



# **FIRST QUARTERLY REPORT OF THE CONSENT DECREE MONITOR**

New Orleans, Louisiana

November 29, 2013

**Office of the Consent Decree Monitor**

Sheppard Mullin Richter & Hampton, LLP

Appointed By Order Of The U.S. District Court For The Eastern District Of Louisiana

## WHAT'S IN THIS REPORT?



### Office of the Consent Decree Monitor

First  
Quarterly Report  
November 2013  
Covering  
August 2013 –  
October 2013

See  
consentdecreeeditor.com  
for full report.

Sheppard Mullin  
Richter & Hampton, LLP

#### WHAT WE DID THIS QUARTER

- Established an office and presence in New Orleans
- Assessed progress made by the NOPD prior to the appointment of the Consent Decree Monitor
- Monitored implementation of the Office of Police Secondary Employment
- Developed a Monitoring Plan and Schedule and began to develop Monitoring Protocols
- Developed protocol for reviewing Misconduct and Use of Force investigations
- Reviewed NOPD policies and procedures
- Met with community stakeholders

#### WHAT WE FOUND

- The City has taken important steps toward establishing a Compliance Bureau led by a Deputy Superintendent
- NOPD made significant progress revising its policies and procedures to implement key aspects of the Consent Decree, but work remains to be done
- Contrary to the terms of the Consent Decree, NOPD prematurely implemented revised policies in advance of review by the Monitoring Team and DOJ
- NOPD made significant progress implementing its Secondary Employment program, but work remains to be done

#### NEXT QUARTER'S ACTIVITIES

- Continue review of NOPD policies
- Identify potential local entities to conduct Biennial Community Survey
- Initiate process to develop and conduct Biennial Survey
- Observe Academy and in-service training
- Review Use of Force and Misconduct Investigations
- Initiate compliance reviews and audits as per the Monitoring Plan
- Monitor implementation of Secondary Employment program

## CONSENT DECREE AUTHORITY

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“The Monitor shall file with the Court quarterly written, public reports covering the reporting period that shall include:

- a) A description of the work conducted by the Monitor during the reporting period;
- b) A listing of each [Consent Decree] requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of sufficient training for all relevant NOPD officers and employees; (3) reviewed or audited by the Monitor in determining whether they have been fully implemented in actual practice, including the date of the review or audit; and (4) found by the Monitor to have been fully implemented in practice;
- c) The methodology and specific findings for each audit or review conducted, redacted as necessary for privacy concerns. An unredacted version shall be filed under seal with the Court and provided to the Parties. The underlying data for each audit or review shall not be publicly available but shall be retained by the Monitor and provided to either or both Parties upon request;
- d) For any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Monitor’s recommendations regarding necessary steps to achieve compliance;
- e) The methodology and specific findings for each outcome assessment conducted; and
- f) A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the [Consent Decree].”

**-Consent Decree Paragraph 457**

## NOTES

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“The Monitor shall be subject to the supervision and orders of the [United States District Court for the Eastern District of Louisiana], consistent with [the Consent Decree]. The Monitor shall only have the duties, responsibilities, and authority conferred by [the Consent Decree]. The Monitor shall not, and is not intended to, replace or assume the role and duties of the City and NOPD, including the Superintendent.”

**-Consent Decree Paragraph 455**

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## INTRODUCTION

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New Orleans is unique. Its long history, rich culture, and colorful traditions are well known. The City's contributions to art, music, and the culinary arts are celebrated worldwide. And the pride and loyalty of its citizenry are legendary. Yet, there historically has been another side to the City – one of crime, unemployment, historic corruption, and growing civil discontent. Unquestionably, the obstacles the City has faced over the years have been heartbreaking by any standard. From Hurricane Betsy in 1965 to Hurricane Katrina in 2005, New Orleans has faced its share of adversity. But some of its obstacles have been laid down by the hand of man rather than by the hand of nature. The history of the New Orleans Police Department is one such example. As the Department of Justice found in its March 16, 2011 Investigation of the New Orleans Police Department, "the NOPD has long been a troubled agency." Even considering the notable strides the City has made in recent years, solving the agency's problems will take time, discipline, and patience.

As one significant step toward solving those problems, the City of New Orleans invited the Department of Justice to investigate the New Orleans Police Department. The City and the Department of Justice then entered into a Consent Decree crafted to cure the ills of the past (and present) and to secure and preserve for the citizens of New Orleans the security and protection that comes from vigorous and Constitutional law enforcement.

The City and the Department of Justice agreed to appoint an independent "Monitor" to ensure that the Consent Decree was implemented as intended and that it resulted in constitutional policing. The Monitor (actually, a Monitoring Team) has a broad and important role under the Consent Decree: "To assess and report whether the requirements of [the Consent Decree] have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD." Yet, the role of the Monitoring Team is also limited in scope as the Team only has "the duties, responsibilities, and authority conferred by the [Consent Decree]." The Monitoring Team, for example, is not a replacement or substitute for the Police Department, the Superintendent, the Independent Police Monitor, or any other City entity.

The City of New Orleans already has taken notable steps forward in addressing some of the issues identified in the Consent Decree.<sup>1</sup> As recognized in the Consent Decree,

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<sup>1</sup> As one such step forward, in September 2013, Superintendent Serpas announced that the NOPD would be purchasing body cameras for patrol officer. (footnote continued on next page)

many police officers have expressed their desire to continue reforms that began under the City's Mayor and Police Superintendent. In this context, the Monitoring Team will serve a vital function in ensuring that the City and the Police Department continue moving forward. The Monitoring Team, however, is not taking on this task alone. Working in concert with (but independent of) the City of New Orleans, the NOPD, the Office of Inspector General, the Office of the Independent Police Monitor ("IPM"), community stakeholders, and the Department Of Justice ("DOJ"), the Monitoring Team is one peg in an ongoing multi-party effort.

In order to ensure that the Monitoring Team's activities are as open and transparent as the effective undertaking of its responsibilities will allow, the Consent Decree provides that the Monitoring Team issue quarterly reports outlining, among other things, the work performed in the prior quarter, its findings, and the work it expects to perform in the next quarter. This is the Monitoring Team's first Quarterly Report.

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Although the Consent Decree requires that every patrol car be equipped with a camera, there is no requirement that every officer wear a body camera. Superintendent Serpas discussed the body camera initiative with the City Council during his 2014 budget presentation. Though the details remain to be worked out, Superintendent Serpas indicated that officers may begin wearing the cameras as soon as early next year. The NOPD is currently reviewing vendor proposals and drafting Department policies on the use of and care for the cameras.

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## BACKGROUND AND HISTORY

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On May 5, 2010, Mayor Landrieu requested that DOJ assist the City in bringing about the "complete transformation" of the New Orleans Police Department ("NOPD"). On May 17, 2010, the United States Department of Justice ("DOJ") notified the City<sup>2</sup> of its intent to investigate the NOPD for an alleged pattern or practice of unlawful misconduct, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"); the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"); and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d ("Title VI").<sup>3</sup>

As part of its investigation, DOJ, in conjunction with its police-practices consultants, conducted a detailed fact-finding review, including numerous tours of NOPD facilities; interviews with New Orleans officials, NOPD command staff, supervisors, and police officers; review of more than 36,000 pages of documents; and meetings with residents, community groups, and other stakeholders within the City. In addition, DOJ participated in detailed exit interviews between its police-practices consultants and NOPD officials following each investigatory tour.

DOJ issued a written report of its findings on March 16, 2011. The Report documented DOJ's finding of a number of patterns or practices of unconstitutional conduct and detailed DOJ's concerns about a number of NOPD policies and practices.

On July 24, 2012, in an effort to resolve the claims brought by the United States without resort to adversarial litigation and to support vigorous and Constitutional law enforcement, the City, the NOPD, and the Department of Justice submitted a proposed Consent Decree to the United States District Court, Eastern District of Louisiana. The Court then granted a joint motion to approve the Consent Decree on January 11, 2013.

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## THE CONSENT DECREE

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The Consent Decree is comprehensive in nature and details specific areas for corrective action including: use of force; stops searches, seizures and arrests; photographic lineups; custodial interrogations; bias-free policing; policing free of gender bias; community engagement; recruitment; training; performance evaluations; promotions;

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<sup>2</sup> See Letter from Assistant Attorney General Thomas Perez to Mayor Mitchell Landrieu (March 16, 2011).

<sup>3</sup> This history is adopted from Section I.A. of the Consent Decree.



officer assistance and support; supervision; secondary employment; and misconduct-complaint intake, investigation and adjudication.

The Consent Decree represents a proactive and robust mandate for reform of the policies, training, and practices of the NOPD with specific agreed-upon corrective actions and timeframes for implementation. What follows is a summary of NOPD's core obligations under the Consent Decree.

### **Policies and Training**

NOPD agrees that its policies and procedures shall reflect and express the Department's core values and priorities, and provide clear direction to ensure that officers and civilian employees enforce the law effectively and constitutionally. NOPD and the City agree to ensure that all NOPD officers and employees are trained to understand and be able to fulfill their duties and responsibilities pursuant to NOPD policies and procedures.

### **Use of Force**

NOPD agrees to develop and implement force policies, training, and review mechanisms that ensure that force by NOPD officers is used in accordance with the rights secured or protected by the Constitution and laws of the United States and that any unreasonable uses of force are identified and responded to appropriately. NOPD agrees to ensure that officers use non-force techniques to affect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary injury to officers and civilians; and de-escalate the use of force at the earliest possible moment.

### **Crisis Intervention Team**

NOPD agrees to minimize the necessity for the use of force against individuals in crisis due to mental illness or a diagnosed behavioral disorder.

### **Stops, Searches, and Arrests**

NOPD agrees to ensure that all NOPD investigatory stops, searches, and arrests are conducted in accordance with the rights secured or protected by the Constitution and laws of the United States. NOPD agrees to ensure that investigatory stops, searches, and arrests are part of an effective overall crime prevention strategy; are consistent with community priorities for enforcement; and are carried out with fairness and respect.

### **Custodial Interrogations**

NOPD agrees to ensure that officers conduct custodial interrogations in accordance with the subjects' rights secured or protected by the Constitution and laws of the United States, including the rights to counsel and against self-incrimination. NOPD agrees to ensure that custodial interrogations are conducted professionally and effectively, so as to elicit accurate and reliable information.

### **Photographic Line-Ups**

NOPD agrees to ensure that photographic line-ups are conducted effectively and in accordance with the rights secured or protected by the Constitution and laws of the United States, so as to elicit accurate and reliable information.

### **Bias-Free Policing**

NOPD agrees to deliver police services that are equitable, respectful, and bias-free, in a manner that promotes broad community engagement and confidence in the Department. In conducting its activities, NOPD agrees to ensure that members of the public receive equal protection of the law, without bias based on race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity, and in accordance with the rights secured or protected by the Constitution and laws of the United States.

### **Policing Free of Gender Bias**

NOPD agrees to respond to and investigate reports of sexual assault and domestic violence professionally, effectively, and in a manner free of gender-based bias, in accordance with the rights secured or protected by the Constitution and laws of the United States. NOPD agrees to appropriately classify and investigate reports of sexual assault and domestic violence, collaborate closely with the DA and community partners, including the New Orleans Family Justice Center, and apply a victim-centered approach at every stage of its response.

### **Community Engagement**

NOPD agrees to promote and strengthen partnerships within the community, and to engage constructively with the community, to ensure collaborative problem solving and ethical and bias-free policing, and to increase community confidence in the Department.

### **Recruitment**

NOPD and the City, working with the Civil Service Commission, agree to develop and implement a comprehensive recruitment program that successfully attracts and hires a diverse group of highly qualified and ethical individuals to be NOPD police officers. NOPD and the City, working with the Civil Service Commission, agree to ensure that NOPD's recruit program assesses each applicant in a manner that is valid, reliable, fair, and legally defensible.

### **Academy and In-Service Training**

NOPD is committed to ensuring that all officers and employees receive adequate training to understand the law and NOPD policy and how to police effectively. NOPD training shall reflect and instill agency expectations that officers police diligently, have an understanding of and commitment to the constitutional rights of the individuals they encounter, and employ strategies to build community partnerships to more effectively increase public trust and safety.

### **Officer Assistance and Support**

NOPD agrees to provide officers and employees ready access to the mental health and support resources necessary to facilitate effective and constitutional policing.

### **Performance Evaluations and Promotions**

NOPD agrees to ensure that officers who police effectively and ethically are recognized through the performance evaluation process, and that officers who lead effectively and ethically are identified and receive appropriate consideration for promotion. NOPD shall further ensure that poor performance or policing that otherwise undermines public safety and community trust is reflected in officer evaluations so that NOPD can identify and effectively respond.

### **Supervision**

NOPD and the City agree to ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide the close and effective supervision necessary for officers to improve and grow professionally; to police actively and effectively; and to identify, correct, and prevent misconduct.

### **Secondary Employment System**

The City shall completely restructure what is currently known as its Paid Detail system to ensure that officers' and other NOPD employees' off-duty secondary employment does

not compromise or interfere with the integrity and effectiveness of NOPD employees' primary work as sworn police officers serving the entire New Orleans community. To achieve this outcome, the City shall develop and implement an off-duty secondary employment system that comports with applicable law and current professional standards.

### **Misconduct Complaint Intake, Investigation, and Adjudication**

NOPD and the City agree to ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all investigative findings are supported using the preponderance of the evidence standard and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent.

### **Transparency and Oversight**

To ensure comprehensive, effective, and transparent oversight of NOPD, NOPD and the City agree to develop, implement, and maintain systems that are meant to be sustained after the completion of the Consent Decree. To facilitate effective and constitutional policing and increase trust between NOPD and the broader New Orleans community, these oversight systems shall ensure that improper incidents, practices, or trends are identified and corrected in an equitable and timely manner.

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## **THE MONITORING TEAM**

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The Consent Decree Monitoring Team ("the Monitoring Team") is a Court-appointed team with expertise in constitutional law, law enforcement, and outcome measurement. The Monitoring Team is responsible for observing and reporting the policy development, training, supervision, and implementation of practices by the NOPD as prescribed in the Court-ordered Consent Decree. The Monitoring Team is independent of the City of New Orleans, the NOPD, and the Department of Justice and serves as the United States District Court's "eyes and ears" relative to implementation of the reforms mandated in the Consent Decree. The role of the Monitoring Team is explicitly governed by the terms of the Consent Decree under the oversight of the District Court. While the Monitoring Team will be involved in engaging the citizens of New Orleans as it reviews, audits, monitors, and evaluates NOPD compliance with the terms of the Consent Decree, the Monitoring Team is not intended to, nor is it permitted to, replace or assume the role and duties of the City or the NOPD.

Further, the Monitoring Team's role is not to replace or duplicate the function of the City's Independent Police Monitor ("IPM"). The IPM maintains its current duties and responsibilities, including its responsibility to monitor the NOPD, receive citizen

complaints alleging police misconduct, and issue public reports. Importantly, the IPM, not the court-appointed Monitoring Team, will remain the New Orleans entity responsible for receiving citizen complaints involving the NOPD.

The mission of the Monitoring Team is to assess and report on whether the requirements of the Consent Decree have been implemented and whether that implementation is resulting in the constitutional and professional treatment of individuals by the NOPD.

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### THE MONITORING PROCESS

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In order effectively to assess and report on the NOPD's implementation of the requirements of the Consent Decree, and whether that implementation is resulting in the constitutional and professional treatment of individuals by the NOPD, the Consent Decree authorizes the Monitoring Team to conduct *reviews, audits, and outcome assessments*. (CD 447)<sup>4</sup> Reviews and audits<sup>5</sup> are used "to determine whether the City and NOPD have implemented and continue to comply with the material requirements of this Agreement." (CD 447) Outcome assessments, on the other hands, are used to measure whether the implementation of the Consent Decree is resulting in constitutional policing. (CD 448)

Like all audit, oversight, and monitoring organizations, the Monitoring Team has a variety of tools at its disposal to conduct the audits, reviews, and outcome assessments contemplated by the Consent Decree. Several of these tools are described on pages 28 through 35 of this Report. Whatever monitoring methodology is used, however, must be shared with the City, the NOPD, and the Department of Justice in advance. (CD 453)

The vehicle available to the Monitoring Team to report its findings to the Parties, the Court, and the public is its quarterly reports. (CD 457) Among other things, these

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<sup>4</sup> References to the Consent Decree are included in this Report as "CD" followed by the applicable paragraph number. Thus, "CD 447" refers to paragraph 447 of the Consent Decree. References to Consent Decree text where no paragraph number is available will cite the applicable Section number, for example, "CD XVIII." A link to the full text of the Consent Decree is available at [www.consentdecreemonitor.com](http://www.consentdecreemonitor.com).

<sup>5</sup> The terms "review" and "audit" are used interchangeably in the Consent Decree, and are similarly used interchangeably in this Report. While CPAs, auditors, and financial analysts do ascribe subtle distinctions to the terms, such distinctions are not material for purposes of monitoring compliance with the Consent Decree.

quarterly reports will describe the work conducted during the prior quarter, list the Consent Decree requirements evaluated, set forth the Monitoring Team's findings regarding NOPD's level of compliance with those requirements, describe the Monitoring Team's recommendations regarding necessary steps to achieve compliance, and project the work to be completed during the next quarter. The reports also will describe the methodology and specific findings for each audit, review, and outcome assessment conducted.

## NOPD AND CITY COOPERATION

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The Consent Decree requires that the City and the NOPD “hire and retain, or reassign current NOPD employees to form an inter-disciplinary unit with the skills and abilities necessary to facilitate implementation of [the Consent Decree].” (CD 467) The Consent Decree explains that this inter-disciplinary implementation unit “will serve as a liaison between the Parties and the Monitoring Team and will assist with the implementation of and compliance with” the Consent Decree. (CD 467) Among other things, the unit must “coordinate the City and NOPD’s compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the City and NOPD personnel to the Monitoring Team and DOJ, as needed; ensure that all data, documents, and records are maintained as provided in [the Consent Decree]; and assist in assigning implementation and compliance related tasks to NOPD personnel, as directed by the Superintendent or his designee.” (CD 467)

The Consent Decree notes that both the City and the NOPD cooperated fully with the Department of Justice during its pre-Consent Decree investigation (CD I.A.), and the Monitoring Team has undertaken its monitoring activities with the same expectation of cooperation. So far, the Monitoring Team has not been let down in this regard.

NOPD initially vested the duties of the “inter-disciplinary implementation unit” in a former NOPD officer and manager reporting directly to the Superintendent. More recently, on October 23, 2013, Superintendent Serpas appointed Mr. Jay Ginsberg to serve as Deputy Superintendent over the recently created “Compliance Bureau,” which, among other things, will oversee the Department’s implementation of the Consent Decree.<sup>6</sup> Mr. Ginsberg reports directly to the Superintendent. The Compliance Bureau is expected to include a police commander and personnel to staff six sections. A preliminary organizational chart shows that the Bureau will be divided into six sections: policy standards, training standards, compliance standards, performance standards, technology standards, and community engagement. The actual number of personnel assigned to the Bureau and each sub-section has not yet been finalized.

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<sup>6</sup> The agenda for the September 16, 2013 New Orleans City Council meeting reflects the discussion of the following item: “Request from NOPD to reinstate unclassified position of Deputy Superintendent to handle responsibilities overseeing Consent Decree Compliance and Policies.”

Mr. Ginsberg is an attorney who previously served as the hearing examiner and administrative judge to the City's Civil Service Commission. According to the NOPD, Mr. Ginsberg's term is for one year at which time the position will be reevaluated to determine whether it should become permanent. Mr. Ginsberg's position has been approved by the Civil Service Commission. The NOPD states that it is working toward a goal of having "all staffing parameters for this new bureau in place on, or before, December 1st, 2013." The Monitoring Team looks forward to working with Mr. Ginsburg as the Police Department's implementation efforts proceed.



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## PRIOR QUARTER ACTIVITIES

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After a lengthy selection process, the Monitoring Team was appointed by the United States District Court for the Eastern District of Louisiana on Friday night, August 9, 2013, and had “boots on the ground” in the City on the following Monday morning. Since that time, the Monitoring Team has been busy establishing its New Orleans presence, meeting with community members, police officers, and City officials, and otherwise developing its Monitoring Plan as required by the Consent Decree. As this is the Team’s first Quarterly Report, the Team is not yet in a position to issue substantive findings regarding the NOPD’s compliance with the various elements of the Consent Decree or its progress toward achieving “full and effective compliance” with the Consent Decree. (CD 486) Such findings, as they arise, will be included in the Team’s Second Quarterly Report, and in subsequent reports where applicable. That being said, the Monitoring Team was extremely busy throughout the first quarter. The following subsections summarize the various activities that took place from August through October.

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### MET WITH COMMUNITY STAKEHOLDERS

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The Consent Decree contemplates that the Monitoring Team will meet with community stakeholders to explain the Monitoring Team’s reports, to inform the public about the Consent Decree implementation process, and to hear community perspectives of police interactions. (CD 461) While the core of the Team’s community outreach efforts will be through public meetings scheduled to coincide with the publication of each Quarterly Report, the Team spent a significant amount of its time this first quarter having informal meetings with citizens across the City. The Monitoring Team met this quarter with the following:

- Vera Institute
- Vietnamese American Youth Leadership Association
- Safe Streets/Strong Communities
- Puente New Orleans
- New Orleans Family Justice Center
- New Orleans Workers’ Center for Racial Justice
- National Guestworker Alliance
- Forum for Equality
- Community United for Change
- Breakout!

In addition, the Monitoring Team met with several thought leaders and organization leaders within the Vietnamese, LGBT, African American, Hispanic American, and migrant day worker communities.

The Monitoring Team found all of these community members and organizations eager to engage and collaborate. For example, the organizations and their representatives were willing to help identify ways for citizens to participate in the Consent Decree process and avenues to facilitate citizen input. At every opportunity, the Monitoring Team has left each organization and representative with the understanding that we intend to keep open lines of communication.

The Monitoring Team members who have engaged in interviews with community leaders from under-represented populations, such as the Limited English Proficiency communities, have found these citizens to be, by and large, frustrated with the NOPD. Common threads in their complaints about the police department include: a disparate lack of police resources; a slow or non-existent police response when they are called; disrespectful treatment in interactions with community members; lack of appropriate feedback to the community regarding incidents in their respective neighborhoods; and a fear and mistrust of NOPD officers.

Working with our team member Judith Williams Dangerfield, the Monitoring Team has received support from community members across the City. The Team will continue to work with the community to educate citizens about the Consent Decree and to encourage community involvement by empowering groups to educate and motivate their own constituencies.<sup>7</sup>

Additionally, the Monitoring Team attended a New Orleans Neighborhood Police and Community Committee (NONPACC) meeting and participated in the joint police/community “7<sup>th</sup> District Anti-Crime Walk” in the Little Woods neighborhood of the Seventh District. During the walk, we spent time talking to citizens, officers, and the district commander. The Monitoring Team will be participating in and observing future police/community walks in other neighborhoods over the coming months.

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<sup>7</sup> The FAQ section of the Monitoring Team’s web site, [www.consentdecreemonitor.com](http://www.consentdecreemonitor.com), includes additional information on how members of the community can become more involved in the Consent Decree process.

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### MET WITH NEW ORLEANS POLICE DEPARTMENT

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The Monitoring Team has spent significant time with members of the NOPD, including the Superintendent, his official designee responsible for Consent Decree implementation, all Deputy Superintendents, and many others. The Monitoring Team visited and invested time talking to the Public Integrity Bureau (“PIB”) Commander, members of the Force Investigation Team, several District Commanders, and the Commander of the NOPD Training Academy and her staff. Nearly every individual with whom we have met has been accessible, generous with his/her time, and fully cooperative. In particular, the Superintendent and his chief Consent Decree liaison have shown a sincere commitment to complying with the Consent Decree and cooperating with our monitoring process.

In order to gain a better understanding of the command and control within the New Orleans Police Department, the Monitoring Team has attended multiple CompStat meetings. “CompStat” is the process of using computer generated statistics (computer statistics) to map crime and to use that information during regular management meetings to identify crime hot spots and address crime problems. Once crime trends are determined, management decisions are developed to deploy personnel and resources to address the issues believed to be the root of criminal activity. One of the hallmarks of CompStat is holding supervisors and managers accountable for criminal activity trends in their areas of responsibility. While there are differing views of the effectiveness of CompStat and of whether it creates new problems at the same time it strives to solve existing ones, the goals of using CompStat clearly are to reduce crime, provide citizens with a feeling of safety, and enhance the quality of life in the City.

Our efforts to understand the perspectives of the New Orleans police officers have involved not only speaking with, meeting with, and riding along with police officers and supervisors in most of the police districts, but also meeting with police officer organizations, such as Police Association of New Orleans and the Fraternal Order of Police.

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### MET WITH CITY OFFICIALS

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In addition to multiple meetings with members of the NOPD, the Monitoring Team held numerous separate meetings with other City officials over the course of the first Quarter. These meetings included the City Attorney, the Mayor’s attorney, Councilmember Susan Guidry (Chair of the Council’s Criminal Justice Committee), Councilmember Stacy Head, the Director of Special Projects for Councilmember Stacy Head, Deputy Mayor and Chief Administrative Officer Andy Kopplin, and Director of the Office of Police Secondary Employment, John Salomone.

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### MET WITH OIG AND IPM

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The Monitoring Team has spent significant time with the Independent Police Monitor (“IPM”) and her team and the New Orleans Inspector General (“IG”) and his team. Both have been fully cooperative with the entire Monitoring Team and extremely generous with their time.

IPM Susan Hutson, Deputy Police Monitor Simone Levine, and Executive Director of Community Relations Ursula Price have provided invaluable information to the Monitoring Team from the very start of the Consent Decree monitoring project. As the Consent Decree contemplates, the Monitoring Team looks forward to coordinating and conferring with the IPM team throughout the life of the Consent Decree. (CD 459)

New Orleans Inspector General Ed Quatrevaux and his staff – most notably Assistant IG for Inspections and Evaluations, Nadiene Van Dyke, and Assistant IG for Criminal Investigations, Howard Schwartz – have been similarly invaluable to the Monitoring Team. As with the IPM, the Monitoring Team looks forward to continued cooperation with the IG’s office throughout the life of the Consent Decree.

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### MET WITH DEPARTMENT OF JUSTICE

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Just as the Monitoring Team has met with City and NOPD officials, so has the Team met with officials from the Department of Justice. These meetings have involved individuals from the Department’s Civil Rights Division as well as the Assistant United States Attorney assigned to serve as the Department’s on-site representative during the life of the Consent Decree. The DOJ attorneys have been extremely generous with their time.

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### REVIEWED NOPD POLICIES AND PROCEDURES

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The NOPD began revising many of its policies and procedures prior to the execution of the Consent Decree and prior to the appointment of the Monitoring Team. Their efforts resulted in the issuance of revised policies and the creation of a policy manual, also prior to the appointment of the Monitoring Team. The NOPD, however, did not follow the process set out in the Consent Decree to have the policies, procedures, and manuals reviewed by the Monitoring Team and the Department of Justice in advance of implementation. (CD 21) The policy review structure set forth in the Consent Decree was intended to ensure that the NOPD undertook the time and expense of training its officers only on compliant policies, and that officers were not put in the position of having to be “untrained” and then re-trained following the policy reviews by the Department of Justice and the Monitoring Team. The NOPD’s implementation of its new policies in advance of their review by the Department of Justice and the Monitoring

Team has created the risk that NOPD now will have to retrain personnel, which, of course, could cause added expense, delay, and confusion among the rank-and-file. Since the Monitoring Team has identified shortcomings in the new NOPD's policies, the Consent Decree's intended *review-then-implementation* structure appears to have been well-justified.

Notwithstanding the timing disconnect, the Monitoring Team spent a substantial amount of time this quarter reviewing and evaluating NOPD's most critical policies and procedures, and meeting with Police Department personnel to share comments. NOPD currently is in the process of making revisions to many of the policies to incorporate the Monitoring Team's recommendations. The Monitoring Team and the Department of Justice expect to review and evaluate the newly revised policies in the current quarter as they become available and report on their compliance with the terms of the Consent Decree. (CD 21)

### **Background**

Prior to the selection of the Monitoring Team, the NOPD entered into an agreement with a vendor to develop a policy manual. Working with the vendor, the NOPD vendor adopted an implementation plan setting out deliverables, project timelines, and target dates. The vendor was to draft Consent Decree-compliant policies and procedures, and provide ongoing legal reviews and updates to the policies. The implementation plan also includes a training component.<sup>8</sup>

The vendor agreement employed a "rapid adoption element," wherein the NOPD and the vendor agreed on which policies should be developed first. The NOPD formed the Executive Development Committee (EDC) and the Administrative Policy Review Committee (PRC) to complete the development of the policies.

The Executive Development Committee is comprised of representatives from across the department, selected by each bureau chief for their overall knowledge of police operations and their expertise in a distinct subject matter. For example, the standing EDC includes members from the police academy, policy and planning, field operations, investigations, and Public Integrity Bureau (PIB). Ad hoc members are added to the EDC when the topic of the policy requires specialized expertise. Draft policies received from the vendor were assigned to the EDC for further development and to ensure they

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<sup>8</sup> See Lexipol, LLC, Implementation Plan, New Orleans Police Department, January 4, 2012.

comport with NOPD's structure and terminology. Once EDC completed its work on the draft policy, EDC sent the revised policy to the PRC for additional review.

The PRC is comprised of the Deputy Superintendents of each bureau, the Superintendent's Chief of Staff, and other senior leaders appointed by the Superintendent. The PRC's role is to ensure the policy is consistent with overall department policy and acceptable police practices. The PRC also sent copies of the draft policies to the three organizations representing the members of the department, who then had five days to provide any comments. In addition, the proposed policies related to the Consent Decree were sent to the City Attorney's Office for its review and comment.

Once this development and review process was complete and the PRC signed off on the policy, it was sent to the Superintendent for his review and signature. Work on twenty-six policies considered "most critical" by the NOPD commenced in January 2012 and covered the following areas:

- Emergency Operations Plan;
- Use of Force;
- Use of Force Review Boards;
- Handcuffing and Restraints;
- Control Devices and Techniques;
- Electronic Control Weapon (ECW);
- Officer-Involved Shooting;
- Vehicle Pursuits;
- Officer response to Calls;
- Domestic Violence;
- Search and Seizure;
- Custody Searches;
- Temporary Custody of Juveniles;
- Victim and Witness Assistance;
- Report Preparation;
- Patrol Function;
- Racial/Biased Based Profiling;
- Hostage and Barricade Incidents;
- Contacts, Detentions and Photographing Detainees;
- Digital Mobile Audio Video Recording;

- Traffic Function and Response;
- Traffic Citations;
- Investigation and Prosecution;
- Records Release and Security;
- Sick Leave;
- Personnel Complaints.

The first revised policy was issued sometime in July 2012. The last of the original 26 was completed in late June 2013.

The revised policies were assembled into a policy manual as required by the Consent Decree. The resulting policy manual consists of six major divisions, several with multiple subdivisions. Most, but not all, of the policies have an associated procedure. The following represents the major divisions and subdivisions of the policy manual:

- Code of Ethics
- Mission Statement
- Statement of Policy
- Rules of the Department
- Policies (Index found on page 24)
  - Law Enforcement Role and Authority
  - Organization and Administration
  - General Operations
  - Patrol Operations
  - Traffic Operations
  - Investigation Operations
  - Equipment
  - Support Services
  - Custody
  - Personnel
- Procedures (Index found on page 724)
  - Law Enforcement Role and Authority
  - Organization and Administration
  - General Operations
  - Patrol Operations
  - Traffic Operations

- Investigation Operations
- Equipment
- Support Services
- Custody
- Personnel

Once all the targeted policies were revised, NOPD assembled a final updated manual, with a revised index, and made the manual available to all officers on the Department's intranet on June 30, 2013. In the interim, old policies were maintained and available to officers until they were replaced by a new, revised policy.

Training on a new policy commenced as soon as the new policy was issued. The contract with the vendor included the development of Daily Training Bulletins ("DTB") for each policy and a mechanism to deliver the training and test the officer on the Department's intranet. As each individual new policy was completed, the online DTB's were activated.

### **The Monitoring Team's Review**

#### *Expedited Review of "Specified Provisions"*

Upon becoming aware of the issuance of the policy manual and the associated training, the Monitoring Team and the Department of Justice reminded NOPD of the requirements of the Consent Decree. The NOPD is required to submit new and revised policies, procedures, and manuals related to: Use, Reporting, and Review of Force; Crisis Intervention Team; Stops, Searches, and Arrests; Custodial Interrogations; Biased Policing; Community Engagement; Academy and In-service Training; Supervision; and Misconduct Investigations ("the specified provisions"), to the Monitoring Team and DOJ for review and comment *prior to publication and implementation*. (CD 21) Many of the policies identified as "most critical" by the NOPD and the vendor cover "specified provisions" of the Consent Decree.

The NOPD policy manual, consisting of 1,038 pages, was obtained by the Monitoring Team and DOJ in late August. According to the Consent Decree, the Monitoring Team and DOJ have 15 days from the receipt of a policy to review and object if it does not incorporate the requirements of the Consent Decree, or is inconsistent with law. The City, the NOPD, the Department of Justice, and the Judge recognized that completing a review of all 1,038 pages of policies within 15 days was not feasible and, furthermore, did not advance the idea of ensuring that all policies were carefully reviewed prior to implementation. Nevertheless, concern was raised that a delay in completing the reviews could adversely impact progress toward compliance with the Consent Decree,



especially in the areas of training and accountability. In order to minimize any adverse impact, the Monitoring Team, the NOPD, and the Department of Justice agreed on a plan to expedite the review of the policies relating to the “specified provisions” of the Consent Decree, that is: Use, Reporting, and Review of Force; Crisis Intervention Team; Stops, Searches, and Arrests; Custodial Interrogations; Biased Policing; Community Engagement; Academy and In-service Training; Supervision; and Misconduct Investigations.

Forty-two policies were identified by the City, the NOPD, and the Department of Justice as high priority.

- Weapons Training/Requalification
- Use Of Force
- Use Of Force Review Board
- Handcuffing And Restraints
- Control Devices And Techniques
- Electronic Control Weapons
- Force Investigation Team/Officer Involved Shooting
- In-Custody Deaths
- Firearms
- Ammunition
- Vehicle Pursuits
- Canines
- Domestic Violence
- Search & Seizure
- Custody Searches
- Workplace Discriminatory Harassment/Retaliation
- Victim And Witness Assistance
- Hate Crimes
- Task Forces
- Discriminatory Policing/Racial Bias-Based Policing/LGBT Community
- Crisis Response Unit/Swat
- Active Shooter
- Hostage And Barricade Incidents
- Mental Illness Civil Commitments

- Arrests
- Arrest Warrants/Wanted Persons
- Immigration Violations
- Field Training Program
- Contacts, Detentions And Photographing Detainees
- Digital Mobile Video Audio Recording
- Mobile Digital Computer And Automatic Vehicle Locator Use
- Traffic Stops And Traffic Checkpoints
- Investigation & Prosecution
- Sex Crimes Victim Rights
- Eyewitness Identification
- Transfers/Filling Vacancies
- Misconduct Complaints/Disciplinary Investigations
- Disciplinary Hearings And Penalty Schedule
- Settlement Agreement
- Secondary Employment
- Professional Performance Enhancement Program (PEPP)
- Job Performance Improvement Plan (JPIP)

The Monitoring Team's expedited review commenced on September 1, 2013, with a commitment to share the results of the review with the NOPD as quickly as possible. The workload was divided among the members of the Monitoring Team. The Monitoring Team created review protocols and a report format to ensure thoroughness and consistency among reviewers and reports. Each reviewer identified his or her "assigned" paragraphs of the Consent Decree that was associated with the topic of the policy and assessed whether the policy met the Consent Decree requirements and was consistent with best practices. The reviews were time consuming and the reports detailed.

In the course of reviewing the policies, the Monitoring Team identified deficiencies in the policies. Among these deficiencies were the following:

- Though the policy manual separated directives labeled "policy" from those labeled "procedures," the content of many of the directives found in each grouping often were a mix of policy and procedure. A policy should consist of principles and values that guide the behavior of members of the Police Department. The policy should be a statement of

the Police Department's guiding principles; whereas procedures are statements of what must be done in a particular situation. The distinction between these two purposes was often confused in the directives reviewed. In many cases, the structure is not consistent with the Monitoring Team's collective view of what makes a policy effective and usable by police officers, and the Monitoring Team's conversations with NOPD officers suggest that there is confusion among the ranks due, in part, to the structure of the manual.<sup>9</sup>

- In some cases, policy terminology was *identical* to language in the Consent Decree. The Consent Decree, however, was drafted to establish standards, not to provide specific language for policies and procedures. It became apparent that, in some cases, the language of the policies was simply a "cut and paste" from the Consent Decree without tailoring of the language by NOPD to make the policies understandable, practical, and effective.
- The responsibilities of each staff level within the NOPD were not always isolated and clearly labeled. Generally, it is a good practice to list all the responsibilities for an officer together in one paragraph and sub-paragraphs, followed by a list of the responsibilities of the first line supervisor, and so on up the chain of command. That format was not consistently used in the policies reviewed.
- While repetition can be an effective tool when used properly, elements of NOPD's procedures often were repeated in a policy in a confusing manner. For instance, definitions were included in one section and repeated in another. Also, prohibitions of certain activities sometimes were repeated throughout a policy, again creating confusion.

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<sup>9</sup> In response to the Monitoring Team's comments regarding confusion among some NOPD officers over the new policy manual format, the NOPD has taken it upon itself to develop an "online Users' Guide" to render the manual more "user friendly." While the plans are not finalized yet, according to the NOPD, the Users' Guide is intended to provide an overview of the purpose, structure, and features of the policy manual in a searchable format, as well as screen shots and step-by-step instructions for ease of officer use.

### *Policy Dialogues*

The Consent Decree anticipates that, in order to aid the timely, full, and effective implementation of the Consent Decree and its underlying objectives, the Monitoring Team may provide “technical assistance” to the NOPD. With that in mind, the Monitoring Team approached the NOPD with oral feedback on the problems the Monitoring Team was finding with the NOPD’s policies. Rather than submit formal written reports to the NOPD, and require them to respond in writing within the time lines set out in the Consent Decree, and thereby further delay final approval and issuance of the policy, the Monitoring Team suggested a series of dialogues around each individual policy wherein the Team would give our comments on each policy’s shortcoming and suggest improvements.

The Police Department was receptive throughout this process and indicated they would consider the Monitoring Team’s feedback and suggestions. They committed to redrafting the policies as they deemed appropriate and resubmitting them to the Monitoring Team and to DOJ for further review. Arrangements were made to receive the revised drafts as the revisions are completed, re-review the policies for compliance with the Consent Decree and best practices, revise our review reports, and forward them to NOPD and DOJ. The Monitoring Team anticipates receiving revised policies over the next several weeks.

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### DEVELOPED MONITORING APPROACH

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The City of New Orleans, the New Orleans Police Department, and the Department of Justice entered into the Consent Decree with a shared goal of

ensuring that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States.

To achieve this shared goal, NOPD agreed to “fundamentally change the way it polices throughout the New Orleans Community,” by, among other things, implementing the specific requirements set out in the Consent Decree. As described in greater detail elsewhere in this Report, the City, the NOPD, and the Department of Justice provided for the appointment of a “Monitor” to “assess and report on whether the requirements of [the Consent Decree] have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD.” (CD 444)

In order to fulfill this mandate, the Monitoring Team must ask four core questions for every element of the Consent Decree:

- Has the requirement been incorporated into NOPD written policy in a manner that is understandable and enforceable?
- Has NOPD effectively trained all relevant personnel on the policy to give them the tools they need to fulfill their responsibilities under the Consent Decree so that they know what is expected of them?
- Are the requirements of the Consent Decree and constitutional policing being consistently met by the NOPD in actual practice?
- Are NOPD personnel who deviate from the requirements of the Consent Decree and constitutional policing being held accountable and disciplined consistently and effectively, and are such deviations rare?

To answer these questions, the Monitoring Team conducts audits and reviews. (CD 447) In the course of these activities, where personnel fail to comply with the NOPD's policies and procedures, the Monitoring Team also asks whether corrective actions are being properly and effectively administered. The Monitoring Team also conducts outcome assessments to measure the impact of the NOPD's reforms and to determine whether the reforms are having the intended effect on constitutional policing and crime control.

While the precise nature and structure of the Monitoring Team's audits, reviews, and outcome assessments will depend upon many factors and will evolve over time – for example, in response to new information from the public or the NOPD, or as NOPD's practices change over the life of the Consent Decree – the Monitoring Team has developed an initial schedule and approach to guide the carrying out of its Consent Decree obligations.

It is the City's and NOPD's burden to demonstrate "full and effective compliance" with the requirements outlined above. (CD 486) It is the Monitoring Team's responsibility to "assess and report on whether the requirements of [the Consent Decree] have been implemented, and whether this implementation is resulting in the constitutional and professional treatment of individuals by NOPD." (CD 444)

The Consent Decree incorporates 16 substantive sections. Each section incorporates multiple subsections, which further may incorporate multiple discrete requirements. From a Consent Decree compliance perspective, each requirement inherently incorporates a policy, training, and outcome component. (CD 447)

The Monitoring Team has a wide variety of tools in its monitoring toolbox to conduct the audits, reviews, and outcome assessments necessary to assess and report on the NOPD's compliance with the terms of the Consent Decree. These tools, which have

been widely accepted, adapted, and used in the police evaluation community for years, include the following:

### **Citizen Experience Evaluations**

This monitoring methodology involves selecting and training citizens to make requests of NOPD or the City while tracking the results of their police/citizen interactions. For example, a trained citizen (sometimes called a “secret shopper” in the commercial context) may visit a police station (randomly selected) and ask for a copy of a Citizen Complaint Form. (CD 385) The results of these experiences are recorded, tallied, and analyzed by the Monitoring Team. Citizen Experience evaluations provide invaluable insight into police/citizen interactions. This process is used frequently and effectively by commercial organizations worldwide. U.S. Federal Government organizations also have used this audit/evaluation methodology with great success.

### **Personal Interviews**

This audit and review method involves meeting with and questioning individuals about their personal experiences and/or perceptions. Interviews are an exceptionally useful tool in conducting audits and reviews because citizens and officers likely have the most relevant, first-hand accounts of citizen/police interactions. Moreover, our experience tells us that citizens and police officers often are quite willing, even relieved, to be able tell “their side of the story.” Social science literature further supports the importance of this research tool. As one scholar has noted, in-person interviews typically attain higher response rates than other means of collecting information from individuals. “Respondents seem more reluctant to turn down an interviewer who is standing on their door-step than to throw away a mail questionnaire.”<sup>10</sup>

The subjects of these interviews could be citizens, police officers, City officials, or most anyone else. The topics could range from police/citizen interactions (CD 461) to the effectiveness of Community outreach efforts (CD 432) to the effectiveness of a specific meeting, event, or Board, for example, the Police-Community Advisory Board (CD 436). Interview subjects typically are randomly selected from appropriate groups. To maximize subject participation, subjects are promised anonymity. In addition to focusing on their personal experiences, subjects also often are asked for suggestions as to how they might solve a problem, how they might enhance a process, and which

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<sup>10</sup> Maxfield, M.G. & Babbie, E.R., *Research Methods for Criminal Justice and Criminology* 273 (6th ed. 2011).

elements of policing are working best in NOLA. This interview model is consistent with general practices performed by/for police departments across the United States.

### **Statistical Analysis**

This approach will involve the collection and assessment of qualitative and quantitative data focusing on various aspects of the Consent Decree. Speaking generally, a qualitative data set helps us explore what is happening and, perhaps, why it is happening. A quantitative data set, on the other hand, gives us a good sense – in numerical terms – of how often something is happening, which helps us measure events, attitudes, behavior, opinions, etc. In the words of the academic world, quantitative research allows us to understand and describe “the number of people involved in certain behaviors or holding specific beliefs.”<sup>11</sup>

The Monitoring Team will perform both qualitative and quantitative statistical analyses on aggregate data to obtain an accurate picture of Consent Decree elements, including use of force trends (CD 27), the conduct of investigations of allegations of misconduct (CD 413), responsiveness of the NOPD to sexual assault reports (CD 195), and the frequency of investigatory stops and detentions (CD 122), to name a few. Any statistical analysis undertaken by the Monitoring Team will be scientific in nature and will encompass a review of existing Police Department data collection methods to assess their utility and recommend modifications, as necessary.

The Monitoring Team, however, will not rely on NOPD or City data without first independently confirming the validity of the data. A database showing crimes in a given neighborhood, for example, is only useful if it accurately captures all the crimes it claims to capture. Underreporting of crimes obviously would skew the data and render the data set unreliable. Accordingly, in this example, the Monitoring Team would test (validate) the crime data set before using it. The importance of such independent validation cannot be overstated. Indeed, it is not an exaggeration to say that assessing the currency, accuracy, and completeness of data is a core element of almost every audit, review, and outcome assessment the Monitoring Team conducts. The Monitoring Team takes data verification very seriously.

The ultimate goal of any statistical analysis, of course, is to establish transparent benchmarks that will allow for future comparison of data, in an effort to show any progress in these areas while presenting possibilities for improvement. This

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<sup>11</sup> Nardi, P.M., *Doing Survey Research: A Guide to Quantitative Methods* 15-16 (2003).

methodology and approach is consistent with widely used quantitative studies regarding policing practices in the United States.

### Community Surveys

Surveys provide the Monitoring Team with an efficient and effective way to canvass a large number of people about a variety of topics. Surveys have been a staple in the toolbox of police departments and those who study police departments for years. Surveys provide researchers (and monitors) with the ability to “explore, describe, explain, and evaluate” an issue for the purpose of understanding it in depth in order to make decisions, make predictions, and track change over time.<sup>12</sup>

The New Orleans Crime Coalition, for example, has been conducting a citizen-funded, random survey since 2009, focusing on how New Orleanians view the NOPD. The Monitoring Team similarly will use surveys throughout its monitoring efforts.

One particularly important survey the Monitoring Team will conduct, in cooperation with the NOPD, the City, and the Department of Justice, is the Biennial Community Survey required by the Consent Decree. (CD 230)

The Consent Decree requires that “within 180 days of the Effective Date, and every two years thereafter, NOPD and the City agree to conduct a reliable, comprehensive, and representative survey of members of the New Orleans community regarding their experiences with and perceptions of NOPD and of public safety.” (CD 230) The Consent Decree goes on to set forth the specific steps that must be taken to ensure the reliability of the survey. Specifically, the Consent Decree requires that the Monitoring Team and any entity with which it works must:

- Develop a baseline of measures on public satisfaction with policing, attitudes among police personnel, and the quality of police-citizen encounters;
- Design, conduct, and analyze baseline and subsequent biennial surveys of a representative sample of City residents, police personnel, and detained arrestees;
- Review and consider prior law enforcement surveys in New Orleans and other cities, as well as current or recent concerns in New Orleans, in designing the survey;

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<sup>12</sup> Nardi, P.M., *Doing Survey Research: A Guide to Quantitative Methods* 9, 13 (2003).



- Engage in informal conversations with New Orleans residents, NOPD officers and command staff, and DOJ representatives, and observe community meetings;
- Ensure that the resident and arrestee surveys are designed to capture a representative sample of New Orleans residents, including members of each demographic category;
- Conduct the survey in English, Spanish, and Vietnamese, as necessary, to ensure representation of the entire New Orleans community; and
- Formally discuss the survey methodology with NOPD supervisors and DOJ and consider these opinions in the development of the initial survey and in making improvements to subsequent surveys.

Survey research has been described as “a skill, an art, and an intellectual process involving collaboration, patience, and creativity.”<sup>13</sup> The Monitoring Team will work closely with the City, the NOPD, and the Department of Justice to ensure that the Biennial Community Survey is fair, balanced, and effective. The Monitoring Team also will ensure that the survey is comprehensive in that it encompasses community members, police officers, and detained suspects.

### *Community Members*

The Biennial Survey will involve interviews to question residents about their quality of life, experiences, and satisfaction with the police, as well as their fear of crime. The Monitoring Team is in the process of identifying studies that have been conducted throughout the country, and plans to use or modify questions that are relevant to the Consent Decree.<sup>14</sup> In addition, the Monitoring Team is meeting with community leaders to identify topics of concern that could be incorporated into an effective survey. Draft questions will be discussed with government and community groups before they are finalized. Once the survey instrument is completed, it will be translated into Spanish and Vietnamese and back into English to assure that the meaning of the questions is similar for all groups.

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<sup>13</sup> Nardi, P.M., *Doing Survey Research: A Guide to Quantitative Methods* 9, 13 (2003).

<sup>14</sup> For example, the study prepared by Christopher Stone, Todd Foglesong, and Christine Cole in May 2009 called “Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD” provides a wealth of useful information.

### *NOPD Officers*

The Biennial Survey will include surveys to be completed by a randomly selected sample of NOPD police officers, civilian employees, and managers. Personnel from all districts will be included in the sample. The survey questions will include their views of policing in general, policing at NOPD, morale, culture, organizational, and community support. The Monitoring Team will consult with police managers and employee representatives to help design the survey.

### *Detained Suspects*

Suspects who have been arrested by NOPD officers have an important perspective on the delivery of police services. In order to gain access to these important survey respondents, an agreement will have to be reached with the Sheriff's Office as the jail is under its control. The Monitoring Team's survey design will involve approaching a sample of inmates and asking if they will participate in an interview where they will be asked about their experiences with the NOPD and the criminal justice system. This cohort of detained arrestees will be interviewed to determine their views of the police, how they were treated, and their perspectives on the justice system in which they have become involved. The Monitoring Team will coordinate with the Sheriff's Office to help secure appropriate facilities and access to the arrestees. The potential questions will be discussed with government and community leaders.

### **Personal Observations**

One of the most important tools in the Monitor Team's audit/review toolbox is the ability to personally observe the NOPD's activities and police/citizen interactions. This monitoring methodology is standard fare among monitors and researchers and affords the Monitoring Team not only the opportunity to review activities and interactions, but also the opportunity for "unstructured interviews" of police officers.<sup>15</sup>

Whether one calls this method (as the social scientists do) "participant observation" or "systematic observation," we plan to spend a significant amount of our time watching, listening, and learning. The Consent Decree grants the Monitoring Team the authority to "conduct on-site visits and assessments without prior notice to the City and NOPD." The Consent Decree makes it clear that the Monitoring Team "shall have access to all necessary individuals, facilities, and documents, which shall include access to

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<sup>15</sup> Maxfield, M.G. & Babbie, E.R., *Research Methods for Criminal Justice and Criminology* 299 (6th ed. 2011).

[Consent Decree] related trainings, meetings, and reviews, such as critical incident reviews, use of force review boards, and disciplinary hearings.” (CD 470) Further, the Consent Decree guarantees the Monitoring Team “timely, full and direct access to all City and NOPD staff, employees, critical incident crime scenes, and facilities that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by [the Consent Decree].” (CD 471) The Team’s Monitoring Plan takes full advantage of this authority.

### **Critical Reviews**

This method involves using the experience, expertise, and judgment of the Monitoring Team to render a judgment that is supported by the collective experience and expertise of the Team. Collectively, the members of the Monitoring Team have held every rank and performed every task in a police department from patrol officer to chief. They have written policies, developed and evaluated training programs, and otherwise been involved in implementing policing best practices for decades. The Monitoring Team will rely on this audit tool, for example, to review each policy and procedure prepared by the NOPD, to assess the content of and delivery of in-service training, to review internal investigations into allegations of abuse or force and citizens’ complaints, and to evaluate the quality of the various controls deployed by the NOPD in response to the Consent Decree.

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The audits, reviews, and outcome assessments conducted by the Monitoring Team will take advantage of each of these tools (and more) to ensure that the NOPD is complying with all material terms of the Consent Decree and that that compliance is resulting in constitutional policing.

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### **DEVELOPED REVISED IMPLEMENTATION TIMETABLE**

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The Consent Decree sets out a wide range of activities and obligations that the NOPD and the City must undertake within a certain period of time. As approved by the Court, the timelines for these obligations were tied to the “Effective Date” of the Consent Decree. The Consent Decree originally defined the Effective Date as the date the Consent Decree was entered by the Court, which was January 11, 2013. The Monitoring Team, however, was not appointed until August 9, 2013. As a result of this delay, the Court revised the Consent Decree Effective Date to August 9, 2013. The City, the NOPD, the Department of Justice, and the Monitoring Team are operating and will continue to

operate using the August 9, 2013 date as the Effective Date for purposes of Consent Decree obligations.<sup>16</sup>

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### MONITORED SECONDARY EMPLOYMENT IMPLEMENTATION

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The Consent Decree mandates that the City “completely restructure what is currently known as its Paid Detail system to ensure that officers’ and other NOPD employees’ off-duty secondary employment does not compromise or interfere with the integrity and effectiveness of NOPD employees’ primary work as sworn police officers serving the entire New Orleans community.” (CD XVI) To achieve this outcome, the Consent Decree provides that “the City shall develop and implement an off-duty secondary employment system that comports with applicable law and current professional standards.” (CD XVI)

The Consent Decree establishes specific requirements for the Office. Broadly, they are designed to ensure that the secondary employment system is independent, transparent, professionally managed, and consistent with NOPD employees’ law enforcement duties and obligations. Implementing the Consent Decree’s secondary employment provisions requires legal, administrative, and operational actions.

Pursuant to this directive, and prior to the appointment of the Monitoring Team, the City established the Office of Police Secondary Employment (“OPSE”). In May 2012, the City hired Lieutenant Colonel (Ret.) John Salomone to set up and direct the OPSE. Lieutenant Colonel John Salomone has more than 21 years of service in the United States Army, much of that experience concerns operations and logistics. He was commissioned into the United States Army Quartermaster Corps in May 1990 upon graduating from Georgetown University. He served tours in Cuba, Somalia, Korea, Germany, Iraq, and England. He was selected for the Army’s Advanced Civil Schooling Program in 1998 through which he earned his master’s degree from North Carolina State University in 2000. Before retiring in October 2011, Lieutenant Colonel Salomone was Chief of Plans and Operations and Deputy G3 of the 377th Theater Sustainment Command in Belle Chase, where he led sustainment and exercise planning in support of United States Southern Command and all operations supporting the command’s six general-officer subordinate commands and 38,600 Soldiers. He has no prior affiliation with the NOPD.

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<sup>16</sup> The Court order modifying the effective date of the Consent Decree made clear that the implementation date for the Office of Police Secondary Employment (“OPSE”) was not being extended beyond the original date of January 11, 2014. See District Court Minute Entry (9/6/13).

On or about August 13, 2013, the City Council approved pay rates and conditions for secondary employment details. The NOPD has drafted policies governing secondary employment by its officers, which have been submitted to DOJ and the Monitoring Team for review. OPSE has drafted complementary policies, which have been submitted to the DOJ and the Monitoring Team. Together these policies have been drafted to ensure that secondary employment assignments are made and managed consistent with the officers' duties and responsibilities and the terms of the Consent Decree. The City has executed a contract with a vendor that will provide a computerized system to manage scheduling of details and to ensure that the assignments comply with the Consent Decree's provisions concerning eligibility for secondary employment, supervision, staffing, rotations, and other provisions of the Consent Decree designed to ensure the integrity of the secondary employment system. Upon implementation, this system will expand OPSE's capacity to assign and manage secondary employment.

Director Salomone has hired 9 full-time professionals for OPSE. There are currently 60 officers who have registered and received the necessary approvals from the NOPD to be eligible for secondary employment assignments. To date, seven details have been completed; two have been confirmed, but not yet performed. Director Salomone and his staff have held approximately 25 face-to-face meetings per month with NOPD employees, potential customers (employers), and other interested stakeholders to educate them about the secondary employment system. These outreach efforts are continuing. The Monitoring Team has been working closely with Director Salomone, the City, and the NOPD to monitor the implementation of the OPSE, and will continue to do so.

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#### PREPARED KEY MONITORING DOCUMENTS

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In addition to the periodic audits, reviews, and outcome assessments that the Monitoring Team must conduct, the Consent Decree also directs certain evaluations to occur whenever a certain type of event occurs. The Monitoring Team spent significant time this past quarter working with the NOPD to develop effective procedures to meet these obligations while minimizing the disruption to the Police Department and those City entities having an existing responsibility to monitor the Police Department. Two areas in which the Monitoring Team and the City developed such procedures are with respect to (i) Misconduct Investigation and Use of Force Reviews and (ii) Critical Incident Reviews.

## Use of Force and Misconduct Investigations Review Procedure

The Consent Decree requires that the City and NOPD

provide each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each investigation report of a serious misconduct complaint investigation (i.e., criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft), to the Monitor before closing the investigation or communicating the recommended disposition to the subject of the investigation or review. (CD 454)

The Consent Decree goes on to state that the Monitoring Team “shall review each serious use of force investigation and each serious misconduct complaint investigation and recommend for further investigation any use of force or misconduct complaint investigations that the Monitor determines to be incomplete or for which the findings are not supported by a preponderance of the evidence.” (CD 454) Once the Monitoring Team provides its evaluation, including “written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence,” the NOPD must determine “whether the additional investigation or modification recommended by the Monitor should be carried out.” (CD 454) The Consent Decree makes clear that this determination rests with the Superintendent, not with the Monitoring Team. However, where the “Superintendent determines not to order the recommended additional investigation or modification, the Superintendent will set out the reasons for this determination in writing.” (CD 454)

The insertion of the Monitoring Team into the Use of Force and Misconduct Complaint Investigation process necessarily will add additional time to the process. The City, however, has an obligation pursuant to State Law to ensure that its Public Integrity Bureau completes its administrative investigations “within the time limitations mandated by state law.” (CD 403) The “State Law” referred to here is known as the Police Officer’s Bill of Rights.<sup>17</sup> This Bill of Rights provides that “each investigation of a police employee or law enforcement officer which is conducted under the provisions of this Chapter shall be completed within sixty days.” The Bill of Rights provides for an

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<sup>17</sup> The formal name for this Chapter of the Louisiana Revised Statutes is “Rights of Law Enforcement Officers While Under Investigation.”

extension of time to 120 days upon a showing of “good cause for the granting of an extension of time within which to complete the investigation.” La. Rev. Stat. 25:2531(7).

In order to perform its review function as mandated by the Consent Decree while not materially impacting the City’s ability to meet its State Law obligations, the Monitoring Team worked with the NOPD PIB to develop a mutually acceptable review procedure. The procedure is attached to this Report as Attachment III.<sup>18</sup>

### Critical Incident Review Procedure

Many of the NOPD’s obligations under the Consent Decree relate to “Critical Incidents.”<sup>19</sup> These include obligations in the areas of Use of Force, Misconduct

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<sup>18</sup> The Monitoring Team is mindful of the difficulties the NOPD already is facing in completing its PIB investigations within the 60/120 day state law deadline. The New Orleans press has reported several instances of police officers having their discipline overturned on appeal due to the City failure to abide by the Police Officer’s Bill of Rights. One such example of such a Court reversal was seen in the Fourth Circuit’s decision in *Tyrone Robinson vs. Department of Police*, No. 2012-CA-1039. In this appeal from a Civil Service Commission ruling, the Court concluded that the PIB had taken longer than the 60/120 days for conducting an investigation provided for the Bill of Rights, and further found that the pendency of a criminal investigation did not extend this statutory timeline. Accordingly, the Court reversed the judgment of the Civil Service Commission and dismissed the discipline imposed. More recently, however, the Supreme Court of Louisiana in *Patrick O’Hern vs. New Orleans Police Department*, 2013-C-1416, ruled that a pending criminal investigation does toll the running of the 60/120 day clock. The *O’Hern* decision will relieve at least some of the time pressures on the NOPD PIB, at least in the context of related criminal and administrative investigations.

<sup>19</sup> “Critical incident” means: (1) all uses of lethal force by an NOPD officer, whether on or off duty; (2) all critical firearm discharges by an NOPD officer; (3) all uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization, whether the injury is to the officer or the subject; (4) uses of force indicating apparent criminal conduct by an officer; (5) uses of force by police department personnel of a rank higher than sergeant; (6) all instances of in custody deaths; (7) all neck holds; (8) all uses of force by an NOPD officer resulting in a loss of consciousness; (9) all canine bites; (10) more than two applications of an Electronic Control Weapon (ECW) on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECW application for longer than 15 seconds, whether continuous or consecutive; (11) any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject; (12) any incident involving an active shooter; and (13) any hostage or barricaded person incident.



Investigation, Bias-Free policing, and the creation of the “Health and Wellness Program,” which encompasses critical incident debriefings and crisis counseling, to name just a few. Consequently, the Monitoring Team has a need to be notified of and be afforded the opportunity to observe critical incidents. The Consent Decree recognizes the importance of such access when it requires that “the City and NOPD agree to ensure that the Monitor shall have timely, full and direct access to all City and NOPD staff, employees, critical incident crime scenes, and facilities that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by [the Consent Decree].” (CD 471)

In order to facilitate timely notification of all critical incidents and prompt access to such incidents, the Monitoring Team worked with the NOPD to develop a mutually acceptable Critical Incident Notification procedure. The procedure was implemented this quarter and will continue in effect throughout the life of the Consent Decree so that the Monitoring Team is always aware of, and has the opportunity to observe, critical incidents. The procedure is attached to this Report as Attachment II.

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#### DEVELOPED AND DEPLOYED WEBSITE

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In an effort to enhance the transparency of the Monitoring Team’s activities, provide information to the citizens of New Orleans regarding the Consent Decree and the Monitoring Team, and to facilitate the availability of the Team’s Quarterly Reports, the Monitoring Team designed and developed a web site. In addition to serving as a central repository of the Team’s Quarterly Reports and other important information regarding the Consent Decree, the site ([www.consentdecreemonitor.com](http://www.consentdecreemonitor.com)) will be used to announce the Team’s public meetings. The site also provides links to the NOPD PIB, the New Orleans Office of Inspector General, the Independent Police Monitor, and the United States District Court for the Eastern District of Louisiana.

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#### MET WITH METROPOLITAN CRIME COMMISSION

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The Metropolitan Crime Commission (“MCC”) is “a non-profit, citizen’s organization dedicated to exposing public corruption, improving the administration of justice, and reducing the incidence of crime in order to improve the quality of life for citizens in the New Orleans and Baton Rouge metropolitan areas and throughout Louisiana.” The Monitoring Team met with the Commission’s Executive Director and Chairman. The Team reviewed the history of the MCC and its efforts to monitor the NOPD in an effort to promote good police practices. The Commission shared copies of prior studies conducted by MCC related to arrest rates. The team discussed the Commission’s current effort to study arrest-to-conviction ratios and assess whether arrests are or are not leading to convictions and determine why they are or are not. The Commission has



an extensive database, which it expressed a willingness to share with the Monitoring Team.

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#### ATTENDED POLICE & JUSTICE FOUNDATION MEETING

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Members of the Monitoring Team met with leaders from the New Orleans Police and Justice Foundation. The primary purpose of the meeting was to learn more about the Orleans Parish Information Sharing System (“OPISIS”), an endeavor to facilitate the sharing of criminal justice system information across multiple agencies within Orleans Parish. OPISIS funding is provided by the Police and Justice Foundation. The OPISIS program is governed by an Executive Board comprised of executives from the participating agencies that includes NOPD Superintendent, Orleans Parish Sheriff, the District Attorney, the Chief Judge of the Criminal District Court, the Criminal Court District Court Clerk, the Chief Public Defender, the Chief Information Officer of the City of New Orleans, Chief Judge of the Municipal Court and the Executive Officer of the Justice Foundation.

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#### OBSERVED U.S. ATTORNEY CRIMINAL JUSTICE COORDINATION GROUP

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The Consent Decree requires the NOPD to establish formal coordination between command-level officials and the Orleans Parish District Attorney, municipal and state court judges, the Orleans Public Defender, the New Orleans Independent Police Monitor, the Federal Bureau of Investigation (“FBI”), and the United States Attorneys Office. To this end, a Criminal Justice Coordination Group has been established by and convened by the USAO. (CD 430) The group meets monthly to share regular feedback regarding the quality of NOPD arrests and indicia of misconduct; to refer specific allegations of misconduct for investigation; and to receive an update on the status of previous referrals.” (CD 430) While the Consent Decree requires that the Coordination Group be developed and implemented by February 2014, the group already has been meeting for several months. The NOPD is a regular attendee and participant at the meetings.

We observed the August meeting, which was attended by the First Assistant of the New Orleans District Attorney’s Office, the New Orleans Public Defender, the Chief Judge of the Orleans Parish Criminal Court, the Chief Judge of the New Orleans Municipal Court, the New Orleans City Attorney, the Orleans Parish Magistrate Commissioner, the Executive Assistant of the USAO, the FBI Special Agent in Charge, and the Independent Police Monitor and Deputy Monitor. Representing the NOPD was PIB Deputy Superintendent Arlinda Westbrook, PIB Commander Tami Brissett, and Consent Decree Coordinator Danny Cazenave. The meeting was chaired by Assistant United States Attorney Steve Parker.

During that meeting, there was a discussion about ways NOPD can be routinely informed about court findings relating to improper searches and arrests. The NOPD attendees were fully engaged in the discussions. There was a constructive tone to the discussions, reflecting the importance of the issues and an interest in identifying solutions.

## AUDIT & REVIEW FINDINGS

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The Consent Decree requires that the Monitoring Team submit its proposed monitoring methodology to the City, the NOPD, and the Department of Justice in advance of undertaking any audit, review, or outcome assessment. (CD 453) Each entity then has the opportunity to submit comments or concerns regarding the proposed methodology to the Monitoring Team. The Monitoring Team then either must “modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons it is not modifying its methodology as proposed.” In other words, while the Monitoring Team will consider the input of the City, the NOPD, and the Department of Justice with respect to its methodology, the Monitoring Team is responsible for the manner in which it conducts its audits and reviews.

The Monitoring Team has begun sharing its proposed audit/review methodologies with the City, the NOPD, and the Department of Justice for review and comments. *Consequently, the Monitoring Team expects to be in a position to begin reporting substantive findings in the next quarter.* While the format of such future reports likely will evolve over time, each will clearly set forth for each Consent Decree requirement reviewed during that quarter the Monitoring Team’s conclusions regarding:

- Whether the requirement effectively has been incorporated into NOPD policy.
- Whether the requirement has been the subject of sufficient training for all relevant NOPD officers and employees, and
- Whether the requirement has been fully implemented in actual practice.

Each Quarterly Report also will clearly identify what audits and reviews have been conducted by the Monitoring Team, the source data assessed, the methodology employed, and the specific findings (redacted as necessary to protect privacy). (CD 457)

## COMPLIANCE WITH CONSENT DECREE DEADLINES

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The Consent Decree phases in many of the NOPD's obligations. Some actions are required to be performed immediately, others are intended to be rolled out over the course of longer period of times, for example, within 90, 180, or 365 days. In addition to assessing and reporting on the City's and NOPD's compliance with the substantive elements of the Consent Decree, the Monitoring Team also tracks the timing of NOPD's compliance. NOPD was obligated to take the following actions within the first 90 days of the effective date of the Consent Decree.

Paragraph	20
Consent Decree Action	Within 90 days of the effective date, NOPD shall set out a schedule for completing all policies, procedures, and manuals within 365 days of the Effective Date.
Deadline	<b>November 7, 2013</b>
Status	<b>Partially Completed</b>
Discussion	<p>Prior to the selection of the Monitoring Team, NOPD entered into an agreement with a vendor to develop a policy manual. Working with the vendor, NOPD created an implementation plan setting out deliverables, project timelines, and target dates. The vendor agreed to draft Consent Decree-compliant policies and procedures, and to provide ongoing legal reviews and updates to the policies. The resulting implementation plan set out a policy development approach and includes a training component. The plan employed a "rapid adoption element," wherein the NOPD and the vendor agreed on which policies should be developed first. The NOPD formed the Executive Development Committee ("EDC") and the Administrative Policy Review Committee ("PRC") to ensure the policies met the requirements of the Consent Decree and the needs of the department. A copy of the implementation plan was included with documents given to the Monitoring Team the first week after the team was in place.</p> <p>The plan, however, failed to factor in the Consent Decree requirement that "specified policies" must be sent to the Monitoring Team and DOJ for their review and comment before they are issued. Now that the Monitoring Team is in place, the Department has revised the process to ensure DOJ and the Monitoring Team receive copies of draft policies for review prior to issuing the policy.</p>

Paragraph	247
Consent Decree Action	<p>Within 90 days of the Effective Date, NOPD agrees to create a full-time Department-wide Training Liaison position within the Training Division, and designate a single training coordinator in each District and central organization unit to coordinate and document training. The Training Liaison shall establish and maintain communications with each District training coordinator to ensure that all officers complete training as required and that documentation of training is provided to the Training Division.</p>
Deadline	<b>November 7, 2013</b>
Status	<b>Partially Completed</b>
Discussion	<p>The Police Department issued Policy 208 Training and Procedure PR208 Training, which set forth NOPD's policy on recruit, in-service, specialize, roll call, and outside training. The directives establish within the Training Division the training liaison position and a training coordinator in each district/division/unit of the department. The Training Liaison is tasked with establishing and maintaining communications with each training coordinator to ensure that all officers complete training as required and that documentation of training is provided to the Education and Training Division.</p> <p>The Monitoring Team was provided a memorandum naming a captain assigned to training to serve as the Training Liaison. The Monitoring Team also has been provided with a roster of training coordinators within each police district and eight specialized units.</p> <p>The policy also creates the academy curriculum director with responsibility for ensuring that lesson plans are prepared and maintained, classes are conducted, and proper instruction provided. The curriculum director also is responsible for ensuring members of the Department have been trained as required. It is not clear from the policy the organizational relationship between the curriculum director and the training liaison position. The policy and procedure were issued June 23, 2013.</p> <p>Yet to be assessed is the degree of interaction between the training liaison and training coordinators, and whether proper documentation is maintained of the date, time, and content of roll call training held by supervisory personnel at the district and unit level. Also to be assessed is how the NOPD is ensuring that all officers complete required training.</p>

Paragraph	317
Consent Decree Action	Within 90 days of the Effective Date, the City and NOPD agree to create a plan for the implementation of the Early Warning System (“EWS”), which shall include the hiring of at least one full-time-equivalent qualified information technology specialist within 270 days of the Effective Date, to facilitate the development, implementation, and maintenance of the EWS. The City and NOPD agree to maintain sufficient staffing to facilitate EWS data input and provide training and assistance to EWS users.
Deadline	<b>November 7, 2013</b>
Status	<b>Partially Completed</b>
Discussion	<p>The City and the NOPD agreed to develop and use an EWS to evaluate the performance of all employees across all ranks and to <i>develop a plan</i> to create the EWS within 90 days of the effective date.</p> <p>On September 5, 2013 NOPD provided the Monitoring Team a copy of the Early Warning System Implementation Plan, dated April 10, 2013. The document states that it was prepared to meet the requirements of paragraph 317 of the Consent Decree, which requires that the City and NOPD create a plan to facilitate the development, implementation, and maintenance of the EWS. It sets out a data collection and input strategy; lists twenty-one distinct data elements required by the consent decree and six additional data elements; identifies data sources; details early warning system requirements including that it be web-capable, allows configuration of special needs data analysis and is compatible with multiple data formats; identifies EWS stakeholders, their training needs and a training approach; and delineates policy needs and structure.</p> <p>It identifies the EWS Implementation Committee Analytics Working Group which was tasked with assessing the comprehensiveness of available data needed for the EWS, identifying needed enhancements to existing systems, determining need for security and privacy, and developing a records retention plan.</p> <p>The plan shows that the City and NOPD analyzed the EWS requirements and for each requirement began the process of mapping how the data are currently collected and how they might be fed into the EWS. The plan includes a chart detailing each of the requirements, the NOPD unit or bureau currently responsible for collecting the data, the application that currently houses the data, the type of database used by this application, whether the application needs modifications, other possible</p>

sources for the specified data, and the employee currently responsible for this data.

The plan recognizes the need to classify all employees into peer groups and design specific thresholds for each group. It commits to continue to develop the peer group thresholds during the coming months as it defines performance indicators, creates peer groups, and calculates thresholds. In the meantime it sets out a table of performance indicators and related threshold that will apply to all employees until peer group analysis is enabled.

The plan includes an appendix that identifies significant ‘milestones’ to full implementation of the Early Warning System and provides projected completion dates of each identified milestone. Noteworthy completion dates are:

- Release of RFP – December 31, 2013
- Begin drafting EWS policies – 1<sup>st</sup> Quarter 2014
- Vendor selected – 2<sup>nd</sup> Quarter 2014
- Pilot implementation – 2<sup>nd</sup> Quarter 2015
- Full implementation – 1<sup>st</sup> Quarter 2016

A working draft of the EWS system RFP has been prepared and a copy provided to the Monitoring Team.

The EWS plan correctly points out that “In order to ensure the seamless implementation of the EWS, it is important that oversight, operational, and maintenance responsibilities be clearly delineated among key personnel.” Yet it also points out that “These responsibilities have not yet been institutionalized as an official protocol.” The plan assigns the responsibility for the operation of the EWS to the Deputy Superintendent of the Compliance Bureau. Yet to be accomplished is the hiring of a full-time-equivalent qualified information technology specialist. The Department has 270 days from the Effective Date to fill the position. Also to be accomplished is putting in place staff to facilitate EWS data input and provide training and assistance to EWS users.

Paragraph 329

Consent Decree Action Within 90 days of the Effective Date, NOPD agrees to develop and implement a schedule for testing AVL, in-car camera, and ECW recording equipment to confirm that it is in proper working order. Officers shall be responsible for ensuring that recording equipment assigned to them or

their car is functioning properly at the beginning and end of each shift and shall report immediately any improperly functioning equipment.

Deadline **November 7, 2013**

Status **Partially Completed**

Discussion NOPD policies require testing of the equipment. However, the policies do not include a requirement that the ECW video/audio recorder attachment be tested at the beginning of the officer's tour of duty or set out the required frequency of the testing of the AVL equipment.

Policy 309 and procedure PR309, Electronic Control Weapons, were issued on 2 June 2013. Policy 444 and procedure PR444, Digital Mobile Video Audio Recording, were issued on 22 July 2013. Policy 446 and procedure PR446 were issued on 8 August 2013.

Policy 309 and procedure PR309 require each officer equipped with an ECW to test the functionality of the ECW at the beginning of the tour. A spark testing protocol is included in the directives. However, the directives do not include a requirement for testing the functionality of the video camera attachment included on the ECW. Camera functionality is only assessed in the aftermath of a use. The manufacturer's user manual provides instruction on testing the recorder. NOPD should incorporate these instructions into PR309 alongside the instructions for spark testing the ECW.

Procedure PR446 requires each officer assigned to a vehicle equipped with a DMVAR to test the functionality of the equipment, including the camera and the body microphone, at the beginning of his shift. The officer must also create a brief recording at that time. The directive clearly states that the officer must ensure all components of the system are functioning, document any malfunctions in a written report and inform his supervisor of the malfunctions.

Officers also are required to check the amount of recording space of the DMVAR to make sure there is enough space to complete their tour of duty.

Procedure PR448 requires the MDC Unit to develop a regular maintenance schedule for testing AVL equipment. The MDC Unit representatives are to inspect and perform maintenance checks on available MDC equipment and associated AVL devices and list any problems found. Necessary corrective are to be taken to repair or replace malfunctioning equipment. However, the policy does not indicate the required frequency of the testing.



Yet to be assessed is whether or not the testing protocols required by the three policies produce the desired results; that is, that the equipment is functioning as intended at the beginning of the officer's shift.

Paragraph	425
Consent Decree Action	The City agrees to request the Civil Service Commission to, within 90 days of the Effective Date, post online its full decisions related to NOPD discipline in a timely manner.
<b>Deadline</b>	<b>November 7, 2013</b>
<b>Status</b>	<b>Completed</b>
Discussion	<p>The Monitoring Team was presented with a letter from the New Orleans City Attorney to the Personnel Director requesting that the Commission post online its full decisions related to any NOPD discipline in a timely manner. On October 14, the Personnel Director responded to the email directing the City Attorney to the NOLA Civil Service Commission web page at <a href="http://www.nola.gov/civil-service/commission/decisions/">http://www.nola.gov/civil-service/commission/decisions/</a>.</p> <p>Since April 11, 2013, the Commission has posted 19 findings of police officer disciplinary hearings. The Monitoring Team viewed those nineteen postings and found that they contained a copy of the full decision of the Commission's findings.</p>

## NEXT QUARTER ACTIVITIES

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The next quarter's activities<sup>20</sup> will involve the implementation of audit, review, and outcome assessments per the monitoring schedule shared with the City, the NOPD, and the Department of Justice. Among other things, the Monitoring Team plans to focus on the following activities:

### **Finalize Policy Evaluations**

The Consent Decree establishes prompt and full implementation of policies as a critical priority. The Monitoring Team will continue to work closely with NOPD and the DOJ to finalize the Team's review and evaluation of proposed new and revised NOPD policies, procedures, and manuals. Our current collaborative approach includes having informal discussions between NOPD staff and Monitoring Team members to discuss identified concerns with proposed policies. These discussions have allowed NOPD to make timely adjustments to proposed policies thereby potentially significantly reducing the time span between policy proposal, acceptance, and final implementation. New policies, however, will be reviewed in accordance with the process and timeline set forth in the Consent Decree.

In evaluating each policy, the Monitoring Team will review and comment prior to NOPD publication and implementation and note any objection in writing if the proposed new or revised policy, procedure, or manual is inconsistent with or does not incorporate the Consent Decree requirements and the law. Factors or circumstances may occur requiring the Monitoring Team to determine the necessity for extending the prescribed time for policy reviews. The Consent Decree authorizes granting additional policy review time only where it is clear that additional time is necessary to ensure full and proper review. The Court may be asked to resolve matters where the DOJ or the Monitoring Team, despite resolution attempts, believes that NOPD policy, procedure, or manual remains inconsistent with the Consent Decree or the law.

### **Develop Biennial Community Survey**

The Monitoring Team, with DOJ approval, will initiate the process to conduct a reliable, comprehensive, and representative biennial survey of members of the New Orleans

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<sup>20</sup> In order to bring the Consent Decree implementation and reporting activities into parallel with the City's Fiscal Year, the Monitoring Team's second Quarterly Report will be issued in May 2014, and will cover activity through the remainder of 2013 and the first calendar quarter of 2014.

community regarding their experiences with and perceptions of NOPD and of public safety. The Monitoring Team will design, conduct, and analyze baseline and subsequent biennial surveys of a representative sample of City residents, police personnel, and detained arrestees. The survey will establish a baseline of measures on public satisfaction with policing, attitudes among police personnel, and the quality of police-citizen encounters. The survey design will review and consider elements of prior law enforcement surveys in New Orleans and other cities, as well as current or recent concerns in New Orleans.

The Monitoring Team will engage in informal conversations with New Orleans residents, NOPD officers and command staff, and DOJ representatives, and observe community meetings prior to working with the Monitoring Team to design the survey. It will help ensure that the resident and arrestee surveys capture a representative sample of New Orleans residents, including members of each demographic category and conduct the survey in English, Spanish, and Vietnamese, as necessary, to ensure representation of the entire New Orleans community.

Formal discussion about the survey methodology will include NOPD supervisors and the DOJ. Their opinions also will be considered in developing the initial survey and in making improvements to subsequent biennial surveys.

### **Attend Academy and In-Service Training**

NOPD policies and procedures must provide clear direction to ensure that officers and civilian employees enforce the law effectively and constitutionally. Training is required for NOPD officers and employees to understand and be able to fulfill their duties and responsibilities pursuant to NOPD policies and procedures. NOPD training must reflect and instill agency expectations that police officers have an understanding of and commitment to the constitutional rights of the individuals they encounter, and employ strategies to build community partnerships to more effectively increase public trust and safety.

Both recruit and in-service Consent Decree training requirements must be fully implemented and practically applied to achieve desired outcomes. To that end, Monitoring Team audit and review protocols will include reviewing lesson plans, verifying instructor qualifications, and attending and auditing academy and in-service training classes. We will ensure that “adult learning techniques”<sup>21</sup> are employed in the

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<sup>21</sup> As most people intuitively recognize, adults learn differently from children. Consequently, effective instructors teach adults differently from children. The (footnote continued on next page)

training. We will audit attendance records to ensure that everyone who should be trained is trained.

Recruit classes shall not exceed 30 candidates. The Monitoring Team will audit and review recruit academy classes for instructional hours in required areas including appropriate use of force, stops, searches, and arrests, and bias-free policing. The Monitoring Team will also attend problem-based learning and scenario-based exercises including how to communicate with Limited English Proficiency (“LEP”)<sup>22</sup> individuals in commonly encountered scenarios, constitutional and statutory law, ethical decision-making and community policing. The reviews will include reports and statements produced by recruits at the end of scenario-based exercises.

In-service training must comprehensively address each of the subject areas in the Consent Decree that requires in-service training. The Monitoring Team will attend in-service training classes to assess the training curricula, lesson plans, and procedures for consistency, quality, accuracy, currency, completeness, and compliance with applicable law and NOPD policy. Attending classes will allow the Monitoring Team to evaluate techniques incorporated into training, including the variety of adult learning techniques, scenario-based training, problem-solving practices and traditional lecture formats.

### **Review Use of Force and Misconduct Investigations**

The Monitoring Team will be provided and will review each investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and all reports of investigation of a serious misconduct complaint before NOPD closes and reports its recommended disposition to the involved employee. In order to conduct

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techniques an effective instructor uses to teach adults are referred to as “adult learning techniques” or “adult learning theory,” and focus on, among other things, using the adult student’s experience, emphasizing the practical application of class material, having students participate in group work, and designing a curriculum organized by problem areas instead of subjects.” See, e.g., Malcolm S. Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*, 2nd ed. (New York, NY: Association Press 1980); see also Eric P. Werth, *Adult Learning: Similarities in Training Methods and Recruits Learning Characteristics* (Police Chief Magazine, November 2013).

<sup>22</sup> The Consent Decree states that LEP, or Limited English Proficient, “refers to a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing). (CD 14)

such reviews effectively, the Monitoring Team has taken steps to ensure that it is timely notified by the NOPD of all uses of force, misconduct investigations, and citizen complaints. The Monitoring Team also has taken steps to ensure that NOPD shares all information, documents, and data (including source documents) regarding each use of force, misconduct investigation, and/or citizen complaint, as requested by the Monitoring Team. The NOPD has fully cooperated in developing effective procedures to ensure an effective and timely review by the Monitoring Team.

The Monitor Team will coordinate with the IPM in conducting these reviews. Upon reviewing each serious use of force investigation and each serious misconduct complaint investigation, the Monitoring Team will recommend for further investigation any use of force or misconduct complaint investigations determined to be deficient or for which the findings are not supported by a preponderance of the evidence. The Monitoring Team will provide written instructions for completing any investigation determined to be incomplete or inadequately supported by the evidence. The Monitoring Team will offer recommendations for further investigation or modification that can be concluded within the timeframes mandated by state law. These actions will be taken in a manner that does not adversely impact the time constraints placed on the investigative process by the Officer Bill of Rights.

### **Conduct Reviews, Audits, and Outcome Assessments**

The Monitoring Team will begin conducting comprehensive and reliable compliance reviews or audits as necessary to determine whether the City and NOPD have implemented and continue to comply with the material requirements of the Consent Decree. In addition to the reviews and audits, the Monitoring Team will begin conducting “outcome assessments” to measure whether implementation of the Consent Decree is resulting in constitutional policing. These outcome assessments are specifically identified in the Consent Decree and include the collection and analysis of outcome data in the areas of Use of Force, Stop, Search, and Arrest, Bias-Free Policing, Community Engagement, Recruitment and Training, Officer Assistance and Support, Performance Evaluation and Promotion, Supervision, and Secondary Employment. (CD 448) The Monitoring Team has developed a schedule to ensure effective and continuing coverage of each area over the life of the Consent Decree.

The Monitoring Team’s schedule involves conducting the required outcome assessments at least annually, except where otherwise agreed by the Parties with the approval of the District Court. The schedule also involves conducting a compliance review or audit of each requirement of the Consent Decree within the first two years of the Consent Decree, and a compliance review or audit of each requirement at least annually thereafter.

## CONCLUSION

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Based on our preliminary observations over the first three months of monitoring, we believe that the leadership of the New Orleans Police Department is committed to fulfilling the objectives of the Consent Decree. While, for a variety of reasons, the City's efforts to engage the Consent Decree Monitor took longer than expected, it appears that the NOPD's progress in meeting its commitments under the Consent Decree is gaining momentum. The Superintendent's appointment on October 23, 2013 of Mr. Jay Ginsberg to serve as Deputy Superintendent over the new NOPD "Compliance Bureau" is one example of this momentum. The actual establishment of the Compliance Bureau, of course, will reflect even further momentum.

NOPD, however, has a lot of work ahead of it. The Consent Decree is comprehensive in its scope. It will take a combination of commitment, time, resources, and consistent vigilance to bring the Police Department into full compliance with the Consent Decree. Additionally, the NOPD will need the full support of the City in order to meet its obligations. For our part, we will continue to be vigilant, and our future reports will objectively and independently measure the success of NOPD's ongoing efforts, identify and explain the basis for each of the Monitoring Team's findings, and, importantly, determine whether the NOPD's efforts are resulting in constitutional policing.

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## ATTACHMENT I: THE MONITORING TEAM

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The Sheppard Mullin Monitoring Team brings the academic, legal, and law enforcement communities together to meet the shared objective of ensuring that police services are delivered to the people of New Orleans in a manner that complies with the Constitution and laws of the United States. Core members of the Monitoring Team include the following:

**Jonathan Aronie (Primary Monitor)** is a partner in Sheppard Mullin's Government Contracts and Internal Investigations Practice Group. Since 1994, Jonathan has conducted complex internal investigations and compliance reviews for a wide range of Fortune 500 companies. Jonathan previously served as the Deputy Independent Monitor over the District of Columbia Metropolitan Police Department. Prior to private practice, Jonathan served as a law clerk to the Honorable Patricia Wynn, DC Superior Court, where he spent most of his time in the Juvenile Crimes division. Jonathan is a graduate of Duke University School of Law. He is cleared at the highest levels and frequently handles cases involving national security issues.

**David Douglass (Deputy Monitor)** is a partner in Sheppard Mullin's Government Contracts and Internal Investigations Practice Group. In private practice, David represents corporations and individuals in civil and criminal investigations, litigation, and prosecutions. Prior to entering private practice, David was an Assistant United States Attorney and then a DOJ civil rights prosecutor, where, among other responsibilities, he investigated and prosecuted excessive force cases. In addition to extensive trial experience, David also brings significant experience reviewing the actions of law enforcement agencies. In 1994, he served as Executive Director of the U.S. Treasury Department's Review of White House Security. Prior to that, he was Assistant Director of the Treasury Department's investigation of the ATF raid on the Branch Davidian compound in Waco Texas. David received his law degree, cum laude, from Harvard Law School and his undergraduate degree from Yale College.

**Chief Dennis Nowicki (Deputy Monitor)** is a senior law-enforcement professional whose career spans over forty-nine years of public service. Retiring as Chief of Police for Charlotte-Mecklenburg, North Carolina in 1999, Chief Nowicki also has served as Executive Director of the Illinois Criminal Justice Information Authority and Chief of Police for Joliet, Illinois. Chief Nowicki began his career in policing with the Chicago Police Department, rising to the rank of deputy superintendent. He retired after twenty six years with that department. Since retiring from Charlotte-Mecklenburg, he served as the executive director of a COPS funded regional community policing training institute and, more recently, has concentrated his work on assisting police departments and DOJ in matters relating to managing police use of force. Chief Nowicki has served on the

teams monitoring the District of Columbia Police Department and the U.S. Virgin Islands Police Department.

**Chief Theron “T” Bowman** currently serves as a Deputy City Manager in Arlington, Texas. He served as the Chief of Police in Arlington from 1999-2012. Dr. Bowman received his Ph.D. in Urban and Public Administration from the University of Texas at Arlington and has served on the faculty of several universities teaching Sociology, Criminology, and Criminal Justice courses. Dr. Bowman has been inducted into the George Mason University Evidence-Based Policing Hall of Fame, recognized by the African American Peace Officer Association as “Officer of the Year,” selected by the John Ben Shepperd Leadership Institute as an “Outstanding Local Texas Leader,” and has received Proclamations of Achievement from both the Texas State Senate and the U.S. House of Representatives.

**Chief Robert McNeilly** is the current chief of Elizabeth Township, Pennsylvania. Prior to moving to Elizabeth, Chief McNeilly served as Chief of Police of Pittsburgh, PA from April 1996 to January 2006. Chief McNeilly led his department through a U.S. Department of Justice Consent Decree in the mid-1990s, resulting in his department reaching substantial compliance and being released from the Consent Decree monitoring. He was also active as a United States Coast Guard Reserves Chief Petty Officer from 1987 to 2011, and is a United States Marine Corps veteran.

**Chief Mary Ann Viverette** served as Chief of Gaithersburg, Maryland for 21 years. As the first female president of the International Association of Chiefs of Police, Chief Viverette led the agency through organizational change, while embracing the diversity of the community, and while facing the dramatic changes the population faced. In addition to serving on the Maryland Chiefs of Police Training Committee for over a decade, Chief Viverette, as a pioneer woman police chief, was often called upon to speak on issues affecting women and minorities in law enforcement. She conducted dozens of training sessions on the recruitment of women and minorities over a fifteen year period and has served as an Investigator with the Department of Justice.

**Dr. Geoffrey Alpert** is a Professor in the Department of Criminology and Criminal Justice at the University of South Carolina and an Adjunct Professor at the Centre for Excellence in Policing and Security, Griffith University in Brisbane, Australia. He is an internationally recognized criminologist who specializes in research, training and the evaluation of high-risk police activities, including the use of force, deadly force, pursuit driving, racial profiling and accountability systems. He is a member of the International Association of Chiefs of Police Research Advisory Council.

**Dr. Alejandro del Carmen** currently is a professor and chair of the Department of Criminology and Criminal Justice at the University of Texas at Arlington. Dr. del Carmen



earned a Ph.D. in criminology and criminal justice from Florida State University in 1997. His research interests include law enforcement, racial profiling, crime prevention and corrections. Dr. del Carmen has published over thirty-five refereed academic manuscripts in internationally recognized journals. His most recent book is titled *Racial Profiling in America* (2008), Prentice Hall Publishing.

**Tracey Kennedy** is a partner in Sheppard Mullin's Litigation and Labor & Employment Practice Groups, working out of New York and Los Angeles. Tracey has extensive experience working in the area of race, gender, and other forms of discrimination cases, and has extensive experience working with employee unions. In the late 1990s, Tracey was retained by the County of Los Angeles to monitor the discriminatory hiring practices of the Sheriff's Department. Tracey has been named one of the country's "top woman litigators" by the Daily Journal.

**Peter Morris** is a partner in Sheppard Mullin's Government Contracts and Internal Investigations Practice Group. Prior to moving into private practice, Peter served an Assistant United States Attorney for the Central District of California, where he led multiple fraud task forces. Peter has extensive experience working with federal and state law enforcement agencies, and was involved in monitoring the Los Angeles Fire Department following a state-mandated investigation in 1992. Peter is a graduate of Harvard Law School where he served on the Harvard Civil Rights & Civil Liberties Law Review.

**Judith Dangerfield** is a member of Metro-Source, LLC, a small planning and consulting firm in New Orleans. Ms. Dangerfield has been a small business owner for over 20 years and has been an advocate for economic equity in the rebuilding of New Orleans. Together with her late husband Dr. Peter W. Dangerfield she is co-author of *Voice of the Poor: Citizens Participation in Rebuilding New Orleans*, published in 2009 in *Historical Inevitability: the Role of Hurricane Katrina in the New Orleans Saga*, a publication of the National Conference of Black Political Scientists, Omni Press, Wisconsin, 2009. Ms. Dangerfield holds a Master's of Science in Community Economic Development from Southern New Hampshire University.

## ATTACHMENT II: CRITICAL INCIDENT NOTIFICATIONS

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The Consent Decree sets forth standards and procedures governing the use of force. The Consent Decree further provides that the Monitoring Team shall assess and report whether the requirements of the Consent Decree have been implemented. In order to comply with this mandate, the following Monitor notification process shall be implemented:

1. The Monitoring Team shall be notified, within one (1) hour of its occurrence, whenever any of the following events occur:
  - A. Any Serious use of force as defined by the Consent Decree, meaning:
    - i. any use of lethal force by an NOPD officer;
    - ii. any critical firearm discharge by an NOPD officer;
    - iii. any uses of force by an NOPD officer resulting in serious physical injury or requiring hospitalization;
    - iv. any uses of force by an NOPD officer resulting in a loss of consciousness;
    - v. any canine bites;
    - vi. any incident that involves more than two applications of an Electronic Control Weapon (ECW) on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECW application for longer than 15 seconds, whether continuous or consecutive;
    - vii. any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject;
  - B. Any use of force indicating apparent criminal conduct by an officer;
  - C. Any in-custody death;
  - D. Any use of force incident wherein the NOPD's Force Investigation Team is mobilized and responds to the scene of the incident.
  - E. Any major incident requiring mass mobilization of the Police Department.
2. Upon notification, the Monitoring Team will make an assessment of the incident to determine whether a Monitoring Team member will respond.
3. The notification will minimally include the following information:
  - A. Location of Occurrence: (Address/Intersection/Description);
  - B. Incident Details;
  - C. Involved officer's district/unit of assignment and rank;
  - D. Nature and extent of injury to officer, if known;
  - E. Nature and extent of injury to subject, if known;
  - F. The name of the on scene supervisor.
4. When a Monitoring Team member responds to the scene of an incident, the team member(s) shall be granted access under the direction of the scene commander. Such access by the Monitoring Team will respect the need to secure the scene and not compromise any evidence therein.

**ATTACHMENT III**  
**REVIEW OF USE OF FORCE & MISCONDUCT INVESTIGATIONS**

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**1. Scope of Monitoring Team's Review Obligations**

- a. Serious use of force investigations
- b. Other use of force investigations subject to a misconduct investigation
- c. Serious misconduct complaint investigations

**2. NOPD's Initial Obligations.** Provide each investigation to Monitoring Team before closing and before communicating disposition recommendation

**3. Monitor's Review Obligations**

- a. Review investigation conducted by NOPD
- b. Recommend for further investigation any investigation
  - i. That is not complete, or
  - ii. Where the findings are not supported by a preponderance of the evidence
- c. Provide instructions for completing investigation
- d. Coordinate with IPM
- e. Provide other feedback to NOPD as necessary

**4. NOPD's Subsequent Obligations**

- a. Decide whether or not Monitoring Team recommendation should be carried out
- b. Set out any disagreements with Monitoring Team in writing

**5. Timeline (to facilitate 60/120 day rule)**

- a. NOPD gives Monitoring Team access to background materials within 10 days of initiation of investigation, where practicable
- b. NOPD provides Monitoring Team access to investigation file immediately upon completion
- c. Monitoring Team provides recommendation to NOPD within 5 business days, where practicable