

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

MEETING MINUTES

17th Meeting of the Racial and Identity Profiling Advisory (RIPA) Board

September 2, 2020 10:00 a.m.

Virtual Meeting Via BlueJeans

The seventeenth meeting of the California Racial and Identity Profiling Advisory (RIPA) Board was held on Wednesday September 2, 2020 at 10:00 A.M. via BlueJeans video conferencing due to the global COVID-19 Pandemic.

Members Present: Angela Sierra, David Swing, Sahar Durali, LaWanda Hawkins Warren Stanley, Sandra Brown, Steve Raphael, Nancy Frausto, Lily Khadjavi, Melanie Ochoa, Damon Kurtz, John McMahon, Felicia Espinosa and Brendon Woods.

Members Not Present: None.

1. Welcoming Remarks

Supervising Deputy Attorney General (SDAG) Nancy A. Beninati welcomed everyone to the first meeting of the year, and provided instructions for engaging in public comment during the virtual meeting in light of the new format due to the COVID-19 pandemic. Ms. Beninati also advised everyone that California Attorney General Xavier Becerra will be a special guest speaker for today's meeting, and that she was very excited to have our new Board members joining us, as well as our outgoing Board Members. Ms. Beninati turned the meeting over to Co-Chair Sahar Durali to officially begin the meeting.

2. Call to Order

Co-Chair Sahar Durali called the September 2 RIPA Board Meeting to order at approximately 10:10 a.m. She then welcomed Attorney General Becerra.

Attorney General (AG) Becerra thanked the co-chair, and stated that he was happy to attend today's meeting to congratulate and thank the outgoing and incoming Board members. The AG noted that RIPA began with Assembly Member Dr. Shirley Webber's bill and the passage of the AB 953 legislation. His message to outgoing Board members was that they have placed the RIPA work on a launching pad that will allow the incoming board members to continue the good work. The AG told the new Board members that we all look forward to their service and insights,

and that this work is exciting. He stated that the Board can go where no one has gone before when it comes to these issues.

The AG discussed the Board's charge to deal with bias, to help root it out where it exists and provide best practices in policing. The AG talked about how the Board impacts all Californians and informs all law enforcement agencies, and helps to back up what everyone is seeing with data.

The AG stated that accountability is the operative word for the Board's mission - accountability and to provide best practices in policing. This is the Board's charge, and the Board is at the cutting edge. The AG urged everyone to get involved with the Board's work to have their voices heard. And, the AG completed his comments with the hope that the Board will help carry the state of California and law enforcement agencies to a better place with respect to progressive police practices.

2. Co-Chair Durali Introduction of New Board Members

Co-chair Durali thanked AG Becerra for his comments, then introduced the six new board members.

Felicia Espinosa: Ms. Espinosa is the Root & Rebound Fresno Site Director & Senior Staff Attorney. Root & Rebound focuses on those communities most impacted by mass incarceration – Black, indigenous and people of color. They focus on breaking down those collateral consequences of the criminal legal system imposed upon these community's relative to employment, higher education, occupational licensing, and family law. Felicia's experience prior to joining Root & Rebound includes work as an attorney with California Rural Legal Assistance Inc., where they exclusively represented agricultural workers and work with the City of Fresno as an Assistant City Attorney.

Reverend Nancy Frausto: Reverend Nancy Frausto serves as the Associate Rector at St. Luke's Episcopal Church in the City of Long Beach. She is honored to be able to be a part of this Board. A DACA recipient, and an advocate in the community, Reverend Frausto recognizes the importance that existing biases are dealt with and that justice prevails in this beautiful land.

Professor Lily Khadjavi: Professor Khadjavi is a mathematician at Loyola Marymount University in Los Angeles. Her work focuses on the intersection of mathematics and social justice, specifically with an interest in issues surrounding law and policing practices. Echoing the comments of Attorney General Becerra, Professor Khadjavi knows that this work is critical work, and also knows the public policing concerns are not new, but truly at a time of heightened awareness, recognizes that this is a heightened opportunity for the Board, the DOJ, and the public to have an impact on addressing systemic practices that can be biased.

Sheriff John McMahon: Sheriff John McMahon of San Bernadino County represents State Sheriffs and is taking over for Dave Robinson, Sheriff of King County, who has done some great work since the beginning of the RIPA Board. Sheriff McMahon's county was one of the original eight that first began reporting RIPA data and his staff was involved with the AG's office early on regarding the data being collected. He has over 35 years of law enforcement experience and is honored to represent the Sheriffs.

Attorney Melanie Ochoa: Ms. Ochoa is a staff attorney for Criminal Justice and Police Practices from the ACLU-Southern California. She has four years of experience with ACLU. Prior to her work with ACLU, she worked as an advocate and policy analyst in researching and providing comments concerning AB 953.

Chief Public Defender Brendon Woods: Mr. Woods is currently the Public Defender for Alameda County. He has been a Public Defender since 1996. In 2012, he became the first Black Chief Public Defender in the history of Alameda County and currently, is the only Black Chief Public Defender in the entire state. Racial identity and profiling are reasons why he became a public defender and why he wanted to be a part of this Board. He is honored to be on the Board and very excited to see how we can do policing in this state and in this nation.

3. Recognition of Outgoing Board Members

Co-Chair Durali turned meeting over to DOJ's Aisha Martin-Walton to recognize outgoing Board Members.

Ms. Aisha Martin-Walton recognized the nine outgoing Board members for their service and shared each individual's contributions as RIPA Board Members. Ms. Martin-Walton expressed how much everyone appreciated the Board members' work towards the elimination of racial and identity profiling in California and bringing about a harmonious relationship between California residents and the law enforcement community.

4. Approval of Board Meeting Minutes

MOTION: A motion was made to approve the minutes by Member Steven Raphael. The motion was seconded by Member Swing.

APPROVAL: The minutes were approved by unanimous consent.

5. Nominations for RIPA Board chairperson for the upcoming year

MOTION: A motion was made by Member Brown to nominate Member Swing to serve as the new RIPA Board Co-Chair. It was seconded by Member Hawkins. Member Swing accepted the nomination.

MOTION: A motion was made by Member Woods that Member Raphael be nominated to serve as the new RIPA Board Co-Chair. It was seconded by Member Angela Sierra. Member Raphael accepted the nomination.

There was a roll call vote. Members Brown, Hawkins, Kurtz, McMahon, Sierra, Swing, and Stanley voted yes for member Swing. Members Durali, Espinosa, Frausto, Khadjavi, Ochoa, and Woods votes yes for Member Raphael and Member Raphael abstained.

APPROVAL: Member Swing was approved as new Co-Chair of the RIPA Board with seven votes for Chief Swing, six votes for Professor Steven Raphael, and one abstention.

Co-Chair Durali asked whether Chief Swing would like to say a few words. Chief Swing stated that he is looking forward to working with the Board, that there are quite a few new Board members, and that this is an exciting time. He looks forward to what the Board is going to accomplish for communities throughout the state.

6. Update from the California Department of Justice

Ms. Allison Elgart, a Deputy Attorney General (DAG) with the Civil Rights Enforcement Section, commented that it was exciting to have everyone here at our first Board meeting of the year. She referenced the March 2020 Board meeting which was cancelled due to the Coronavirus (COVID-19). She stated that over the Summer of 2020, all of the subcommittees met and the first draft of the Board Report has been completed. She looks forward to the Board's comments and feedback. Additionally, subcommittee meetings were added for the end of September and beginning of October 2020. She then provided the general timeline of Board events for the remainder of year 2020, with the next full board meeting on November 5, 2020, followed by a final Board meeting, December 2, 2020. At that point, the Board will officially sign off on the Board report and the report will be published on January 1, 2021.

7. CJIS Update on Data Collection: Statewide Stop Data Collection System: Status update on agencies and their collection.

Ms. Erin Choi, Program Manager with CJIS, DOJ Client Services Program, discussed the recent additions to the statewide stop data collection system, as well as a timeline for data collection and the agencies collecting Stop Data, including early adopters. She indicated that Wave 3 agencies were being on boarded and that her office was conducting recurring meetings with law

enforcement agencies. In addition, her staff is working with Wave 4, which consists of 400 plus agencies. Lastly, her office is currently partnering with the Civil Rights Enforcement Section to develop a four (4) hour POST Certified class on agency reporting requirements.

8. DOJ Update on Best Practices for Internal Civilian Complaint Investigative Processes

AG Domonique Alcaraz provided the update on Civilian Complaints and Accountability Best Practices. She included the following) tracking complaints, 2) investment in processes for internal civilian complaints, 3) Early Intervention Systems and the link to hiring and firing, 4) resources to address legal barriers for hiring and firing officers with civilian complaints, and 5) public accessibility of civilian complaints. Ms. Alcaraz stated that the DOJ seeks to consult with the Board about its top priorities in this area. She listed added Best Practices including;

Tracking – Agencies must standardize how complaints are labeled and follow those categorizations to allow for useful data.

Racial and identity profiling should always be considered a formal complaint rather than an inquiry.

Internal Civilian Complaints – If the complaint is race based, civilian investigators should be a part of the investigation. Agency investigators need to be trained on how to investigate and investigators should create an investigative plan and share with supervisors beforehand. Lastly, there needs to be some level of independence along with a conflict of interest clearance.

Lastly, Ms. Alcaraz explained that experts noted that: **1)** if a complaint is not sustained, it is not considered by the agency for hiring and firing unless specific policy requires them to do so; **2)** any background investigator with a keen eye will look at an applicant's resume with multiple agencies, looking to determine whether there is a reason for that; and **3)** if an officer resolves complaints through negotiation or resignation prior to discipline, it can be difficult for a new hiring authority to learn about that complaint.

Member Rafael had a question related to the complaint/inquiry distinction. He asked whether inquiries show up in data at all or whether inquiries are elevated to formal complaints? He stated this is an important distinction to think about in terms of tracking complaints.

DAG Elgart responded to Member Rafael's question by stating that we have seen situations where inquiries rise to what is being counted as a complaint, and that some agencies are counting inquiries while some are not. In some agencies, inquiries are being wrapped in with civilian complaints and categorized as complaints itself. Agencies vary in how they are conducting these complaints and characterizing them. What is being submitted to the DOJ is what an agency counts as a civilian complaint, and given the lack of uniformity, we see significant variation in the numbers of complaint submissions.

Co-Chair Durali asked whether complaints or inquiries in EIS are flagged solely for a supervisor review or are there outside auditing agencies for complaints that have been flagged. Some of the research shows that when the complaint is only flagged to the supervisor, there may not be any further action.

DAG Alcaraz responded by stating that she was aware of two vendors that provide auditing services and that the Board would be willing to place a greater level of focus on the operation and capacity of vendors providing these services.

Co-Chair Durali indicated that the last several reports focused on the uniformity issue and that she believed, in light of the unarmed shootings of Black men, that greater dedication to the report should be given to early intervention systems.

SDAG Nancy Beninati added that many of the commercial auditing products or programs that agencies use has early intervention warning levels set by law enforcement agencies themselves.

Member Chief David Swing commented that agencies use a variety of criteria to establish what that early intervention warning looks like. He made the point that communities in California are different so it is hard to set an across-the-board benchmark level for early intervention.

Member Lawanda Hawkins commented that she believed EIS is very important and supports the Board's focus on EIS, particularly in light of the negative outcomes from interactions between law enforcement and Black people in Los Angeles. She asked what was being done about the negative outcomes. She stated that we should not just focus on the individual officer but rather focus on the law enforcement system.

Member Angela Sierra asked in the State of California, how common are civilian investigators included for internal investigations and whether the experts have some sense of how common the practice is throughout the State.

DAG Domonique Alcaraz stated that she was unaware of the percentage of agencies that have civilian investigators. The experts she spoke with are more familiar with agencies in cities outside of the state but that this issue presented a research question DOJ can further explore.

SDAG Nancy Beninati commented that she was unaware of how smaller agencies in the state handle civilian investigations, but that the San Francisco Department of Police Accountability is an all-civilian staff and they investigate and adjudicate all administrative civilian complaints.

DAG Allison Elgart added that from the conversation with experts, we learned that some agencies will have a race-based complaint investigated outside the police agency, such as, for example, by the Department of Human Services. Obviously, provision of these services is more difficult with smaller agencies, but these are some successful interventions agencies are using.

Member Professor Rafael inquired whether EIS has to be based entirely on complaints. Does it touch on other information sources gathered under RIPA,

DAG Allison Elgart indicated that the experts look at a number of factors in addition to complaints, including, for example, vehicle pursuits or use of force. Each agency decides what are going to be the touchpoints of these early intervention systems.

Member Sheriff McMahon commented that EIS is determinative of the totality of the circumstances. This includes traffic pursuits, collisions, internal issues such as timeliness or report issues. A large number of pursuits or more than normal does not necessarily mean there is a problem with the officer. Each matter needs to be evaluated in totality based upon overall officer performance.

Member Sandra Brown, a retired Lieutenant with the City of Palo Alto, indicated they had used early warning systems and independent police auditors (IPA) in her jurisdiction. She worked closely with the IPA, meeting with them during the month in reference to citizens' complaints and internal officer investigations. She agreed with Sheriff McMahon that the EIS used in Palo Alto tracks a number of metrics, including calls in sick, lateness, use of force. She indicated these reports were used to determine whether there were officer-agency issues. In many cases there were no problems.

Member Felicia Espinosa inquired whether there is conversation around the uniformity of the term "audit" relative to early intervention systems.

DAG Domonique Alcaraz noted the question concerning the uniformity of the term audit and expressed appreciation for the Board's input concerning civilian complaints and EIS matters. She stated she would provide an update in response to the discussion and questions generated post-presentation in the upcoming Civilian Complaints subcommittee meeting.

Co-Chair Durali inquired about the status of agency surveys seeking to determine which of those agencies are implementing recommendations based on civilian complaints.

DAG Allison Elgart responded to Co-Chair Durali's survey inquiry by stating that we received responses and that there were only three or four agencies that had not responded, which was a fantastic response. She stated that DOJ will work on the survey analysis for the upcoming Policies subcommittee meeting. She commented that we did not ask agencies specifically about EIS, but did ask agencies how they are using RIPA data and other accountability measures.

Co-Chair Durali adjourned the meeting for short break.

9. Sub-Committee Report Highlights

Member LaWanda Hawkins presented the following highlights from the Civilian Complaints Sub-Committee Meeting

A. Co-Chair Durali commented on the murder of George Floyd by law enforcement and that there were a high number of arrests of African-Americans during protests, both racial and coronavirus related.

B. There is no mandated complaint form, no mandated procedures, and no clear definition for complaint forms.

C. The DOJ reported that the subcommittee is using a civilian complaint matrix to determine how many agencies have complaint forms and the accessibility of these forms to the public.

D. The DOJ advised the subcommittee that law enforcement agencies can seek reimbursement for data collection costs related to RIPA.

D. Each law enforcement agency now includes language translation for civilian complaint forms.

E. The subcommittee looks forward to hearing from experts on the following topics, including: 1.) civilian complaints, 2.) civilian complaint tracking, 3.) supervisory review, 4.) agency accountability, 5.) accessibility of other officer's complaints to the public.

Member Hawkins then asked DAG Alcaraz to present her update for the civilian complaint matrix and review.

DAG Alcaraz provided civilian complaint matrix updates reflected in the first draft of the RIPA report. She noted that there is added language for each participating LEA to include information on language translation, including information on the methodology used for agency selection of the chosen language(s) to translate. Lastly, she provided information on how civilians who do not speak the languages selected for translation, may be able to make a civilian's complaint.

Member Sandra Brown provided highlights for the POST Sub-Committee Meeting

A. POST has been open to comments and training suggestions on their training videos. She was appreciative of the collaboration and openness displayed by POST and their willingness to work with RIPA on Stop Data collection to ensure proper reporting.

B. Each course will receive student evaluations which will be collected for the RIPA Board and the public.

C. Law Enforcement officers who sit on the Board may be able to assist training by assisting with consensual stop scenarios and helping with how to report citizen's information.

D. POST does not actively recruit for law enforcement within the state but did put together best practices for recruiting so that POST and LEA's have a frame of reference. Member Brown indicated that recruiting needs to change, perhaps in the mold of the student-athlete-college

dynamic. There exists a need to develop a more personal relationship with recruits, which is difficult given the current narrative with law enforcement.

Member Angela Sierra presented the highlights for the Calls for Service Sub-Committee Meeting

A. MET, a Kern County organization operating at the intersection of mental health and law enforcement, provides calls to service involving individuals with mental health disabilities. They have a strong, working relationship with LEA's in Kern County and respond to between 2,600 to 3,000 calls for service per year. They provide dispatch radio services in collaboration with law enforcement services and on the scene assistance. They are currently piloting a project for 24-hour on-call services.

B. MET also provides crisis team intervention training to Kern County LEA'S. The training is a 40-hour course offered three to four times a year. The Kern County Sheriff made this training mandatory for those graduating from the academy and joining the Kern County Sheriff's Office.

C. Smart 911 is a voluntary based service that captures important information on an individual that may be helpful to law enforcement or in an emergency or crisis situation. Individual information is voluntarily offered, including medical, mental or health status.

Co-Chair Swing presented the highlights for the Stop Data Subcommittee Meeting.

- A. Ken Barone and Matt Ross from The Institute for Municipal and Regional Policy (IMRP) at Central Connecticut State University indicated that the veil of darkness is the gold standard when used to evaluate whether an agency needs to have a closer inspection on existing agency police practices. Co-Chair Swing shared two success stories following implementation of veil of darkness methodology.
- B. One LEA used equipment violations as a pretext to catch DUI drivers. Upon closer inspection of the strategy, it was found that there was really no correlation between the equipment violations and DUI arrests, which was the desired goal. Additionally, the strategy found that there was a racial/ethnic disparity of those who were stopped. The agency discontinued this strategy, resulting in an improved community outcome due to a reduction in racial/ethnic disparity in those stops as well. In a second scenario, researchers discovered racial disparities in who was being asked to consent to a search relative to a low yield rate from these searches. In response, the Chief of Police prohibited consent searches. Consequently, the success of searches went from seven percent to close to 80 percent with racial/ethnic disparities significantly decreased.

Member Ochoa presented the highlights for the Policies & Accountability Subcommittee Meeting.

A. The committee will seek more extensive research on properly ensuring the collection of data and accountability mechanisms for a failure to do so.

B. The committee seeks more information on how agencies are handling supervisory reviews, which is one of the data measures.

C. Member Ochoa advised that her committee flagged inconsistent reporting and racially biased enforcement of shelter in place policies and called for bias-free use of force and policing policies. Member Ochoa commented that other crises similar to Covid-19 or negative interactions between communities of color and law enforcement could arise again, resulting in disparate applications of law and policy. It is important to see how LEA's respond to these current crises in real time to learn from these experiences and to be better prepared to for the future.

Co-Chair Durali concluded the Sub-Committee Reports.

Kevin Walker, Research Associate, and Dr. Trent Simmons with the California DOJ Research Center presented on the draft of the stop data analysis. Mr. Walker and Dr. Simmons covered the following topics from the report:

- A. Stop Data Demographics & Outcomes
- B. Tests for Disparities
- C. Intersectional Analysis

Co-Chair Durali then opened up the floor to public comment.

Public Commenter Tiffany Carter, Statewide Advocacy Liaison with Cal Voices, wanted to express her enthusiasm with the RIPA effort and the presentation and looks forward to collaborating and providing a mental health consumer voice in the conversation for just outcomes and best policing practices.

Public Commenter Poshi Walker expressed her gratitude for including sexual orientation and gender within the confines of the RIPA research. She recommended consideration of the intersection of civilian complaints and transgender sex workers, particularly transgender workers who have been abused by police, since they do not know whether it would be safe to complain about sexual or other abuses stemming from the profession.

Public Commenter Stephanie Ramos stressed the importance of civilian investigators, noting that many communities do not trust systems, law enforcement or otherwise.

Public Commenter Eva Betran, Staff Attorney with ACLU Southern California, expressed her excitement for the intersectional analysis in the draft report. She also stated that discretionary

and administrative searches are tethered to agency policies and inquired whether this leads to disparities across agencies

Stacey Hiromoto with Racial & Ethnic Mental Health Disparities Coalition stated that Mental Health Services Oversight & Accountability Commission completed a Law Enforcement & Mental Health Report. This report provided focus groups on African-American and transgender communities that are not well documented in the report. At our request, she is able to provide information on African-American and transgender groups.

Public Commenter Karen S. Glover noted that earlier RIPA report did not offer clear policies, nor specific action related to officer behavior and EIS. She also stated the importance of a universal definition defining a complaint.

10. Board Discussion of 2021 RIPA Draft Report

Co-Chair Durali commented on the necessity of cleaning up the Stop Data regulations and inquired whether we have data on homeless (under-housed) “community caretaking” stops. She commented that not all stops of the under-housed are community caretaking stops, but rather encampment sweeps and other detainments.

SDAG Nancy Beninati commented that the data regarding encounters with the under-housed and law enforcement is something we can look at in the future of the RIPA Board work.

Member Ochoa commented that there is a need to confirm data on the number of stops leading to an arrest as the vast majority of stops do not end in an arrest. Additionally, she inquired as to what additional actions are taken by law enforcement following a stop. She would like to know whether there is a trend towards underreporting or accurate reporting of arrests and other actions following a stop.

DOJ Research Analyst Kevin Walker responded to Member Ochoa’s inquiry concerning the accuracy of reporting following a stop. He stated that some agencies ‘spot check’ those stops. A report out of the LA Office of Inspector General stated that these spot checks will pull body camera footage of encounters and compare with the stop data collected as a further check toward ensuring accuracy and accountability with recording stop data. He said that he will find that report and send it out to the RIPA Board. He recognizes the benefit of the spot checks, believes it will be beneficial to the RIPA effort and would encourage other agencies to participate in the spot check program.

Member LaWanda Hawkins asked what is lethal force as contemplated by the report. Additionally, she asked for the definition of “permission to be searched.”

Research Analyst Kevin Walker responded to Member Hawkins’ inquiry by pointing to pages 33-37 of the draft report, which discussed the three force types. Additionally, he stated that

incidents of lethal force by definition are instances where officers discharge their firearm. In response to Member Hawkins' second question, Kevin stated that permission to be searched requires consent and that may occur by way of an officer asking the civilian for consent to be searched and the civilian either providing or not providing consent to be searched by the officer.

Member Rafael commented that it may be helpful to examine search and discovery risk analysis relative to the three mental health categories – first ignoring race and then looking within racial groups, repeating the analysis with a focus on disparities by mental health levels and looking at the intersection of race.

Member Hawkins commented with concerns regarding the accuracy of reporting relative to California Highway Patrol (CHP) data. She stated that the issues, law enforcement and otherwise, in Northern California are distinct from those issues in Southern California and that CHP data should be broken out by region. Mr. Walker indicated that given Board interest, he could look into breaking out CHP data by region for greater reporting accuracy.

Co-Chair Swing commented that he would be interested in seeing a data breakdown of stops where the civilian is placed on a psychiatric hold for officer safety reasons. Additionally, he would like to see the collection of stops of individuals who are not from the community or the service area community of the officer.

Member Lily Khadjavi typed in the comment that we should be connecting data trends to policy recommendations. (Member Khadjavi was having difficulty with her Blue Jeans connection.) She made reference to Co-Chair Swing's positive outcome scenario where a study showed that a policing strategy led to disparities, and the decision to remove that policing strategy resulted in the reduction of disparities.

Co-Chair Durali opened the floor for a second public comment period.

Public Commenter Karen S. Glover commented that she took offense to Co-Chair Swing's comments of "out of community individuals" and that the comment seemed to invoke the out of place doctrine, limiting the mobility of individuals.

Public Commenter Eva Betran echoed Member Khadjavi's comments and thanked the Board for making the report.

Public Commenter Rachel McHale asked how agencies screen whether LEA applicants are linked to white supremacy groups. She commented on the need to understand unconscious bias and how to tackle the issue at a much deeper level than the current level of training offers.

Closing comments and next steps.

SDAG Nancy Beninati discussed the RIPA outreach flyer and thanked her staff for all of their hard work on the report and the flyer. She stressed the importance of outreach tools such as the flyer necessary to get the word out about the RIPA Board work and resources available to all Californians. She also requested whether the Board would be able to vote on the approval of the current RIPA flyer. Prior to that vote, Member Woods requested that the DOJ edit the flyer to move up a sentence in the flyer. All Board members were agreeable.

MOTION: Member Rafael made a motion for the approval of the RIPA flyer. Member Brown seconded the motion.

APPROVAL: Following a roll call with ten members supporting the motion, the flyer was approved.

Ms. Nancy Beninati added that the flyer will be available in multiple languages to get the word out to the community.

Co-Chair Durali adjourned the September 2, 2020 RIPA Board Meeting at 2 pm.