



August 23, 2012

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

RE: United States of America vs. City of New Orleans/  
NOPD Consent Decree, Case Number 12-1924

Dear Judge Morgan:

Thank you for providing the community an opportunity to be heard prior to your approval of the final consent decree for the New Orleans Police Department (NOPD).

Baptist Community Ministries (BCM) is the only private foundation in Louisiana that provides significant grant support for public safety and governmental oversight initiatives. It is our funding experience over the past 15 years that informs our comments to the Court regarding the terms of the consent decree and the Court's oversight role. The Court's consistent oversight will be essential to the long-term success of the decree. Political appointees and elected officials come and go—federal judges' involvement in addressing deep-seated and long-term problems can ensure real progress and enduring change. During his time on the federal bench in Alabama, Judge Frank M. Johnson, Jr. demonstrated the importance of commitment to the law and the difference one principled jurist can make on matters of grave importance. It is our belief that four aspects of the consent decree warrant the close and consistent attention of the Court spread across several years (probably longer than now envisioned).

**Training.** First, the findings of the Department of Justice investigation of NOPD repeatedly point to the lack or absence of training in range of essential policing skills, from use of force through searches and arrests, custodial interrogations and all points in between. The training requirements of the consent decree are steep, and seem not to be adequately supported by the preliminary budget released by the City of New Orleans which we have reviewed. We have funded numerous forms of training and technical assistance to the NOPD during the past 15 years. It is clear that sustained funding to develop and maintain a high quality work force has not been a priority of the City or NOPD leadership. In our opinion, the culture and operations of NOPD cannot improve without an absolute, enduring commitment to training, training, training. The role of the Court in overseeing the implementation of the decree to ensure that resources are made available for every year it is in effect is critical to creating permanent change.

**Independent Police Monitor.** Budgeting priorities and the need to guard against attempts to "change on the cheap" are relevant in another area of the proposed consent decree we believe warrants your review, and that is in the role of the Independent Police Monitor (IPM) for the City of New Orleans. This office, lodged in the Office of the Inspector General (OIG), is funded by City ordinance. The citizen

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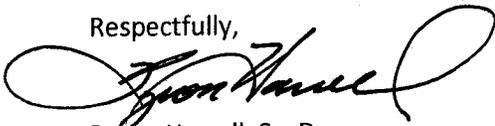
advocacy that led to the landmark creation and sustenance of these entities represents the community's dedication to improving government generally and policing specifically. In our view, every effort should be made to strengthen the IPM's role in supporting the federally appointed monitor. At the same time, reciprocal learning between the two monitors can inform how the role of the IPM can be shaped to ensure it aids in maintaining improvements set in motion through the consent decree.

**Detention.** The Department of Justice is currently engaged with City officials in negotiations regarding the terms of an agreement intended to address the conditions of confinement at the Orleans Parish Prison. Sheriff Gusman has publicly stated that a new facility would solve nearly all of the issues addressed in the DOJ's investigation of jail conditions. A related debate is occurring over the optimum size for a new facility. Understandably DOJ views the NOPD and jail findings as two separate problems to be addressed by two separate consent decrees. While that may be so, we believe there are important linkages between them. The first linkage is between arrest policies and the demand for detention space. Custodial arrests when combined with historic bonding practices in Orleans have led to an over-use of detention. While recent changes in arrest policy for some traffic warrants, public order offenses and misdemeanors have led to some improvements, a uniform, enforced arrest policy has not been developed and implemented by NOPD. DOJ findings and remedies outlined in the consent decree seem to indicate that policy revision, supervision improvements and training might have the effect of decreasing custodial arrests. We strongly support these efforts, however, such an outcome is an important variable in the jail size calculation.

**Funding.** A second linkage between the NOPD and prospective jail consent decrees is funding. The City of New Orleans will not have unlimited revenue to meet these two tests, and ongoing, open examination of the costs and benefits of each will be essential. As already demonstrated, political budget calculus alone will be insufficient—judicial review will be essential and invaluable. All of this said, perhaps the decree can include an early non-threatening role for the court to monitor the city budget dedicated to the police department because it reflects the truth of the city's priorities. Such language acknowledges that the court is watching. Currently, a federal consent decree determines the rate at which the City reimburses the Sheriff for detention stays. This budgeting method has fed the tendency of the current and previous Sheriff to scale up bed use as a tool for reaching a break-even point. For that calculus to work arrests must stay at a certain level, whether or not those arrests are warranted. We submit that the proposed movement away from per diem jail funding and the improvements needed to address the DOJ's investigative findings will severely tax the City's resources and a balance in the demand for funding on all fronts should be found in the interest of justice, overseen by a judge, and not determined by politics alone.

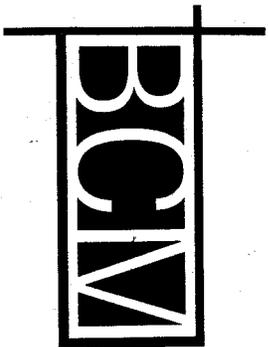
Thank you again for this opportunity to comment and please do not hesitate to call on me or other staff members here at BCM if needed.

Respectfully,



Byron Harrell, Sc. D.  
President

Cc: ✓ Clerk of Court,  
Section E  
500 Poydras Street, C508,  
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MARJORIE R. ESMAN  
EXECUTIVE DIRECTOR

August 23, 2012

Judge Susie Morgan  
Division E  
U.S. District Court for the Eastern District of Louisiana  
500 Poydras Street  
New Orleans, LA 70130

Re: United States of America v. The City of New Orleans  
Civil Action 12-1924

Dear Judge Morgan:

In response to the Court's request for public comment on the proposed Consent Decree in this matter, the ACLU of Louisiana submits the following:

The ACLU of Louisiana ("ACLU") is the state's leading organization dedicated to defending civil liberties. With just under 1500 active members and supporters throughout the state, and about 500 in New Orleans, the ACLU has a vested interest in matters pertaining to safe and Constitutional police practices in New Orleans and elsewhere in Louisiana. For many years we have monitored the activities of the New Orleans Police Department ("NOPD") and have long been concerned about such issues as excessive force, interference with First Amendment rights, unlawful stops, inadequate training practices, harassment of LGBT community members, improper adherence to internal affairs investigatory standards, among other issues. Over the years, we have brought many of our concerns to the attention of the U.S. Department of Justice, and we welcomed the DOJ's investigation of the NOPD, anticipating the needed reforms it would bring.

This office has sued the City of New Orleans over NOPD conduct multiple times, including the following lawsuits in the post-Katrina years:

*Social Aid and Pleasure Club Task Force et al v. New Orleans City et al*, 2:06-cv-10057 (First Amendment rights)  
*Elloie v. New Orleans City et al*, 2:07-cv-03231 (Fourth Amendment rights)  
*Griffith et al v. Hughes et al*, 2:07-cv-09738 (First Amendment rights)  
*Social Aid and Pleasure Club Task Force et al v. City of New Orleans et al*, 2:08-cv-00803 (First Amendment rights)  
*Houston v. City of New Orleans*, 2:09-cv-04245 (pending) (Fourth, Fourteenth and Second Amendment rights)  
*Clayton v. Zullo et al*, 2:10-cv-01228 (pending) (Fourth Amendment rights)

While the facts and the outcomes of these cases vary, together they reflect a pattern of problems that have concerned our office for some time. The mere fact that we have seen the need to file five lawsuits in six years indicates severe problems with the operations of the NOPD and with its relationships with the community.

Since 2009, our office has received 50 complaints from members of the public about issues pertaining to NOPD conduct. These incidents, which average over a dozen per year since 2009, span two Mayoral administrations and two police chiefs. The subjects of these complaints include:

Violence/excessive force: 15 (some leading to death)  
Wrongful arrest: 6  
Racial profiling: 4  
LGBT harassment: 2  
Internal affairs problems: 2  
Falsification of records: 1  
Unlawful stop or search: 3  
Intake procedures: 1  
Other miscellaneous: 17

(the total is more than 50 because some complaints involve multiple issues)<sup>1</sup>

These are the incidents directly reported to the ACLU by people seeking our legal help. Not everyone with a complaint about the NOPD contacts our office, and we have no records of situations not directly reported to us. We know of many more such incidents from media reports and from conversations with community members and other organizations. In other words, the 44 complaints submitted to us reflect only a very small portion of the problems experienced by the people of New Orleans.

Even after the Consent Decree was signed by the City of New Orleans on July 24, 2012, it appears that some members of the NOPD command have disregarded its terms. The Commander of the Fourth District is reported to have ordered officers to increase stops even in the absence of reasonable suspicion, by an email dated August 7, 2012.<sup>2</sup> If true, this indicates the critical need for oversight and enforcement of the terms of the Consent Decree to ensure that its terms are followed.

Because of our longstanding concerns about Constitutional violations by some members of the NOPD, the ACLU has welcomed the DOJ's investigation and has followed it closely. The people of New Orleans have the right to a police department that is unbiased, that does not engage in excessive force or detain people wrongly, that will take appropriate disciplinary action against police officers who violate the law, that is free of corruption, and that will ensure adequate and accurate training of all of its officers to protect the Constitutional rights of the people it serves. We therefore support the Consent Decree and the wide scope of the reforms it will bring.

Specifically, the ACLU supports the proposed revisions in training procedures, with specific emphasis on the Constitutional rights of the public; changes in the use of force policies;

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<sup>1</sup> We have additional complaints alleging problems with or misconduct by the NOPD. We have omitted those because, in our opinion, they do not raise genuine issues of concern.

<sup>2</sup> "Algiers police are told: Make more traffic stops, or else."

[http://www.nola.com/crime/index.ssf/2012/08/algiers\\_police\\_told\\_make\\_more.html](http://www.nola.com/crime/index.ssf/2012/08/algiers_police_told_make_more.html). Last visited Aug. 23, 2012

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new policies concerning stops, searches, and arrests; new procedures for interrogations and lineups; regulations regarding bias-free policing of all kinds; new structures for supervision; revised procedures for intake investigation and adjudication; and enhanced transparency and oversight. The oversight of a federal monitor is essential to ensure that these changes will become permanent so that fundamental rights will be protected for the long term.

The ACLU takes no position on who the monitor should be or on the specific details of the implementation of the Consent Decree. We do, however, urge this Court to approve the Consent Decree as quickly as possible so that the people of New Orleans can finally have a police department that respects the law and the rights of the people it serves.

In short, the ACLU strongly supports the entry of this Consent Decree and believes it fair, adequate, and reasonable. The people of New Orleans need these reforms as quickly as they can be implemented. The safety of our community depends on them.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Esman', with a long horizontal flourish extending to the right.

Marjorie R. Esman  
Executive Director

**ACLU**

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VIA HAND DELIVERY

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