by adding the letters "SI" in the "Type" column of the list.
- K. Any member failing to comply with this order shall be subject to disciplinary action.

## **XI. SUPERVISORY AND COMMANDER RESPONSIBILITIES**

### **New DGO M-19, Part XI, H-O**

Supervisors shall:

- H. Ensure the appropriate report (CAR, FBR FC, FBR SDF, citation, Assignment Report, and when FBR is not operating, paper SDF and paper FC) is completed for every investigative encounter listed on the DDACTS Activity Summary Report (TF-3220) and that, when required, an FBR Stop Data Form is completed, prior to the reporting member's shift ends.

- I. Review and approve all FBR Stop Data Collection Forms to ensure information fields are filled out correctly.
- J. Ensure Field Contact Reports completed in the FBR system include the CAD incident number or RD number, and there is a corresponding completed FBR Stop Data Collection Form.
- K. Review all handwritten SDF and handwritten Field Contact Reports prior to the end of his or her tour of duty to ensure information fields are filled out correctly (in the event FBR is not operational).
- L. Review and approve all DDACTS Activity Summary Reports (TF-3220) to ensure information fields are filled out completely (including CAD incident and RD numbers) and shall legibly write in his/her serial number on the first page directly above the word "AREA" to document that the Activity Summary Report was reviewed and is legible and complete.

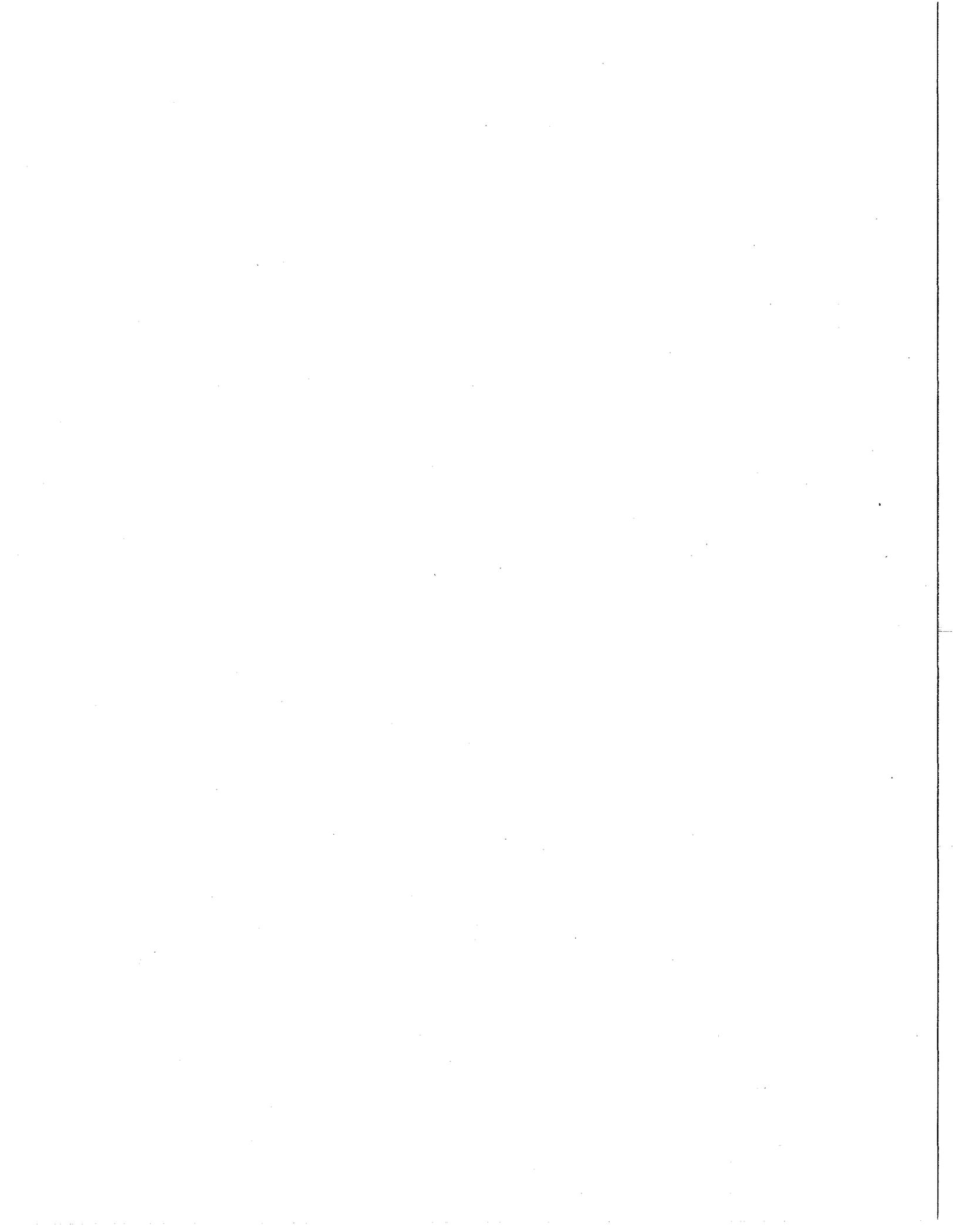
Supervisors and commanders shall:

- M. Comply and ensure subordinate personnel comply with the provisions of this order.
- N. Be subject to disciplinary action for failure to comply with this order.
- O. Be subject to disciplinary action if it is determined that members assigned to a supervisor and/or commander failed to comply with this order and the supervisor and/or commander knew of said violation, or should have reasonably known.

By order of

Anthony W. Batts  
Chief of Police

Date Signed: \_\_\_\_\_



OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER NO. 9101

TO: All Personnel

SUBJECT: Revised Stop Data Collection Procedures

EFFECTIVE DATE: 1 Mar 13

TERMINATION: Upon Revision of DGO M-19, RACIAL PROFILING  
(Rev. 15 Nov 04)

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The purpose of this Special Order is to revise Department policy and procedure on Stop Data collection.

Department General Order M-19, RACIAL PROFILING is revised as indicated.

**Revised DGO M-19, Part II, III, and IV**

**II. DEFINITIONS**

**A. Racial Profiling**

The use of race, ethnicity, or national origin in determining reasonable suspicion, probable cause or the focus or scope of any police action that directly or indirectly imposes on the freedoms or free movement of any person, unless the use of race, ethnicity, or national origin is used as part of a specific suspect description.

**B. Consensual Encounter**

A police encounter in which officers do not exert any authority, use any force, and the subject voluntary agrees to stop and answer questions or otherwise assist officers in their investigation. Because these encounters are, by definition, consensual, a subject may refuse to talk with officers, refuse to identify themselves, or otherwise refuse to cooperate.

**C. Detention**

A detention is a temporary seizure of a person to determine if the person seized is involved in criminal activity. The seizure must be supported by a reasonable suspicion to believe criminal activity may be afoot and the person seized is possibly involved with that criminal activity. Unlike consensual encounters, a person subject to a detention is not free to leave.

OAKLAND POLICE DEPARTMENT  
Special Order 9101

D. Arrest

An arrest must be based on probable cause and requires physical force or, where that is absent, submission to the assertion of authority by a peace officer.

**III. POLICY**

A. A separate Field Interview/Stop Data Report (FI/SDR) is required for all self-initiated encounters involving person(s) subject to a(n):

- i. Detention;
- ii. Arrest; or
- iii. Encounters resulting in a search or request to search.

Self-initiated encounters are encounters that are not related to any radio dispatched call for service, citizen flag-down, or encounters conducted pursuant to the service of a search warrant. For the purpose of this policy, a radio dispatched call for service is any CAD-initiated service call by a citizen to Oakland Police Communications.

B. An FI or Crime Report shall be completed on all radio dispatched encounters involving person(s) subject to a(n):

- i. Detention; or
- ii. Arrest

For radio dispatched encounters, officers may complete a single FI or Crime Report documenting all persons subject to these encounters. When the FI form is opened, officers shall select "No" under the "Stop Data Required" field and enter "Dispatched" or "Citizen Flag-Down" under the "Reason for No Stop Data" field. Officers shall also enter "NSDF" as one of the CAD disposition codes.

C. For all encounters directed by another officer, it is the responsibility of the officer executing the encounter to complete an FI or Crime Report, and, if applicable a SDR.

D. For planned operations, the operations commander, with the approval of his or her Deputy Chief of Police, may temporarily suspend FI/SDR requirements. The operations commander shall document the temporary suspension in the operations plan.

E. An FI or Crime Report, and, if applicable, an SDR is not needed for a passenger(s) of a vehicle who is merely detained for officer safety reasons and the interaction is

OAKLAND POLICE DEPARTMENT  
Special Order 9101

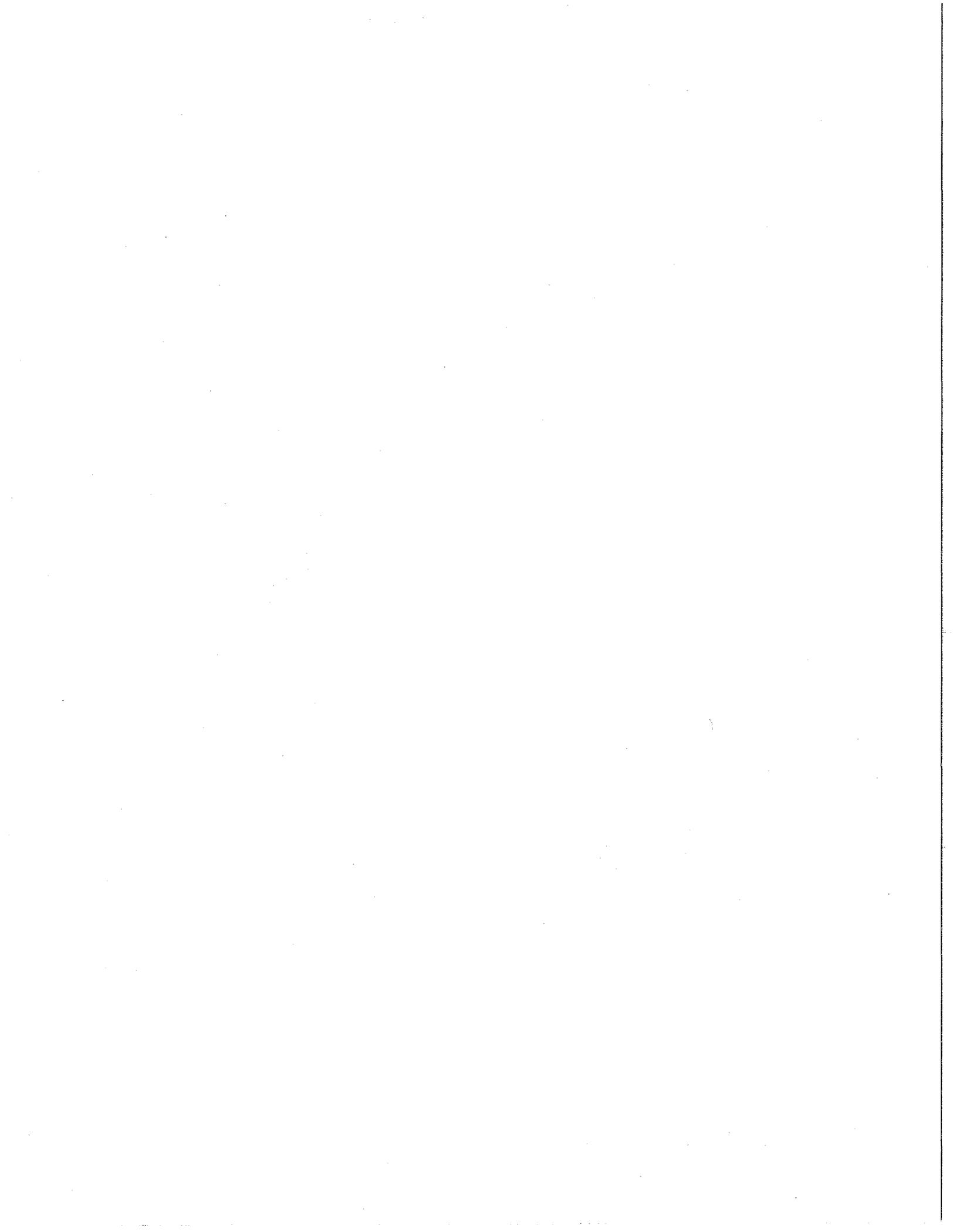
not intrusive. However, asking the passenger(s) if he/she is on parole or probation; asking if he/she has a criminal history; or asking if he/she has anything illegal on their person requires the completion of an FI/Stop Data Report. Merely asking for identification does not require the completion of an SDR.

- F. An FI or Crime Report, and, if applicable, an SDR is not needed for a person(s) subject of a self-initiated consensual encounter. However, asking if he/she is on parole or probation; asking if he/she has a criminal history; or asking if he/she has anything illegal on their person requires the completion of an FI/Stop Data Report. If the consensual encounter is elevated to a detention or arrest, officers shall complete an SDR. Merely asking for identification does not require the completion of an SDR.
- G. Officers shall document in their FI or Crime Report:
- i. The reason for encounter, and, if necessary,
  - ii. The reasonable suspicion or probable cause for the stop.

By order of

Howard Jordan  
Chief of Police

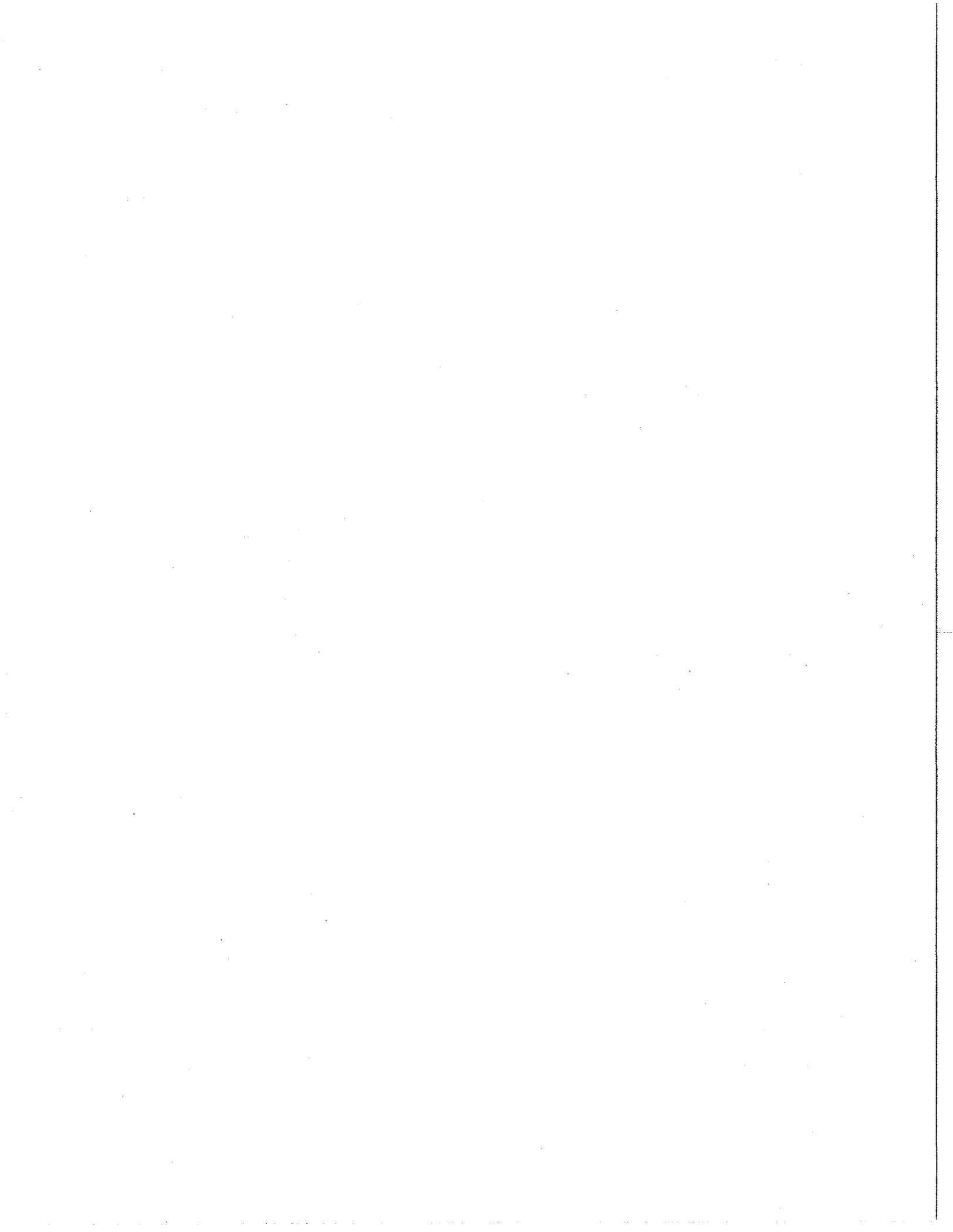
Date Signed: \_\_\_\_\_



**OAKLAND POLICE DEPARTMENT**  
**Office of Chief of Police**



**Stop Data Annual Report**  
**July 1, 2013 to June 30, 2014**



# CITY OF OAKLAND

## Memorandum

**TO:** Office of Chief of Police  
**ATTN:** Chief Sean Whent  
**FROM:** Assistant Chief Paul J. Figueroa  
**DATE:** 15 Sep 14

**RE: Stop Data Annual Report**

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The Oakland Police Department (OPD) is committed to ensuring that all stops, searches, and seizures are constitutional and performed within Departmental policy. Oakland Police Departmental General Order M-19 explicitly prohibits racial profiling and other bias-based policing. In order to fulfill our obligation to provide the Oakland community with public safety services in a fair and equitable manner, staff collects Stop Data information. To that end, OPD requires officers to complete detailed Field Interview and Stop Data Reports (FI/SDRs) documenting and listing the reasons for actions taken during an encounter. The OPD Stop Data program increases transparency and allows the Department to assess effectiveness and identify potentially biased behaviors.

The following report contains Stop Data information collected for a twelve-month reporting period from July 1, 2013 to June 30, 2014. It provides an overview of data collected and is the Department's second statistical report since improved data collection procedures were implemented in early 2013. This report presents the following Stop Data categories:

- Race and Gender
- Stop Reasons by Race
- Search Percentages by Race
- Search Recovery Percentages by Race (Including and Excluding Incident to Arrest Searches)
- Search Types by Race
- Stop Results by Race

The Department recognizes the complexities, challenges, and responsibilities associated with the presentation of Stop Data statistics. Stop activity can be influenced by variables such as beat demographics, crime trends, deployment patterns, Department staffing, traffic levels, and transit patterns in the City. This report is not an attempt at an academic or research level analysis of the data, nor is it intended to establish any benchmarks. Rather, it has three goals:

- To present Stop Data statistics for the period (July 1, 2013 to June 30, 2014).
- To create transparency regarding stops, including the racial/ethnic identity of those stopped by officers.
- To build a solid foundation for ongoing analysis and discussion.

In the Independent Monitor's Eighteenth Quarterly Report (released July 29, 2014), the

Monitor found that 96% of stops audited had a corresponding FI/SDR. The Monitor also found the Department in compliance with Negotiated Settlement Agreement (NSA) requirements for the documentation and justification for each stop. Numerous checks and review processes are in place to protect the accuracy and quality of Stop Data reports. The FI/SDR is an electronic data collection form that requires the completion of all Stop Data fields mandated by OPD policy prior to FI/SDR finalization. All FI/SDRs are reviewed and approved by a supervisor. Additionally, staff conducts audits of FI/SDRs to verify that stops are justified and relative Stop Data fields marked are consistent with information contained in each FI/SDR narrative, such as the stop reason and the type of contraband recovered.

**Stop Race and Gender**

During this review period, staff collected 27,991 FI/SDRs. African Americans composed the largest percentage of those stopped at 59%, followed by Hispanics at 17% and Whites at 14%. Those classified as Other and Asians comprised the lowest percentage of those stopped at 3% and 7%, respectively. Seventy-five percent of stops involved men and 25% involved women.

**Table 1 - Stop Race**

Race	Stops	%
Afr American	16,542	59%
Asian	1,905	7%
Hispanic	4,839	17%
White	3,801	14%
Other	904	3%
Grand Total	27,991	100%

**Table 2 - Stop Gender**

Gender	Count	%
Male	20,870	75%
Female	7,112	25%
Unknown	9	0%
Grand Total	27,991	100%

**Stop Reason by Race**

Traffic Violations were the legal basis for 67% of all stops, followed by Probable Cause (19%) and Reasonable Suspicion (8%) (see Table 3). Subsequently, Consensual Encounters (4%), and stops conducted of individuals known to be on Probation or Parole (2%), accounted for the lowest percentages. Compared to other races, African Americans had the highest percentage of stops based on Probable Cause (23%) or Reasonable Suspicion (10%), and the lowest percentage of stops for Traffic Violations at 60% (9,888 out of 16,542 stops). The other four race categories were stopped for Traffic Violations 76-78% of the time.

**Table 3 - Stop Reason by Race**

Race	Consensual Encounter		Reasonable Suspicion		Probable Cause		Probation/ Parole		Traffic Violation		Grand Total
	#	%	#	%	#	%	#	%	#	%	
Afr American	778	5%	1,636	10%	3,794	23%	446	3%	9,888	60%	16,542
Asian	51	3%	94	5%	254	13%	25	1%	1,481	78%	1,905
Hispanic	155	3%	289	6%	669	14%	69	1%	3,657	76%	4,839
White	113	3%	164	4%	570	15%	29	1%	2,925	77%	3,801
Other	28	3%	37	4%	126	14%	9	1%	704	78%	904
Grand Total	1,125	4%	2,220	8%	5,413	19%	578	2%	18,655	67%	27,991

**Searches & Recovery Percentages by Race**

African Americans and Hispanics were searched most frequently at 39% and 25%, respectively (see Table 4). Whites, those classified as Other and Asians were searched 13% to 15% of the time.

**Table 4 - Search Percentage By Race**

Race	Searched	Not Searched	Grand Total	Search %
Afr American	6,461	10,081	16,542	39%
Asian	288	1,617	1,905	15%
Hispanic	1,226	3,613	4,839	25%
White	486	3,315	3,801	13%
Other	126	778	904	14%
Grand Total	8,587	19,404	27,991	31%

Those classified as Other had the highest recovery rate at 32%, with very few searches overall (see Table 5). African Americans and Asians had the second highest search recovery rate at 28%. Hispanics and Whites had recovery rates of 26% to 27%. The overall recovery rate for all searches was 28%.

**Table 5 - Search Recovery Percentage By Race**

Race	Yes	None	Grand Total	Recovery %
Afr American	1,839	4,622	6,461	28%
Asian	81	207	288	28%
Hispanic	317	909	1,226	26%
White	130	356	486	27%
Other	40	86	126	32%
Grand Total	2,407	6,180	8,587	28%

Searches made incident to arrest are non-discretionary warrantless searches made after a person is lawfully arrested and taken into custody. When these mandatory searches are excluded from the overall search recovery totals, those classified as Other still had the highest search recovery rate at 37%. All other race categories had recovery rates of 23% to 24%. Although recovery percentages are consistent among population groups, we continue to

conduct ongoing and regular reviews of this category because the Department recognizes the impact of searches on community members.

**Table 6 - Search Recovery Percentages (Excluding Incident To Arrest Searches)**

Race	Yes	None	Grand Total	Recovery %
Afr American	1,053	3,327	4,380	24%
Asian	44	145	189	23%
Hispanic	207	659	866	24%
White	64	213	277	23%
Other	27	46	73	37%
Grand Total	1,395	4,390	5,785	24%

### Search Types by Race

Searches conducted incident to arrest made up the highest percentage of searches at 33% (see Table 7). Forty three percent of searches of Whites were made incident to arrest. Probation and parole searches made up 32% of all searches. African Americans were searched for probation or parole 35% of the time. All the other race categories had probation or parole searches conducted 24% to 25% of the time.

**Table 7 - Search Types By Race**

Race	Incident to Arrest		Prob./Parole		Weapons		P/C		Consent		Inventory		Grand Total
	#	%	#	%	#	%	#	%	#	%	#	%	
Afr American	2,081	32%	2,243	35%	1,043	16%	846	13%	170	3%	78	1%	6,461
Asian	99	34%	68	24%	71	25%	34	12%	13	5%	3	1%	288
Hispanic	360	29%	295	24%	268	22%	215	18%	59	5%	29	2%	1,226
White	209	43%	119	24%	81	17%	49	10%	22	5%	6	1%	486
Other	53	42%	32	25%	21	17%	17	13%	1	1%	2	2%	126
Grand Total	2,802	33%	2,757	32%	1,484	17%	1,161	14%	265	3%	118	1%	8,587

### Stop Results by Race

Compared to other races, African Americans had the highest percentage of Felony Arrests and Field Investigation Reports at 12% and 36%, respectively; and the lowest overall percentage of Citations at 34% (see Table 8). Hispanics and those classified as Other, were cited the most at 52% and 53%, respectively. Asians and Whites had the highest percentage of warnings at 14% and 17%, respectively. Hispanics, African Americans, and those classified as Other, received warnings 11% to 12% of the time.

**Table 8 - Stop Results By Race**

Race	Felony Arrest		Misd Arrest		Citation		FI Report		Report Taken-No Action		Warning		Grand Total
	#	%	#	%	#	%	#	%	#	%	#	%	
Afr American	1,990	12%	771	5%	5,679	34%	5,948	36%	100	1%	2,054	12%	16,542
Asian	90	5%	47	2%	924	49%	566	30%	6	0%	272	14%	1,905
Hispanic	295	6%	174	4%	2,493	52%	1,327	27%	10	0%	540	11%	4,839
White	136	4%	124	3%	1,755	46%	1,127	30%	16	0%	643	17%	3,801
Other	31	3%	33	4%	479	53%	248	27%	4	0%	109	12%	904
<b>Grand Total</b>	<b>2,542</b>	<b>9%</b>	<b>1,149</b>	<b>4%</b>	<b>11,330</b>	<b>40%</b>	<b>9,216</b>	<b>33%</b>	<b>136</b>	<b>0%</b>	<b>3,618</b>	<b>13%</b>	<b>27,991</b>

**Conclusion**

Stop Data information is used at monthly Risk Management Meetings to identify statistical disparities between the five police Areas and with squads assigned within each police Area. Commanders are responsible for conducting audits and reporting back when disparities are seen. This method has resulted in excellent discussions regarding staff practices. As the amount of Stop Data information collected grows, the Department will be able to draw stronger comparisons, draw possible conclusions, and make recommendations to further improve our practices.

In June 2014, Stanford University Professor Jennifer Eberhardt was contracted by the Oakland Police Department to administer a Stop Data analysis project, designed to identify and address tensions between the Oakland Police Department and the Oakland Community. The project will last at least a year.

Professor Eberhardt’s analysis will be conducted city-wide and for each of the five police Areas. The Professor’s analysis will follow industry standards using a variety of different benchmarks and variables including, but not limited to, racial demographics and crime rates. The analysis will consider, measure and compare the following factors:

- Differences in stop rates, relative to the race of the persons stopped.
- Differences in search rates and types of searches relative to the race of the persons searched.
- Differences in recovery rates relative to the race of the persons searched.
- Stop results relative the race of the persons stopped.

The Professor will analyze decision-making leading to the initiation of stops and actions during stops, as reported on Stop Data forms, other reports and audio/video recordings. Additionally, the expert analysis will consider variables such as officer race, experience and squad diversity.

On July 10, 2014, staff met with community members to gather input and perspectives about policing issues and concerns prevalent in Oakland. The initial preliminary Stop Data

Analysis Report, released on February 5, 2014, was reviewed and discussed. Staff received valuable feedback from the community members regarding aspects of the data collection process and the anticipated end result of our efforts. Attendees included members of the Citizens Police Review Board, the American Civil Liberties Union (ACLU), Youth Uprising, People United for a Better Oakland (PUEBLO), Men of Valor and Acts Gospel Church. At the conclusion of the meeting, attendees agreed to participate in an ongoing Stop Data Community Advisory Board.

Additionally, we continue to work with the Federal Monitoring Team, who provide technical assistance and suggested guidance. As a government organization entrusted with vital responsibilities, our goal is to use this information and promote subsequent discussions to increase transparency. We must ensure that our practices protect the rights of all groups, reflect ethical policing strategies, and increase public safety.



Paul J. Figueroa  
Assistant Chief of Police  
Oakland Police Department

## Fourth Progress Report of the Compliance Director for the Oakland Police Department

December 1, 2014

### Introduction

This is the fourth progress report issued in my capacity as both Monitor and Compliance Director of the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California. In January 2010, under the direction of Judge Thelton E. Henderson, the Parties agreed to my appointment as Monitor of the Oakland Police Department (OPD). With the assistance of the Monitoring Team, I determine the status of OPD's compliance with the requirements of the 22 active NSA Tasks. Our quarterly assessments have found that while the Department has achieved compliance with several requirements, in other areas, progress has stagnated.

In December 2012, as a result of the City's slow progress with the NSA reforms, and following Court-ordered negotiations among the Parties, Judge Henderson established a Compliance Director for the Department. The Court's Order of December 12, 2012 outlined the Compliance Director's broad powers and responsibilities to "bring...[OPD] into sustainable compliance with the NSA and AMOU."<sup>1</sup> On February 12, 2014, Judge Henderson issued an Order finding it "appropriate and effective to now concentrate the powers of the Compliance Director and Monitor into one position."<sup>2</sup>

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

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

As Compliance Director, I hold more direct authority over the Department's NSA-related decisions. With the assistance of a seasoned associate, I serve as an agent of the Court, and work closely with OPD on a sustained basis. My primary focus is, undeniably, for the Department to achieve and sustain compliance with the reforms outlined in the NSA. As

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

<sup>2</sup> United States District Court for the Northern District of California, Master Case File No. C00-4599<sup>8</sup> TEH, Order Modifying Compliance Oversight Model, dated February 12, 2014.

directed by the Court, I “have the power to review, investigate, and take corrective action regarding OPD policies, procedures, and practices that are related to the objectives of the NSA...even if such policies, procedures, or practices do not fall squarely within any specific NSA task.”<sup>3</sup> I shall become involved in all matters that directly relate to the NSA – as well as issues in which there is a reasonable nexus to the NSA or those that concern civil rights, which I view as central to the NSA.

As of the last quarterly monitoring report (issued in October 2014), the Department was in full compliance with 18 of the 22 Tasks, and in partial compliance with two additional Tasks. (We deferred our assessment of Tasks 5 and 45.) This is the highest number of Tasks in compliance since the beginning of our tenure. In this report, I discuss the status of the Tasks that remain out of compliance or have recently come into compliance – and what the Department is doing currently to attain or sustain compliance with these requirements.

### News Since Third Progress Report

Over the last few months, my associate and I observed several noteworthy developments in the Department, including:

- OPD has facilitated numerous protests and other events involving large crowds within the last year, and for the most part, these events have been peaceful. Yet the protests of the last week – in response to the St. Louis County, Missouri’s grand jury’s decision to not indict the white police officer who fatally shot an unarmed African American teenager – have an entirely different character. While the overwhelming majority of protesters have exercised their rights peacefully, the protests have also involved violence against police officers, looting, and destruction of public property. I continue to closely monitor OPD’s response to these activities, including officers’ uses of force and less lethal munitions; the Department’s interactions with citizens during such events; and any related complaints or investigations.
- Over the past few months, we have observed that discussions at the monthly Risk Management Meetings have declined in quality. While the Area Captains seem more comfortable and less defensive with the format of the meetings, which signals progress; commanders are not asking probing questions to consider the various identified risk factors. We intend to work with the Department on this issue.
- The Department is currently revising its policy on annual performance appraisals of its members and employees. We have observed that an inordinate number of members and employees are rated highly by their supervisors in the Department. While this phenomenon is not unique to OPD, it certainly devalues the assessments.

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

Upon our request, the Department provided the distribution of ratings for all members and employees over a 12-month period; we will review this data carefully and discuss it with the Department.

As noted above, the Department is currently in compliance with 18 of the 22 active Tasks – the highest number of Tasks in compliance since the beginning of our tenure. I commend the Department for its steady progress toward achieving compliance with the NSA. But the efforts must go on.

## Discussion of Tasks

The Monitoring Team's assessments have shown that OPD has not yet achieved – or has had difficulty maintaining – compliance with the following eight Tasks:<sup>4</sup>

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

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

### Task 20, Span of Control for Supervisors

In our most recent quarterly status report, for the first reporting period since the beginning of our tenure, we found OPD in compliance with Task 20. OPD had been in partial compliance with Task 20 due primarily to its non-compliance with the subtasks related to consistency of supervision (Task 20.2) and the actual ratio of supervisors to officers (Task 20.3). Earlier this year, my associate and I completed a series of discussions with Department officials and the Plaintiffs' attorneys to revise the methodology for assessing these subtasks. The new, mutually agreeable approach to these issues allowed the Department to achieve compliance with Task 20 – but even more importantly, to develop Task 20-related practices that are sustainable in the long term.

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<sup>4</sup> The Monitoring Team found Task 20 in compliance in our nineteenth quarterly status report; Tasks 33 and 37 in compliance in our seventeenth and eighteenth quarterly status reports; and Task 40 in compliance in our eighteenth quarterly status report. We discuss these Tasks in this report because the Department has struggled to maintain compliance with these Tasks during our tenure.

In anticipation of its annual “draw” – in which officers, based on seniority, select their assignments for the coming year – the Department has reworked the relief supervision system that has been in place for over one year. Chief Whent has expressed that while he believes that the relief system is a useful arrangement, its current formation – which comprises 23 relief sergeant assignments – is not sustainable. The Department’s slightly altered model involves 16 relief sergeant assignments. I have provisionally concurred with the Department’s proposal. It remains to be seen if this new plan will allow the Department to sustain its newly achieved compliance with these critical requirements.

My associate and I will review the available data every few weeks during the first quarter of 2015 to determine compliance under this altered model and assist the Department with any necessary tweaks.

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

OPD has been in partial compliance with Tasks 26 and 30 during many different reporting periods since the beginning of our tenure. In May, with the assistance of the Monitoring Team, the Department revised relevant policy Departmental General Order K-4.1, *Use of Force Boards*. This policy requires the board proceedings to be more formal, efficient, and analytical.

Since the adoption of the new policy, the Monitoring Team has observed several improvements in board hearings. Deputy Chiefs now confer with presenters in advance of the hearings to communicate their expectations; the Department has reduced the number of participants who are required to attend hearings; and board members are provided reports and other evidence in advance of the hearing date.

My associate and I recently began to examine the significant reductions in uses of force in the Department within the last year. As noted previously, OPD attributes this drop largely to improved training and changes in policy that characterize uses of force differently. Yet even considering these advances, we have found that the low rates of uses of force of some patrol squads seem implausible. As a starting point for our analysis, we are reviewing recent citizen complaints of force and attempting to locate their associated use of force reports.

In the next few months, I will continue to review more closely the downward trends in uses of force. The Office of Inspector General (OIG) recently conducted a review of Level 4 incidents; we will follow up on this with the Department. I will also discuss with the Department its training to reduce officers’ use of boilerplate language when justifying encounters that ultimately involve a use of force.

### **Task 33, Reporting Misconduct**

OPD regained compliance with Task 33 in the seventeenth reporting period after being in partial compliance with this Task for four reporting periods due to the Department's failure of its officers to report misconduct during the Occupy Oakland events. The Department reports that it is increasingly holding individuals accountable for failing to report misconduct or activate their Personal Data Recording Devices (PDRDs) as required.

OIG recently conducted a review to determine if sergeants reviewed their subordinates' PDRD footage, as required by policy. Following its review, OIG issued an information bulletin to remind supervisors of this requirement. Yet while the current PDRD policy requires supervisors to audit their subordinates' PDRD footage, it does not set out *how* supervisors should do this, and we have observed that the quality – and therefore, utility – of these reviews is inconsistent. We will provide more direction to OPD in this area.

In the next few months, I plan to provide more direction to OPD in this area, and to follow up with the Department regarding its recent improvements to the PDRD storage and tracking system.

### **Task 34, Vehicle Stops, Field Investigation, and Detentions**

Task 34 is one of the NSA's most significant requirements – as it addresses the bias-based policing that was an original issue in this case. OPD has been in partial compliance with Task 34 since the fourth reporting period.

For the last several months, Professor Jennifer Eberhardt of Stanford University has been assisting the Department with its stop data analysis. Dr. Eberhardt and her team are completing an examination of the first full year of available stop data (April 2013 through April 2014), and recently presented at an all-Parties meeting their preliminary findings. The presentation noted, for instance, that race plays a significant role in who officers stop, and why, and for how long.

In the next few months, I will continue to work with OPD to explore ways in which the collected information and Dr. Eberhardt's analysis can serve as the basis for the development of training and other intervention activities to address the racial disproportionality.

### **Task 37, Internal Investigations – Retaliation Against Witnesses**

OPD regained compliance with Task 37 in the seventeenth reporting period, after one reporting period of non-compliance and two reporting periods of partial compliance as a result of the Department's failure to respond fully to the most serious allegation of retaliation observed by the Monitoring Team. OPD reports that it aggressively scrutinizes

and investigates any allegations of retaliation. The Department is providing improved training to new police officers and employees to, according to OPD, emphasize a culture of accountability and the importance of reporting misconduct.

In the next few months, I will continue to discuss and review OPD's training on these critical matters.

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

OPD regained compliance with Task 40 in the eighteenth reporting period after completing the upgrade that allows arrest data from Alameda County to automatically populate the Records Management System (RMS) without requiring manual data entry. OPD remains in partial compliance with Task 41.

Over the last few months, the Department has on occasion reported problems with recording accurate arrest counts or other data in the PAS system. Encouragingly, the PAS Unit staff discovered these problems as part of its daily reviews of arrest data; it appears that the unit's internal audit procedures are successful in identifying these data problems.

As noted previously, as part of its risk management system, the Department constructs lists of the "Top 30" members and employees within several categories of risk-related activity. Earlier this year, the Monitoring Team conducted a supplementary review of the Top 30 lists to learn more about how OPD uses these lists and develops interventions for the individuals who appear on them. We plan to conduct a similar analysis – with a particular focus on the individuals who have appeared on multiple Top 30 lists, or on these lists over several different reporting periods.

Following this analysis, I will work with the Department to assess its strategies for members and employees who are "repeaters" – that is, those who continue to meet system thresholds without changing their behavior. Also over the next few months, I will make plans to review the IPAS2 system as Microsoft, the system's developer, fulfills different components of the project in the coming year.

### Discussion of Matters Outlined in December 12, 2012 Court Order

The Court's Order of December 12, 2012 grants the Compliance Director the authority to assist OPD to "address, resolve, and reduce: (1) incidents involving the unjustified use of force, including those involving the drawing and pointing of a firearm at a person or an officer-involved shooting; (2) incidents of racial profiling and bias-based policing; (3) citizen complaints; and (4) high-speed pursuits."<sup>5</sup> The Order describes such matters as

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<sup>5</sup> United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Re: Compliance Director, dated December 12, 2012.

“key to driving the sustained cultural change envisioned by the parties when agreeing to the NSA and AMOU.” The Order also states that the Department should develop “a personnel assessment system (‘IPAS’) that provides a sustainable early-warning system that will mitigate risk by identifying problems and trends at an early stage.”

According to data provided by OPD, the Department has made improvements in all of these areas. While OPD tracks all of its uses of force, including those “involving the drawing and pointing of a firearm at a person,” and it examines the justification for all Level 1 and 2 uses of force as part of its review board process, the Department does not specifically track “unjustified” uses of force. OPD has not had any officer-involved shootings in 2014.

Also, thus far in 2014, the Department has logged 34 pursuits; at the same time last year, it had logged 133. (OPD had a total of 148 pursuits for the full year of 2013.) As of the implementation of OPD’s revised pursuit policy (which took effect in January 2014), OPD now also tracks its “non-pursuits” – that is, situations in which officers do not elect to pursue but in the past, under the former policy, likely would have. Thus far in 2014, OPD has logged 147 non-pursuits. OPD continues to refine its policies on legitimate circumstances for pursuits.

In the area of “incidents of racial profiling and bias-based policing,” the available data raises many questions about what accounts for the varying search rates among different racial and ethnic groups – and it has not yet been determined whether there is a constitutionally valid basis for the disparity or there is a need for corrective intervention. While OPD appears to be making progress – with the retention of the services of Dr. Eberhardt and the Department’s ongoing engagement with its publicly released stop data report – this is an area that will be constantly scrutinized by us, the Court, the Plaintiffs’ attorneys, and the community. At the all-Parties meeting presentation by Dr. Eberhardt, discussed how OPD’s recovery rates compared to those of other departments – and what can be done to raise these rates.

In the next few months, I will continue to engage City and Department officials regarding strategies to resolve the disparities suggested by the Department’s available stop data; as well as how best to measure OPD’s progress in all of the critical areas outlined in the Court Order of December 12, 2012 – including “unjustified” uses of force. I will discuss these matters further in future progress reports.

## **Other Recent Activities of Compliance Director**

Beyond what is noted above, my associate and I have been involved in many activities since I issued my last progress report as Compliance Director:

- In an Order of August 14, 2014, the Court expressed its indignation with the recent reinstatement of an officer whom the Chief had terminated, and with the City’s poor performance in other recent arbitrations – several of which also overturned

terminations.<sup>6</sup> The Order asserted that the Department is no longer in compliance with Tasks 5 (Complaint Procedures for IAD) and 45 (Consistency of Discipline), as it “question[ed] whether Defendants are adequately preparing cases for arbitration such that consistency of discipline can be assured to the greatest extent possible.” The Court ordered a far-reaching investigation of the discipline and arbitration process and directed the Department and City “to take appropriate corrective action to ensure sustainable reforms, including, if necessary, immediate corrective action pending further investigation.” As part of this investigation, which is currently underway, we are interviewing key players in the discipline and arbitration process – inside and outside of the City – and reviewing the files for arbitrations that occurred within the last five years.

- Facilitating discussions between the Department and local attorneys from the legal team in the case of *Spalding v. City of Oakland*, which required significant changes to the Department’s crowd control policy.
- Working with the Department on revisions to several NSA-related policies. Most recently, these included policies that govern Force Review Boards, the Department’s canine program, reporting and investigating force, and crowd control.
- Enhancing the Department’s capacities for community interaction and engagement. Members of the Monitoring Team and I occasionally meet with community groups to learn more about their interactions with the Department and their observations of its progress with the reforms. In January, we will facilitate a meeting between members of the Executive Team and a community coalition that is focused on policing issues. Also, in July, OPD held a meeting with community stakeholders to discuss the Department’s first public stop data report; OPD is considering hosting similar meetings in the future, and creating other opportunities to solicit public feedback on its Ceasefire program and other initiatives.
- Providing guidance, mentoring, and technical assistance to Department officials in several other key areas – including recent personnel transfers and promotions, managing and training members and employees, new technological initiatives, and organizational changes.

In the next few months, beyond what I have listed above, my associate and I intend to work with the Department to:

- Continue discussions with the Department regarding the sustainability of the NSA reforms.
- Learn more about the Department’s plans for a Tactical Team rotation policy.

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<sup>6</sup> United States District Court for the Northern District of California, Master Case File No. C00-4599 TEH, Order Re: Internal Affairs Investigations and Subsequent Proceedings, dated August 14, 2014.

- Continue to work closely with the Chief and his Executive Team to build capacity and foster leadership within the Department, especially in ways that focus on sustainability of the reforms in the NSA.
- Engage the Chief and his Executive Team about the Risk Management Meetings to improve the inquiry and discussion in these forums.
- Assist the Department to develop a training needs assessment. We will review the results of the Training Section's recent survey of officers on the Department's current training offerings.
- Follow up with OIG on the Department's follow-up to its audits, and its plans to appoint and train appropriate personnel throughout the Department to conduct mini-audits on NSA-related and other procedures.
- Begin discussions with OPD on the importance of creating succession and training plans to ensure that personnel in new assignments learn from their predecessors about the responsibilities of their new positions. While OPD – like many law enforcement agencies – regularly transfers its members and employees to different assignments throughout the Department, it generally does a poor job in creating such plans.
- Engage the Department, in conjunction with the Office of the City Attorney, to assess and possibly revamp OPD's fitness for duty evaluation.
- Revise critical Departmental policies.

## Conclusion

The Oakland Police Department has, in fact, made progress in its long involvement with the NSA. Throughout this period, a number of political changes have occurred regarding the executive leadership of the City. To its credit, and more recently, as a result of the leadership of Chief Sean Whent, the Department has been steady in its forward progress and did not become immersed in other developments in City government that could conceivably mitigate the road to compliance. Mayor Jean Quan, who shall soon be leaving office, has played an important leadership role. Incoming Mayor Libby Schaaf has pledged her support and commitment to the reform process, and we look forward to her active engagement in this most important of undertakings.



Chief (Ret.) Robert S. Warshaw



PUBLIC SAFETY CMTE.

APR 14 2015