

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



SUSAN HUTSON
INDEPENDENT POLICE MONITOR

August 24, 2012

The Honorable Susie Morgan
U.S. District Court for the Eastern District of Louisiana
500 Poydras, C508
New Orleans, LA 70130

RE: Civil Action No. 12-1924; United States of America vs. The City of New Orleans,
Consent Decree

Dear Judge Morgan:

I thank you for allowing us, the Office of the Independent Police Monitor (OIPM), and the public to have a meaningful opportunity to share important history and information about our public safety system prior to your approval of the Consent Decree in this matter.

As the entire community seeks to see the New Orleans Police Department (NOPD) improve, it is in everyone's best interests to identify reform areas that are missing from the proposed Consent Decree, or where provisions are inadequate.

NOPD and its current leadership are the architects of several policies that have become areas of concern: quantitative policing, possible quotas for stops (field interviews), and retaliation. It will be difficult to obtain buy-in from police officers and citizens when the department is the subject of concerns and also the judge of how well those concerns are being addressed. The Consent Decree process requires a broad buy-in from officers and the public into the reformation process and a neutral entity (e.g. the OIPM) is necessary. A recent survey conducted by policing expert Dr. Peter Scharf and the motions to intervene by the two police associations detail how officers do not believe that the parties appropriately represented their interests.

The insular management style of the city's government may also be antithetical to the effective buy-in and implementation needed for a viable Consent Decree process. The lack of involvement by the OIPM in the process of negotiating the Consent Decree reflects this insularity and is an underlying major risk factor going forward. We have been monitoring the process by which the NOPD investigates itself for over two years and we have Consent Decree experience but were blocked from participation for what we believe are political reasons which have nothing to do with effectiveness or efficacy. Since the 1940's, reform in policing has attempted to separate policing from politics. Political interests may not be able to achieve the legitimacy needed for an



effective Consent Decree process. After all, in the mid-1990's, the federal government and local government attempted reforms which dissipated without permanent oversight.

The following are crucial elements that we believe to be missing from the proposed consent decree.

I. An Apology

The most important missing component of this Consent Decree is an apology from the City of New Orleans and its police department to the public to whom they swore a duty to protect and serve. As was noted in the investigation into the NOPD by the Department of Justice (DOJ), the NOPD failed to train its officers, hold officers accountable and investigate itself in a proper manner. Further, several officers have been found guilty of heinous crimes. Yet to my knowledge, no one from city government has ever made a public apology. The family members of those killed by NOPD are especially disappointed. An apology would start these reforms out on a note which informs the public of the NOPD's contrition and reminds current officers of the burdens they bear in making change.

II. OIPM Duties

As mentioned in our motion to intervene and during our oral arguments, a strong role for local and lasting police oversight (i.e. OIPM) is missing from this Consent Decree. The OIPM has knowledge and expertise of which are not being taken advantage. I worked under a very detailed Consent Decree in the City of Los Angeles prior to coming to work in New Orleans. I am very familiar with the best practices that the DOJ put in place in Los Angeles, in other Consent Decree cities, and proposes here. In fact, the OIPM has been reviewing NOPD patterns and practices over the last two years and making recommendations based on these best practices. The Deputy Police Monitor has worked as an Assistant Attorney General in New York where she prosecuted public integrity cases, a criminal defense attorney, and as Legislative Counsel where she drafted legislation regarding government ethics, police stops and searches, and whistleblower protection. My Community Relations Director has a community organizing background and ties to the community most impacted by problems with NOPD. She fought to make the OIPM a reality. We are the most qualified independent reviewers of the NOPD and if we are locked out during the Consent Decree period, it will be difficult to resume our duties once federal officials and the Consent Decree Monitor leave.

To illustrate this troubling dearth, we point to three vital areas which the OIPM ordinance requires us to monitor, review, assess, and report upon: a) the complaint/disciplinary system, b) critical incidents and c) community involvement in oversight. Critical incidents are major uses of force and includes officer involved shootings and in custody deaths. We will discuss these areas in more detail below.



a) Complaint Investigation/Disciplinary System

The OIPM is better equipped to make the complaint investigation/disciplinary system more reliable. For instance, our review of complaint investigations utilizes a matrix of questions that is more detailed, but which certainly includes, the same criteria included in Paragraphs 413-417 of the Consent Decree related to complaint investigations. Our review process came with me from Los Angeles and was used during the life of that Consent Decree. In fact, the OIPM, spearheaded the purchase of the current NOPD computer program which houses complaint investigations, uses of force, and the early intervention system.

We also note that Paragraph 392 of the proposed Consent Decree does not mention the OIPM as a partner to identify and forward complaints of misconduct. Others in the criminal justice system are included, but not the OIPM. This is a huge oversight, given the fact that the OIPM receives around 200 complaints of alleged misconduct per year. The OIPM also traces various other non-complaint contacts with citizens where we address their concerns informally. For instance, a woman contacted our office because she had spotted her stolen vehicle several times but could not get her district officers to come out, make an arrest and recover her property. My staff was able to put her in touch with the district commander and an arrest was made within the hour. The woman recovered her property before the end of the day.

Additionally, as required by Paragraph 392, the OIPM has been asking the City Attorney's Office for lawsuit and claims for damages against the NOPD and its NOPD employees to be included in the early intervention system since October of 2011, but we have not received it. We know that having more information about at risk officers is vital to predicting which may be involved in major misconduct and in trying to prevent these types of major incidents from occurring.

The Consent Decree should also dictate that any lawsuit against a member of the NOPD which states an allegation of misconduct should automatically trigger a complaint investigation. This measure was required in the LAPD Consent Decree, but is not required here. In the alternative, PIB should be required to read each lawsuit and claim for damage and be required to enter all allegations of misconduct into the complaint system for investigation.

Currently, Consent Decree Paragraph 426 conflicts with the OIPM ordinance and the NOPD-OIPM MOU Paragraph 63 which provides that the NOPD will provide the OIPM with material for the OIPM to write an annual report about the complaint investigation/disciplinary system. Consent Decree Paragraph 426 provides that "The PIB and IPM shall coordinate and confer with each other in collecting, analyzing, and reporting this data to avoid or minimize duplication efforts." The City of New Orleans, from which we are operationally independent, cannot give away the OIPM's duties under city law.



Additionally, the OIPM already attends all disciplinary hearings to monitor whether or not complaints are adjudicated properly and that discipline is issued according to NOPD's policies and procedures. The OIPM will be reporting upon the disciplinary process and should have this duty under the Consent Decree.

b) Critical Incidents

We review officer involved shootings in the same manner as complaints. The OIPM has already made a significant impact on force investigations. We helped to make the Force Investigation Team (FIT) a reality. We made the recommendation to put this team together back in October of 2010. Additionally, we assisted the NOPD in connecting with the Force Investigation Division (FID) in Los Angeles, which assisted in training NOPD's FIT. At each shooting the OIPM asks a series of questions more detailed than the criteria included in Consent Decree Paragraph 105, based on Consent Decree best practices, which are intended to make sure the investigation starts off correctly.

The matrices that we utilize to review complaints and critical incidents are appended to the MOU between the OIPM and the NOPD.

We would also ask that the court make it clear, that the Use of Force Review Board (UOFRB) reviews defined in Paragraph 108, and any other NOPD boards or commissions that will hold reviews, are defined as hearings under city ordinance that the OIPM has a right to attend. We are not mentioned in this very important process.

Furthermore, the OIPM has reached out to the families of those who have been killed by NOPD officers over the last 6-8 years. These families will address the court separately about their recommendations for the Consent Decree; however, the OIPM proposes to have language inserted into the Consent Decree which specifically gives our office the role of liaison between the families and the NOPD investigations. We are already acting in this capacity and the families are comfortable in dealing with us.

c) Community Involvement in Oversight

The OIPM has advocated for a strong role for the public in the oversight of the NOPD. The proposed Police-Community Advisory Board proposed in this Consent Decree in Paragraphs 436-438 is unsuitable.

In each city in which I have been involved in civilian oversight of law enforcement, the city has had a citizens review panel or police commission to review major policy changes, complaints of misconduct, and officer involved shootings. The OIPM cannot over emphasize the power of the public to affect change in police departments, if they are given a major role. Mayors, city councils, and chiefs of police change frequently. The only constant is the communities and the people in them. Both community partnership models I have worked with have been highly



effective. We also ask this court to include such an entity in this Consent Decree. The people of this city deserve some control over their fates and will not easily tolerate being locked out of important decisions that affect them.

III. Access

The OIPM asks that this court provide the same access to the OIPM as the Consent Decree Monitor has in Paragraphs 470-476. The OIPM also asks the court for language in the Consent Decree which makes it very clear to the NOPD and its City Attorney that the city of New Orleans and NOPD shall promptly provide the OIPM with any documents or other information we request, related to our responsibilities under this Agreement. The OIPM has had delays from NOPD and/or the City Attorney in getting access to officer involved shooting files and lawsuit information.

IV. Retaliation Prevention

The OIPM has established itself as a safe place for officers and members of the public to come and report allegations of retaliation. However, we know that for any system to flourish, we need officer buy-in. Towards that end, officers must be protected from retaliation. The Consent Decree addresses preventing retaliation in Paragraph 377. However, it does not contain important provisions which are necessary here. Specifically, the Consent Decree should provide that the OIPM will have full access to any “whistle blower” who wishes to communicate with us. The Consent Decree should also provide that the OIPM shall be informed of and have unfettered access to any reports, files, notes or records involving a whistleblower, made by or in the possession of any New Orleans Police personnel, including any grievances.

Additionally, the Consent Decree should reflect that retaliation is a specialized type of case to investigate/prove and that special training is needed for investigators. Furthermore, the OIPM should be mentioned as a primary place for receiving officer and civilian complaints of retaliation. Paragraph 375 specifically provides that officers must report observed misconduct internally. This disrupts their ability to come to OIPM without fear of reprisals.

The Consent Decree should further reflect that the OIPM shall record and track retaliation allegations and provide the annual review as to the NOPD's handling of these types of complaints.

Finally, the OIPM should work with the NOPD to develop and implement retaliation complaint investigation protocols that will protect, to the maximum extent permitted by law, the confidentiality of the identity of the person reporting retaliation to the OIPM. The Consent Decree provides for PIB to conduct this review, but that does not allow for an independent review as most retaliation allegations are leveled against the leadership in any organization.



V. Grievances

A properly functioning grievance system is integral to the prevention of retaliation. A proper grievance system will give officers a voice that would otherwise not be available to them. The City has a grievance process that is extremely unsatisfactory to officers of the NOPD.

The Consent Decree should contain strict timelines and penalties for the City not adhering to grievance timelines and deadlines. Additionally, all grievances filed by NOPD employees should be reviewed by PIB, with the requirement that PIB initiate a misconduct investigation for any grievance which alleges misconduct.

VI. Risk Management System

At the request of the OIPM, the current early intervention software system was purchased. The OIPM made this the priority project upon beginning my tenure as Police Monitor. I have experience with early intervention systems and risk management systems under the Consent Decree in Los Angeles. In February of 2011, I recommended to the Superintendent of Police that a risk management system be put in place similar to the one used Los Angeles. This risk management system would be an expansion of the NOPD's current Professional Performance Enhancement Program (PPEP), which will monitor at risk officers for as long as it takes to remove the risk to the public. The at risk officers are usually benched or given limited (low risk) assignments while in the risk management system. This system is only for those officers presenting an elevated risk of harm to the public. It is worthy to note that even in the middle of the 1990s, Police Chief Richard Pennington built an early warning system that was nationally praised. However, this system fell into disrepair when not monitored by an entity outside of the department.

I also specifically recommended that a detailed pattern analysis should be conducted for at risk employees and how a profile of each employee should be created. When conducted properly, the analysis will reveal any pattern and potential issues with respect to the subject employee and suggest the proper approach to correct the situation. Paragraph 326 of the Consent Decree provides that the NOPD will share information about at risk officers with the DOJ and the Consent Decree Monitor, but does not include the OIPM. This is direct contravention of the NOPD-OIPM MOU (Paragraph 61-62) which requires that “[t]he IPM and NOPD will work together to jointly establish procedures for the IPM to access the Department’s data/information which is necessary to conduct risk management reviews and pattern analyses pursuant to Paragraph 3 of the Ordinance.” It also contradicts our Ordinance, which requires us to monitor the system for effectiveness.



VII. Constitutional Policing Review (Stops and Frisks)

The OIPM has already begun reviewing the NOPD's field interview program and its patterns/practices with respect to stops and frisks. All parties were aware of this review when negotiations began. Our recommendations, which are currently in draft form, go further than what is required in the Consent Decree and we delve into what is wrong with the current system in much more detail. We want to continue to have this function during the life of the Consent Decree and thereafter.

VIII. Search and Arrest Warrants Review

Paragraphs 136 and 146 provide very little guidance to the NOPD and its supervisors about the review measures they need to put in place prior to approving warrants. Currently, supervisors are reviewing warrant affidavits prior to their employees submitting them for court approval. However, despite the supervisory review, the NOPD is not catching the untruthfulness within some of the affidavits. For instance, since my arrival in New Orleans I have reviewed a combination of seven arrest and search warrants. Each of these warrants contained what we believe to be untruthful information in the affidavits used to obtain them.

Furthermore, the OIPM has already begun reviewing this issue. The review started in July of 2012. Our review will provide specific checklists for supervisors, documentation, and training. The OIPM is already a part of Detectives Training which started on August 20, 2012. We are already teaching the NOPD about their obligations of candor and material disclosure to the court in attempting to obtain any warrant. I would also like the court to know that as a member of oversight in Los Angeles, we conducted a number of these reviews under that Consent Decree. This should be an ongoing OIPM review in this Consent Decree as well. We note that as a result of this Consent Decree, the NOPD and the City Attorney have recently expressed concerns about this review. We knew that there would be confusion and difficulties in conducting our normal operations, if the Consent Decree was not specific as to the duties belonging to the OIPM.

IX. Command Staff Investigations

We advised both parties that a uniform system should be in place for the investigations of complaints for which PIB has a conflict of interest, such as investigations of the Superintendent and Deputy Superintendents. We told both sides that the investigators should be the OIPM for consistency. Other entities have conducted investigations, but the OIPM is the most familiar with NOPD's departmental rules. Whomever the court orders to conduct these investigations, there should be clear and consistent requirements set in place. In Los Angeles, the oversight agency conducted investigations for which internal affairs had a conflict.



X. City Administration and City Attorney

The current City administration took office in May 2010 pledging reform and issued a policy memorandum (MJL 11-02) on cooperation with the city's oversight entity, in which it instructed employees that cooperation is the Administration's policy as well as a duty set forth in City ordinance.

However, we believe that it is important for the Court to understand the current climate between the OIPM and the City's Administration. On the occasions that the OIPM has been denied access to critical information to conduct its duties under the OIPM Ordinance, the access was denied with the assistance of the City Attorney's Office. The City Attorney reports directly to the Mayor.

The OIPM has sought to advance reforms in the NOPD in a number of ways, which have received resistance from the NOPD with the assistance of the City Attorney's Office. For instance, although the OIPM Ordinance and the NOPD-IPM MOU make it clear that our office should have access to NOPD officer involved shooting files, even those conducted by the Homicide Unit; it took a prolonged period of time to secure the OIPM's proper access to these files.

Additionally, the OIPM has sought over the last 10 months to work with the City Attorney's Office to provide the public with a redacted version of the NOPD's Operations Manual. However, there have been numerous delays in meeting directly with the City Attorney to complete that project.

We have also received attempts by the City Attorney's Office to prevent the OIPM from releasing information about our activities, as we are required to do under our ordinance, to the public.

The Court should include language in this Consent Decree that provides that there is a duty incumbent all upon the City Attorney's Office to comply with this Consent Decree with respect to the OIPM and to refrain from obstructing any of the reviews required therein, subject to legal arguments which will be reviewed by this court for merit.

XI. Local Oversight Staffing and Resources

In each Consent Decree in which the DOJ has been a party, there has been included a Paragraph which makes the defendant city responsible for providing necessary support to the local civilian oversight agency to fulfill their obligations under the Consent Decree. This paragraph is, of course, accompanied by a specified role and duties for the local civilian oversight agency.

This Consent Decree should also contain such language, but instead only requires the City to fully support the NOPD (Paragraph 12).



We should report upon Consent Decree matters to the court, provided the City of New Orleans is required to provide us with the resources necessary to complete these tasks. We believe that it is inappropriate for the NOPD to critique itself and certify to a court that it is investigating itself appropriately.

XII. Crisis Intervention Team

Although Paragraph 12 of the Consent Decree requires the city to properly fund the NOPD in general, the court should include a specific provision that the City of New Orleans will properly fund and resource the Crisis Intervention Team, the Crisis Intervention Planning Committee, and all functions. The aftermath of Hurricane Katrina was that many individuals were left in need of mental health care, but few resources. It is unfair to put the burden of dealing with these individuals in dire need of help on an underfunded and understaffed unit. Further, we continue to have unfortunately violent incidents between the mentally ill and NOPD officers.

XIII. Collection of Evidence

We request that the court include a provision within Paragraphs 404-412 which requires the NOPD's misconduct investigators to follow the same departmental standards for the collection of evidence as is used in criminal investigations. The collection of evidence may include photographs of items, locations, and injuries. Evidence may also include an officer's equipment such as boots, batons, or flashlights. We have received complaints from the public that important evidence is not being collected in misconduct cases.

XIV. Stop and Search Data Collection and Review

Paragraph 150 of the Consent Decree requires supervisors to review investigatory stops, detentions and searches within 12 hours of receiving a report. However, either the OIPM or the Consent Decree Monitor, needs to conduct regular monthly reviews of supervisory actions to verify that officers are being held accountable. The public cannot wait for the annual reviews contemplated in Paragraph 152, because this type of action affects them every day.

XV. Visual and Audio Documentation of Police Activities

Similarly, the court should add a provision in Paragraphs 327-331, to require that either the OIPM or the Consent Decree Monitor conduct regular monthly reviews of supervisory actions to verify that officers under their command are properly using the in car camera systems and using the systems to document misconduct.

We also ask the court to add a provision that the NOPD and its officers are not to audio or video record individuals when they are not subject to a legal stop or arrest or without the public's consent. The OIPM has been asked about this by members of many communities.



XVI. Disclosure by a Consent Decree Monitor

Paragraphs 462-466 which seek to limit the Consent Decree Monitor from providing information to the public without the approval of the DOJ and the City will be unsatisfactory to the public. The reason that the NOPD has operated in such an unlawful manner is that the city's administration and the city attorney have been able to limit the public's right to know. Shedding light upon the NOPD's practices should be a requirement of this Consent Decree. The court may already know that several media outlets have had to litigate their right to public information from our police department.

XVII. NOPD Policies and Manuals

Paragraphs 15-26 of the Consent Decree are missing some important voices, namely the public and the OIPM. As mentioned elsewhere in this letter, the OIPM believes that the public, through some type of citizens review panel, should have the opportunity to comment on NOPD policy changes. Most certainly, the OIPM should have a voice in this process since we regularly review the NOPD's compliance with and effectiveness of NOPD policy.

Additionally, this court should require the city of New Orleans to immediately review the NOPD's Operations Manual and publish it on the city's website all portions which are not specifically exempted from public disclosure under Louisiana law. All portions which the City of New Orleans seeks to exempt from disclosure should be reviewable by this court. The OIPM has encouraged the City of New Orleans and the NOPD to accomplish this task, but the city has yet to comply.

These proceedings will have a significant impact on New Orleanians' daily lives for years to come. We trust the court to weigh all factors accordingly and we respectfully request that the court consider the impact of an incomplete reform process. The court understands that NOPD reform must be more than a public relations campaign this time. We further note that this not an exhaustive list of the ways this Consent Decree can be improved, but we at the OIPM thank the Court for the opportunity to provide this input and for your consideration thereof.

Sincerely,



Susan Hutson
Independent Police Monitor

