

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

<https://oag.ca.gov/ab953/board>

MEETING MINUTES

November 5, 2020 – 10:00 a.m. – 1:22 p.m.

Members Present: Co-Chair Sahar Durali, Co-Chair David Swing, Nancy Frausto, Sandra Brown, Felicia Espinosa, LaWanda Hawkins, Lily Khadjavi, Damon Kurtz, John McMahon, Melanie Ochoa, Steven Raphael, Angela Sierra, Brendon Woods

Members Absent: Amanda Ray

1. Call to Order by Board Chairs

Co-Chair Swing welcomed everyone to the RIPA Board meeting and introduced Co-Chair Durali.

DAG Nancy Beninati announced the retirement of Commissioner Stanley along with the swearing in of Amanda Ray who will become the new CHP Commissioner and take the place of Commissioner Stanley. SDAG Beninati along with the Board thanked Commissioner Stanley for all of his hard work on the RIPA Board.

2. Approval of Minutes

MOTION: Co-Chair Durali made a motion to approve the September 2, 2020 Board Minutes. Member Lily Khadjavi seconded the motion.

APPROVAL: All subcommittee members present voted “yes;” there were zero “no” votes and no abstentions.

3. Update from the Department of Justice

DOJ noted that all Board members should have a draft of the 2021 RIPA report and DOJ is looking forward to the input of the Board for comments and recommendations for the draft. Additionally, it was noted that a new Co-Chair will need to be selected to begin service in January 2021 as Co-Chair Durali’s term ends. DOJ also provided a brief update for the Board on the work of the AG’s office on the proposed amendments to the AB 953 implementing regulations. DOJ requested that the Board recommend fixes to the regulations and stated that the amendments will be informed by board-members, LEAs’ questions submitted to the DOJ comments received from community members, academics and DOJ staff. The proposed amendments are not likely to increase the time to complete a stop data form but in fact, may reduce time and make existing obligations clearer and more logical for the officer to follow. The goal for completion of the stop data amendments is early 2021, for

approval by the summer of 2021 with an effective date of January 1, 2023. Between the period of approval and the effective date the DOJ IT department will be testing the stop data collection systems, DOJ CRES will train all reporting agencies on the approved regulation amendments. DOJ encourages all stop data subcommittee members to attend the November 12, 2020 meeting at which time a more substantive discussion of the proposed amendments to the regulations will take place.

Relative to the AB 953 training sessions, DOJ staff has developed the trainings to provide 1) uniform reporting amongst officers, and 2) respond to questions for onboarding agencies to reporting stop data. DOJ stated that the AB 953 training will be a POST-certified course, and that to this point, 110 officers have attended four training sessions. DOJ updated the Board on the RIPA flyer, stating that the flyer has been approved by the Board and in continuing the Board's work to act on language accessibility, including bilingual meeting notices, the current RIPA flyer is translated in seven languages and will be shared with Board members and is available on the Board's website.

Additionally, the Research Center provided an update on the dashboard by noting the addition of two additional RIPA dashboards to the Open Justice website. They are 1) dashboard reflecting K-12 stop data and 2) dashboard reflecting discovery rates. The Research Center welcomes Board feedback and comments may be sent to AB953@doj.ca.gov. Lastly, SDAG Beninati introduced a new team member, DOJ CRES Sr. Legal Analyst Anthony Jackson, to the RIPA Board.

4. Subcommittee Reports

Member Hawkins provided an update from the October 1, 2020 Civilian Complaints Subcommittee meeting. She stated that DOJ staff provided civilian complaint metrics to be included in the 2021 RIPA Report including a review of the civilian complaint forms from Wave 1 and 2 reporting LEAs; an overview of LEA Early Intervention Systems (EIS) and best practices published by the US DOJ; skill development of officers and identifying at risk behavior prior to the need for disciplinary action. Key components of an effective EIS system were discussed. They included identification, flagging and monitoring at risk behavior, ensuring first-line supervisor and senior supervisor involvement with interventions, including the necessity of follow through for EIS success. She stated that the most common interventions include counseling, training, crisis intervention and temporary relief of duty and the US DOJ recommends each LEA have an EIS policy. Member Hawkins stated that all officers should: 1) know of policy; 2) have the necessary EIS training; 3) understand the evaluation of EIS data. She reported that the subcommittee asked DOJ whether racial profiling is a common indicator category in EIS and whether there is third-party oversight of agency systems. Related to the AB 953 survey, she reported that there were two civilian complaint questions sent to Wave 1 and 2 agencies and all but one of the agencies responded.

Member Hawkins stated that the next steps for the subcommittee would be to examine the effectiveness of EIS systems used by agencies to inform the best practice recommendations that the Board will make in this area.

Member Ochoa provided an update from the September 30, 2020 State and Local Policies and Accountability Subcommittee. She reported that the DOJ provided a presentation on the survey results from Wave 1 & 2 agencies along with a review of the high level results. The Board requested additional detailed information on how this type of officer level data reflected from the survey works in practice, believing a deeper dive into the data may prove worthwhile in the coming years. Member Ochoa stated that DOJ presented on agency accountability and identified ten foundational concepts for accountability systems along with recommendations for strengthening systems including: 1) vetting the social media of candidates for ties to white supremacist organizations, 2) identifying those organizations who overlook vetting measures, and instead have policies which exclude candidates with discriminatory ties from performance reviews as a matter of policy, 3) a further exploration of the selection processes for civilian participants in accountability systems due to how these processes can significantly limit the effectiveness of systems. She stated that policy suggestions for the 2021 report include: 1) language explicitly prohibiting racial and identity profiling, 2) requiring reasonable suspicion for detentions, and 3) a clear and deeper understanding of how racial and identity biases exist and are manifested in police conduct and give officers tools to mitigate bias in conduct and actions.

Member Brown provided an update from the October 7, 2020 POST Training and Recruitment Subcommittee. She stated that DOJ presented on an overview of POST and five courses that meet the AB 953 training requirements; two for recruits and in-service officers and one for supervisors. Member Brown stated that the Board reviewed two of the five courses and planned to evaluate the remaining courses. She reported that the subcommittee made the following recommendations: mandating annual training for officers; Board review of the three remaining courses; recommended training course enhancements; requested earlier consultation with POST in course selection and greater involvement in the course development process. Additionally, The Board requested POST explore developing a tracking system that follows the career path of those officers who have received racial and identity training taken and the impact it has had on their career. She stated that the subcommittee discussed the possibility of conducting a literature review regarding the impact of implicit bias on officer behavior. Member Brown reported that the DOJ also presented information about LEA recruitment and hiring and the impact of diversity in law enforcement. She stated that the subcommittee discussed the need to teach about implicit and explicit biases; women officers having greater success at neutralizing escalating situations; the benefit of critical mass, officers from marginalized identity groups having numbers and influence within an agency, and surveying black law enforcement members to

better understand their experience within law enforcement and the challenges of recruiting people from marginalized identity groups into law enforcement.

Member Sierra provided an overview of the October 6, 2020 Calls for Service Subcommittee meeting. She stated that DOJ staff provided a presentation on the proposed topics for the Calls for Service section of the 2021 Report: 1) Bias by proxy; and 2) Calls for Service related to mental health crises. Member Sierra described the subjects discussed by the subcommittee as follows: 1) The need to train officers and dispatchers on how to handle 911 bias based calls; 2) Training on how to deescalate these calls; 3) A three-step protocol for addressing bias by proxy: a) See something suspicious, say something specific, b) adding friction to the phone call, bias de-escalation tactic, c) providing caller with the definition of bias; 4) The incorporation of Restorative Justice approaches to repair harms caused by bias and bias-based calls; 5) The necessity of mental health training for first responders, given that one in four fatal shootings have involved someone experiencing mental health crises. She stated that the subcommittee would like to hear from experts and community responders about response models.

Board Member Raphael provided an update from the October 8, 2020 Stop Data Analysis Subcommittee meeting. He reported that the following topics were discussed during the meeting: 1) The appropriateness of the American Census Survey (ACS) a benchmark for stop data analysis, differences in daytime and nighttime populations of urban employment centers, and concerns that non-residents should not be targeted for greater scrutiny; 2) Data collection about subject's actions that may have preceded officer's actions; 3) Adding data elements to specify if a stopped person was a driver, passenger, pedestrian, or bicyclist; 4) The Board considered the value of canvassing departments to see what types of questions are being collected that are not on the RIPA form, specifically those data elements that might be useful to review. One element that has been raised by agencies several times is parole/probation status, whether the civilian is asked, how answered, and everything that ensues on a stop. This topic is of particular interest considering at the moment we can only infer that someone is searched and officer notes that the basis of the search is the community correction status of the individual.

Research Data Specialist Kevin Walker from the DOJ noted the addition of three sections to the Report from the September Board meeting.

1. Search and Discovery Rates by Race/Ethnicity and Age.
2. Consent Search and Discovery Rates when basis for search is consent alone
 - a. Stopped and asked for consent by Race/Ethnicity
 - b. Proportion of Searches conducted only for consent by Race/Ethnicity
 - c. Discovery Rate Differences for Consent/Discretionary Searches by Race/Ethnicity.

3. Known Supervision Search and Discovery Rates
 - a. Individuals stopped for Known Supervision by Race/Ethnicity.
 - b. Searched only for Condition of Supervision by Race/Ethnicity.
 - c. Proportion of individuals stopped for known supervision by Race/Ethnicity.
 - d. Discovery Rates for Condition of Supervision Searches/Discretionary Searches by Race/Ethnicity.

5. Public Comments

Michele Wittig said that she appreciated the work of the Research Center and recommended that discussion of the logical implications of the consent search and discovery rate findings be included in the Report to benefit readers.

Eva Bitran stated that she was happy to see the inclusion of race/age intersectional analysis. She stated that the high discretionary consent search analysis reflects racial bias and that it is necessary to make strong policy recommendations on this subject.

6. Break

7. Board Discussion of 2021 Draft Report

Co-Chair Durali commented on recidivism factors related to the difficulties of accessing employment and housing. She stated that given the large number of unhoused people in California, not only should employment challenges be highlighted but also those challenges associated with housing. Additionally, she expressed concern with language in the Report recommending that POST “consider” bias by proxy training courses, rather than recommending that POST “implement” these courses, in light of the many high profile and harmful bias by proxy calls in recent months. Co-Chair Durali also expressed the need for a disclaimer above the Civilian Complaints section indicating some of the factors that may account for the variability in the numbers of complaints reported across agencies as was included in the 2020 Report.

Member Ochoa stated that she would like to see a reframing of the implicit bias section which was focused on individual officers’ behavior. She expressed that explicit racism exists and needs to be acknowledged and incorporated into the report if we want to address biased policing policies and practices. Additionally, Member Ochoa discussed the importance of data integrity and the usefulness of auditing as a method to improve performance and reporting accuracy. As an example, she referenced an Office of Inspector General Report, in which a sample of the Los Angeles Police Department’s RIPA reports were audited and compared against body worn camera recordings finding only 61% of the stop reports to be fully accurate. Lastly, she stated that providing grand totals, and not just group totals in the report and on the dashboard would provide greater context for readers and the public.

Member Raphael suggested that information could be provided on the dashboard about how particular analyses are commonly interpreted which could empower agencies, the public, and readers interested in understanding this data. Co-Chairs Durali and Swing suggested that a synopsis of the larger report would be helpful in making the information more digestible.

Member Ochoa asked if the Board would be able to create agency level reports, including the data analyses presented in comprehensive Report, the agency's policies and any survey responses. She stated that if the Board was not prepared to identify best practices regarding consent searches in the Report this year, she recommended including a discussion of the ongoing research in the area, along with information about the laws that have been adopted in other states. Co-Chair Swing stated that the data dashboards on the Open Justice Portal may be more helpful than reports for anyone interested in agency-specific information, noting that in the coming years there will be over 400 agencies reporting. Member Raphael stated that online sources are valued because they allow people who would like to perform their own analysis to download the raw data and can provide pre-prepared analysis of outcomes that are more widely used. He stated that the Board could explore how to incorporate the Dashboards into all of the Reports, so that readers understand that they can access agency-specific, customized information for most analyses. He added that perhaps, to improve accessibility, the Board could create a video demonstrating how to use the Dashboards to access individualized reports on demand. Co-Chair Durali stated that it would be helpful if a link allowing Dashboard users to download agency-specific could be added.

Co-Chair Swing stated that he would like the Board to consider how officers' experiences and any resulting hypervigilance or complacency can be included in the discussion of implicit bias. Member Brown stated that through her experiences over more than thirty years of service in law enforcement, she recognized that she had biases that she needed to acknowledge and overcome. She stated that law enforcement training should teach officers that these type of biases that are influenced by officers' experiences may lead to profiling of some groups based on stereotypes and complacency toward other groups based on stereotypes. She stated that issues of explicit bias in law enforcement should also be included in the discussion.

Member Ochoa stated that the persistent disparities in search yield rates over time indicate that policy recommendations should be focused on agency-level interventions to limit the discretion for conducting searches because how biases influence discretionary decisions to search. Member Brown stated that training should teach officers not to be complacent when they see actions based in bias and they should be prepared to intervene. Co-Chair Durali stated that she believes that communities will be looking to the Board Report this year to acknowledge incidents based in explicit bias and racist incidents that have happened, including reports of potential white supremacist gang infiltration in the Los Angeles County Sheriff's Department, and incidents in San Jose of officers sharing anti-Muslim memes.

She stated that while she would be in favor of adopting the ACLU's recommendation regarding consent searches, the Board had not yet fully discussed this and she would like to know if the Board was in agreement with Member Ochoa's proposal to include information about laws regarding consent searches that have been adopted in other states in the 2021 Report. Member Khadjavi stated that because the subject of consent searches had been discussed during subcommittee meetings she supported the Board continuing to work on this issue. She stated that additional narrative about consent searches discussing the relationship of bias and the data outcomes could be developed.

Member Woods stated that as a society we are making a choice to police certain communities that leads to the disparities that are reflected in the data and therefore it would be valuable to include the history and origins of policing in the Report. He stated his support for the ACLU's recommendation regarding consent searches. He raised the question of how the Board might make a recommendation regarding probation and parole searches because often the first question asked during a stop is about probation or parole. He stated that there has been movement in Oakland to stop questions about supervision from being the first questions asked during a stop and he was considering how the Board might make a similar recommendation. He stated that this practice creates ill will, bad rapport and bias in policing of people who are on probation and parole. Member Woods recommended the addition of an endnote explaining the 23 actions taken that an officer can report for a stop. He recommended that a three-page summary of the data findings be prepared to make the data analysis section more accessible for the public. He suggested that the style of the Fact Sheet and Executive Summaries developed for previous Reports be changed to make it more engaging for members of the public.

Member Khadjavi stated that the Dashboard increases transparency for members of the public and also allows smaller agencies the ability to review the data. She recommended a review of the Report to identify places where the addition of raw numbers of stops or raw numbers of people would be useful, in addition to the percentages. Kevin Walker from the DOJ confirmed that the DOJ was in the process of reviewing the Report to add in raw numbers where appropriate and invited Board members to highlight any specific sections where they would find this addition helpful. Mr. Walker stated that the DOJ could explore the capacity of the program used to create the Dashboards to add functionality to download reports that users create by filtering the data by identity groups and/or agencies. Co-Chair Durali requested that agencies' policies also be made available on the Dashboard. Mr. Walker stated that additional data collection would be required in order to solicit updated policies from all agencies each year, one approach that might be considered would be to survey LEAs about their policies and develop a dashboard with the survey responses.

Member Raphael stated that it might be beneficial to highlight the additional research and policy recommendations regarding consent searches and probation and parole searches that would be developed in a separate report. Member Khadjavi stated that the COVID-19 pandemic may make it difficult to compare data for 2020 with data from other years and there may be different trends about which the Board may want to report before the 2022 Annual Report. Member Sierra stated her support for developing an interim report to address issues of consent searches and probation and parole searches.

SDAG Beninati stated that the DOJ would draft an Executive Summary and Fact Sheet for the Report and asked the Board if they would like a Best Practice Recommendations Appendix listing all of the policy recommendations for law enforcement, law makers and community members to be prepared. Board members expressed support for preparing these documents.

Mr. Walker invited Board members to provide recommendations about the stop data analyses that should be highlighted in the Fact Sheet and Executive Summary. Co-Chair Durali stated that the analyses related to disabilities and analyses of stops of people perceived to be transgender, especially when disaggregated by race, would be appropriate to include in the Fact Sheet.

Co-Chair Durali stated that the addition of a data reporting element regarding whether the officer perceived the person stopped to be unhoused would be important to include in stop data regulations updates.

Member Hawkins stated that because the California Highway Patrol (CHP) is a statewide agency, it is difficult to use the statewide data to get an understanding of the actions that the CHP is taking in different regions of the state. Mr. Walker stated that as the data was collected it is not possible to separate the stop data by regions and the DOJ was exploring potential changes to the data collection that would identify the stops by region. Member Hawkins stated that a single agency policies different areas of their jurisdiction differently and this is difficult to identify when all of an agency's stop data is aggregated.

DAG Allison Elgart stated that this meeting would be the last opportunity for Board members to discuss the substantive issues in the Report, and the December Board meeting would focus on the Report finalization and approval, and requested that Board members provide any additional direction or requests for substantive changes that they may have.

Member Ochoa asked if a discussion of the data integrity could be included in the Report. DAG Elgart stated the DOJ does not have body worn camera recordings from any stops conducted by outside agencies to conduct auditing, but the Board could recommend that agencies do this auditing of stop data reports. Mr. Walker stated that it would be good for the

Board to reiterate the importance that agency audit their stop data before transmitting the data to the Department. Member Raphael stated that often times the audits of stop data reporting performed by agencies include ensuring that reports are being completed and that the same information is not repeated for every report and there may be random audits of individual stops. He stated that he has seen differences in practices in reporting for misdemeanor arrests across departments, in some departments, for these type of arrests, there may not be any other actions taken by an officer during the stop.

Co-Chair Durali stated that the Board should review and reference the report by the Office of the Inspector General for Los Angeles County that included information about an audit of stop data reports from the Los Angeles Police Department. She stated that including this information in the Board Report may encourage other agencies to perform auditing of their stop data. Member McMahon stated that it would be important to also receive information from the Los Angeles Police Department about this issue to inform the content that may be included in the Board Report. Member Ochoa stated that the Report was discussed at a Police Commission meeting where the Chief of the LAPD commented on the Report. Member Raphael provided a link to the LA OIG Report via a chat comment and stated that the finding could be found on page 4 of the Report. Co-Chair Durali stated that since the OIG Report is a formal report, it would be important to reference the finding in the Board Report. She stated that the finding that for 23% of people searched in the audited videos, the searches were not documented. Member Raphael stated that it would be valuable to review the OIG Report carefully and understand to the sampling method for the audit. Co-Chair Durali agreed.

SDAG Beninati stated that a possible compromise would be for the Board to recommend the practice of supervisors using bodywork camera footage as an accountability and accuracy check of their stop data reports. Member Sierra stated that this approach would make sense for the 2021 Board Report in addition to following up on the particular audit of the LAPD stop data to inform future work of the Board. Member Ochoa stated that this is a good recommendation. She stated that she was unclear about what concerns Board members may have with citing the OIG Report. Co-Chair Swing stated that he understood there to be some hesitancy because Board members had not yet had the opportunity to review the OIG Report. He stated that he agreed that the Board should make a recommendation for LEAs to establish auditing procedures. Co-Chair Durali indicated that information about the methodology used in the OIG Report was available on page 48 of the Report. Member Woods stated that the Board would have the opportunity to review the OIG Report before voting on the Board Report at the December Board meeting. Co-Chair Durali confirmed with Board members that there was consensus for Board members to read the OIG Report before the December meeting and to discuss this issue at that meeting.

Member Espinosa stated in addition to the recommendation for supervisors to audit stop data reporting, it would also be important to include recommendation for civilian oversight auditing. She stated that there are clear differences in how police oversight is conducted internally and the policing of civilians. Member Espinosa stated that the concerns for providing LEAs the opportunity to respond to the findings are different from the opportunities to respond provided to civilians when they are publicly charged of crimes. She stated that along with making recommendations for the role of civilians in auditing and oversight, in future reports the Board should address the history of policing. Member Sierra asked if it would be helpful to include in the 2021 Board Report a reference to an earlier Board report that included the history of policing. Member Espinosa stated that it would be ideal to reference the historical information in relation to the context of policing in 2020. Member Brown stated that the history of policing has been included in discussions of procedural justice training and this would be a resource to include. Ms. Aisha Martin-Walton from the DOJ stated that the 2018 Board Report included an overview of the history of law enforcement and in the Introduction of the 2021 Report there was an effort to discuss the connection of the current policing and incidents with the history of policing. She requested that Board members provide any feedback that they would like to provide regarding the Introduction. Co-Chair Durali stated that it would be helpful to include a paragraph about the history of policing so that the public would not have to cross reference the Reports. She stated her appreciation for the resource that Member Brown mentioned. Member Brown volunteered to draft this content.

Ms. Allison Elgart from the DOJ stated that Board members could contact DOJ staff regarding any recommended line edits or corrections, other than what would be a substantive discussion.

Public Comment

Eva Bitran from the ACLU of Southern California stated that she supported Member Ochoa's comments about the importance of calling out explicit bias and this could be achieved by focusing on the definition of implicit bias as it relates to other forms of bias that one can have, so that people can understand what it means when bias is operating below the level of cognition. She expressed appreciation for the Board members' comments about the importance of auditing data for accuracy and stated that including the OIG findings regarding the Los Angeles Police Department would help provide understanding of where weaknesses may exist in data collection and encourage better supervisory review by LEAs. Ms. Bitran stated that auditing may also help to address issues of personally identifying information in data collection that have come up in the past. She stated that she appreciated the discussion about how to make agency-level data available to the public and Open Justice is a wonderful platform to perform comparison of data across agencies and downloadable reports on Open

Justice would be very helpful. Ms. Bitran stated that the Board Report also has a role in highlighting specific findings or policies or problems that require public attention that may be different across agencies. She stated that if the DOJ or the Board identifies egregious disparities, exemplar agencies that are doing things well or are doing things particularly poorly, it would merit discussion in the Board Report. Ms. Bitran stated that she agreed with Co-Chair Durali's comments about the need to focus on the massive disparities for people perceived to be transgender or gender non-conforming. She stated that this disparity caught her attention as indicative of striking over policing and requested that the Board address this issue.

Discussion of Next Steps

SDAG Beninati thanked Special Assistant Christine Sun, the Attorney General's Senior Policy Advisor on civil rights, criminal justice reform and police reform, for her service to the DOJ. She stated that sadly Ms. Sun would be leaving the DOJ. She stated the Ms. Sun had especially contributed to the Stop Data Analysis section of the past two Board Reports, expressed appreciation for all of Ms. Sun's great work, and said that she would be missed at the DOJ.

Ms. Sun stated that it was an honor to be a part of the team working on the Board's Reports and expressed her appreciation to the Board members for their service. She stated that she looked forward to all of the work that the Board would continue to do.

DAG Elgart stated that the next steps for the DOJ staff include working on the items that were discussed during the meeting, working with Member Brown on the introduction section, foundational work to address the subject of consent searches, incorporation of a reference to the Los Angeles OIG Report, and incorporation of comments regarding the Implicit Bias section. She stated by the December 2 Board meeting the DOJ should have the Executive Summary and Fact Sheet ready for the Board to review.

8. Adjourn

Co-Chair Swing thanked everyone for their participation, and thanked DOJ staff for their work to facilitate the conversation. Co-Chair Durali thanked everyone and adjourned the meeting at 1:21 p.m.