



**Public Hearing Prepared Opening Statement¹ of David Douglass
Deputy Monitor, Office of the Consent Decree Monitor
Before The U.S. District Court For the Eastern District of Louisiana
27 April 2023**

Thank you Your Honor. I will be providing an update concerning NOPD's compliance efforts and our monitoring work, but I first would like to address a few issues that concern us.

First, recent statements by the City, coupled with its objection to appearing at the April 12th hearing, have led to public discussion about the scope of the Consent Decree and the purpose of having the Parties to the Consent Decree and the Monitoring Team appear before the Court. I would like to address these comments, in large part, because — unlike the City — the Monitoring Team is not permitted to make press statements. Indeed, the only vehicle for us to inform the public and the media is through our reports, these court hearings, and our public meetings.

The Consent Decree's introductory paragraph states as follows:

The parties have a shared recognition that the ability of a Police Department to protect the community it serves is only as strong as the relationship it has with that community. ***Public safety, constitutional policing, and the community's trust in its police force are thus interdependent.*** The full and sustained implementation of this agreement is intended to protect the constitutional rights of all members of the community, improve the safety and security of the people of New Orleans, and increase public confidence in the New Orleans Police Department.

Consent Decree at 1 (emphasis added).

Relatedly, Paragraph 461 of the Consent decree provides that “The Monitor shall meet with community stakeholders to explain the Monitor's reports, to inform the public about the Agreement implementation process, and to hear community perspectives of police interactions.”

The courtroom hearings you have held for years and the Monitoring Team's public meetings have been structured both to report to the public the NOPD's progress toward

¹ Actual comments at hearing may vary slightly from prepared remarks.



compliance and to build public confidence in the Department and its ability to sustain the reforms it agreed to make. We regularly receive comments and questions from members of the community expressing doubt as to whether the NOPD has truly changed, expressing great concern that the City might be released from the Consent Decree before compliance is achieved, or sharing fears that the City will revert to its “old ways” promptly after being released. It is essential to the durability of the reforms that the public know what reforms have been achieved to date – and truly understand the new rules that NOPD has agreed to play by and trust NOPD’s commitment to sustaining the reforms it agreed to undertake.

Public knowledge and trust is critical because once the Consent Decree is terminated, responsibility for sustaining the reforms will fall to the City’s elected officials and agencies, the Independent Police Monitor, and members of the public.

Let me give you a couple of examples of how transparency and public engagement go hand-in-hand to enable accountability.

Almost a year ago, media reports surfaced concerning potential violations of the hourly limits on working Secondary Employment and on officers who billed NOPD while they were working details (*e.g.*, time card fraud). A citizen brought to us and the IPM information that indicated additional potential violations. We brought the information to NOPD’s Public Integrity Bureau, which initiated investigations. We have been monitoring NOPD’s response and will be reporting on that another time; but regarding transparency, *the important point is that this misconduct was exposed by a citizen using public NOPD and OPSE data that never would have been available but for the Consent Decree’s reforms.*

Similarly, the Monitoring Team has received information from members of the public and advocacy groups that raise serious questions concerning NOPD’s handling of sexual assault and domestic violence incidents. These concerns arise from an analysis they performed of publicly available NOPD data. We reviewed the information and are conducting new audits and reviews based on the questions presented to us, and will, of course, report the results of those audits to you, the parties, and the public. But, again, *it was the availability of accessible, user-friendly data that enabled concerned citizens to monitor NOPD’s performance and that will allow them to continue to do so after we have gone.*

There are other examples, but I think these two make my point.

Because public trust is so important to maintaining the reforms brought about by the Consent Decree, we have used these court hearings over the years to acknowledge and even celebrate the Department’s achievements rather than focusing on its deficiencies, which we generally have attempted to first address directly with the NOPD. For example, in general, when we have identified a deficiency, we have first advised the NOPD and then given it a reasonable period of time to fix the shortcoming. We then report to the public, in a court hearings such as this, the problem and NOPD’s corrective action plan. This approach promotes public confidence in NOPD’s ability and commitment to sustaining the reforms.



Unfortunately, in light of recent statements made by the City, we are concerned that our “accentuate the positive” approach has allowed a false narrative to emerge that the NOPD already has met the terms of the Consent Decree. While, as we have said repeatedly, the NOPD has made great progress toward fulfilling its obligations under the Consent Decree, *it is nevertheless true that there are important requirements the NOPD has not yet met.* There are also some areas in which we have seen what we previously have described as *slippage*.

There are important areas of the Consent Decree in which the NOPD has yet to achieve compliance and areas in which we are concerned that NOPD may no longer be in compliance. We are not suggesting a lack of commitment on NOPD’s part. Rather, in many cases, the deficiencies likely are attributable, in part at least, to factors outside the NOPD’s control, such as the COVID-19 pandemic, the historic cyber-attack, and ongoing officer recruitment/attrition problems. Nevertheless, the Consent Decree’s requirements are not satisfied by good intentions alone. They must be implemented in form and spirit.

And if I may, let me stay with the attrition point for a moment since it is so important on so many levels, including how it highlights the misguidedness of the City’s public position on civilianization.

Consent Decree Paragraph 12 provides that “The City is responsible for providing necessary support and resources to NOPD to enable NOPD to fulfill its obligations under this Agreement.” *Yet, the City has experienced unprecedented attrition and, until recently, has failed to devote the resources necessary to offset that attrition.*

We are sympathetic to the recruitment and retention challenges the NOPD is facing. Police departments nationwide are facing these same challenges. But the fact that other departments share these challenges cannot cause us to ignore the impact of these challenges on the NOPD. The fact remains that lack of personnel has a disproportionate impact on those groups the Consent Decree’s reforms are designed to protect, victims of sexual assault and domestic violence, those with limited English proficiency, those in mental health crisis, and those in neighborhoods that have been historically underserved by the police.

Lack of personnel also impairs NOPD’s ability to train its officers in the policies and practices adopted under the Consent Decree. I note that this relationship is not unique to New Orleans; the Judge presiding over the Baltimore Consent Decree repeatedly has expressed concern about how attrition and low recruitment rates are impacting that Department’s ability to comply with the Consent Decree and has urged Baltimore to remedy the problem.

Sexual Assault Investigations

Let me drill down a bit more deeply into this issue using the areas of Sexual Assault and Domestic Violence. The Monitoring Team has reviewed the NOPD’s compliance with the *Policing Free of Gender Bias* section of the Consent Decree for years. We have noted previously that the Special Victims Unit (SVU) detectives have achieved the specific requirements set forth in the Consent Decree with regard to their investigations. Indeed, in January 2019, we recommended moving SA and DV “into the green,” which allowed the Monitoring Team to



spend less time auditing the work of this group of professionals. At that time, we also deservedly commended the conscientious SVU detectives and supervisors for their attentive, compassionate, and professional work.

Our most recent review revealed, however, that the SVU, like other components of the NOPD, has been significantly impacted by the Department's ongoing staffing crisis. This next slide compares attrition to sexual assault clearance rates. It shows the correlation between attrition and a decline in clearance rates. Indeed, available data from NOPD reveals that NOPD's clearance rate for sexual assault cases has plummeted since 2019, dropping from a clearance rate of 11% in 2019 to a 3% clearance rate in 2022.

While some aspects of the low clearance rates are attributable to NOPD practices, for example, leaving cases open that could be closed, there is little doubt that the low clearance rates are attributable, in part at least, to a sharp increase in the number of cases filed and a corresponding decrease in the number of SA detective available to handle those cases.

The next slide shows an increase in Gone on Arrivals, which correlates also with lack of personnel.

Last year, the City's *Sexual Assault Response Advisory Committee* published an important report in which the Committee reiterated that each NOPD SVU detective should have a caseload of 26 cases.² The Committee found, however, that NOPD's SA detectives were actually averaging a caseload of 89 cases per detective. While there is no mandatory national standard for SA caseloads, the Monitoring Team finds the Committee's recommended caseload goal of 26 to be sensible and consistent with other departments across the country. In any event, few would dispute that 89 cases per detective is dangerously high.

Uncorrected, understaffing the SVU will lead to a host of problems, *including slow investigations, unsolved investigations, lack of appropriate attention to victims, frustrated victims and families, and a loss of community trust in the NOPD*. Understaffing also creates significant risks for SVU detectives themselves, including health and wellness problems. As the Police Executive Research Forum (PERF) noted in a May 2018 national report on the topic of Sexual Assault investigations, "overly burdensome caseloads can more quickly lead to burnout and prevent departments from achieving a truly victim-centered approach to investigations."³

When the City of New Orleans entered into the Consent Decree with the U.S. DOJ in 2012, the NOPD agreed to

respond to and investigate reports of sexual assault . . .
professionally, *effectively*, and in a manner free of general bias, in
accordance with the rights secured or protected by the Constitution
and laws of the United States.

² See April 2022 Report.

³ PERF Executive Guidebook (May 2018).



CD at IX (emphasis added). While the NOPD has worked hard to meet its obligations under the Consent Decree, the impacts of the Department’s ongoing staffing shortages raise significant questions regarding the durability of its prior successes. We say this with a critical caveat: *The SVU’s current shortcomings are not the fault of the hardworking officers and supervisors staffing that unit.* These professionals continue to do yeoman’s work under extremely tough conditions. But even their hard work cannot overcome the obvious negative impacts of insufficient staffing. To repurpose an old saying, the Monitoring Team cannot let the health of some trees blind us to lack of health of the forest as a whole.

Sexual Assault is not the only area in which we are seeing signs that attrition is making it hard for the NOPD to achieve and sustain compliance with its Consent Decree obligations.

Community Engagement

We also have observed persistent shortcomings in the City’s compliance with the Community Engagement section of the Consent Decree. For example, the Department’s Community Engagement Report is overdue. The NOPD has explained that this is due to workload. Similarly, the NOPD has explained that its geographic deployment plans have been adversely affected by its personnel shortage. When we moved Community Engagement “into the green,” as we say, it was conditioned on the NOPD’s agreement to implement the policies and practices it had adopted to satisfy the Consent Decree. We have not seen evidence that the NOPD has done so and part of that failure is due to lack of personnel and personnel turnover.

Public Integrity Bureau

Regarding the Public Integrity Bureau, we learned of vacancies in its Quality Assurance Unit, which is the unit NOPD established to review the quality of disciplinary investigations conducted in the various police districts. We previously had found compliance regarding credibility determinations in the districts to be unacceptably low. The Quality Assurance Unit was NOPD’s corrective action plan for this deficiency.

We found that Force Investigative Team members were assigned investigations before they had received the required training, contrary to the Consent Decree’s requirements.

We found that in 2022, Use Of Force Review Boards were not regularly and timely conducted. We also have expressed concerns about the quality of some of the Board’s more recent reviews, which we believe may be attributable to the need to rush to clear the backlog.

Crisis Intervention Team

I won’t revisit it in detail here, but, as set forth in our Annual Report for 2022, we are seeing an increase in NOPD response times, which correlates with an increase in calls in which, by the time the officer arrived on the scene, the caller was gone. These are known as Gone On Arrivals (GOAs). In a preliminary study we conducted for those GOA calls, the average NOPD response time was 5 and ½ hours. The median response time, which eliminates the excess weight attributable to the 7th District’s 14 hour and 45 minute average response time, was just over 3



hours. We currently are working with NOPD's PSAB to look more deeply into these preliminary data.

Against this background, it is incumbent upon the NOPD to prepare a comprehensive corrective action plan to remedy these shortcomings. Without such a plan, and a disciplined commitment to executing it, the NOPD risks that we will be forced to change prior compliance recommendations. To find compliance based on the right policies and training while ignoring the lack of personnel to provide the necessary level of service would truly be putting form over substance.

The City recently has responded, commendably in our view, with a corrective action plan; namely, investing more in the equipment and facilities the NOPD personnel need to do their jobs, increasing pay, strengthening its recruitment program, and placing greater reliance on civilian employees to handle those tasks that do not require a response from a sworn NOPD police officer, commonly referred to as "civilianization." *The City's recent statements that these actions are outside the scope of the Consent Decree, however, are simply wrong and misleading.*

Civilianization

So allow me to clarify the relationship between civilianization and the Consent Decree. Given the challenges in recruiting sworn officers, civilianization is the necessary corrective action plan for those areas of non-compliance, or potential non-compliance, that are attributable to a lack of NOPD sworn personnel. As an overview, civilianization (or the greater reliance of civilians to augment and support police services) has been a practice among police departments nationwide for decades, but has grown in response to the recruitment and retention challenges departments are facing across the U.S. Civilianization entails using unsworn NOPD employees (i.e., civilians) for those tasks that do not require a sworn police officer, for example, taking reports of crimes that do not require an emergency response or an armed police officer, taking police reports to satisfy an insurance company's requirements, responding to traffic accidents in which there are no injuries, and providing mental health and other social services to both crime victims and individuals who need mental health support.

Reliance on civilians can enable police departments to provide faster, cheaper, and better services. Additionally, studies suggest that employing more civilians to support the police can also strengthen the relationship between the police and the public.

In sum, although civilianization is a practice being implemented by police departments nationwide for a number of good reasons, that is not why we are concerned about it. *We want to ensure the City follow through on its recruitment and civilianization commitments because doing so will help it meet its obligations under the Consent Decree -- and not doing so will almost certainly lead to more areas falling out of compliance with the Consent Decree.*

Additional Concerns

The Monitoring Team has additional concerns about statements the City recently has made concerning the Consent Decree. For example, statements by elected officials have wrongly



blamed the Consent Decree for preventing vehicle pursuits, and suggested, by extension, the Consent Decree is responsible for New Orleans' ongoing crime problems. This is simply not the case. Vehicle pursuits, when appropriately authorized in response to a violent crime, are permitted. In fact, in 2022 NOPD conducted approximately 53 authorized vehicle pursuits.

But, while vehicle pursuits are appropriate in some instances, they can be dangerous – to community members and to officers. It was just a few years ago that a vehicle chase of young men who were driving a stolen car resulted in their death, destruction of a New Orleans community landmark, and the death of an innocent bystander. Additionally, your honor, vehicle pursuits cause damage to NOPD vehicles, taking them out of service, further increasing response times, and increasing costs to the City.

Our concern is not limited to factual misrepresentations concerning vehicle pursuits. We are equally concerned about statements by elected officials suggesting that one reason the City wants to get out of the Consent Decree is so that it can conduct *more* vehicle pursuits. These same officials have also blamed the Consent Decree – without any actual evidence – for the City's officer attrition and recruitment challenges. *These statements give us great concern that the City's focus on getting out of the Consent Decree is so that it can roll back the reforms it agreed to implement and sustain.*

The City also repeatedly has made inaccurate references to the “self-monitoring phase.” Simply put, there is no such phase. Consent Decree paragraph 491 provides for termination after “the City and NOPD have been in full and effective compliance for two years.” It further defines Full and Effective Compliance as

sustained compliance with all material elements of [the Consent Decree] or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the [Consent Decree's] outcome measures.

It simply does not provide for a self-monitoring phase. We have expressed to the City our hope that once it achieves full and effective compliance we will be able to shift much of our monitoring work to the NOPD and the IPM. But we cannot do that until the City and NOPD have met their burden of establishing their ability to sustain compliance; and, in any event, it would not relieve us of our responsibility to monitor and report on NOPD's compliance. A critical element of NOPD's ability to sustain compliance is its ability and willingness to regularly conduct thorough and objective audits of its performance.

In sum, misleading statements by the City undermine the Consent Decree's goals of promoting transparency, accountability, and public trust.

Monitoring Activities

Your Honor, I now would like to provide an update on our monitoring activities. I would like to start by addressing an issue that also has been a matter of public discussion, the state of NOPD's compliance and how we measure it.



Your Honor, as far back as 2013, the earliest days of our work, in an effort to help NOPD manage and track its progress toward compliance, the Monitoring Team developed what we informally call the “Consent Decree Tracker.” It is an Excel spreadsheet that lists the Consent Decree paragraphs, provides a compliance status snapshot, and identifies next steps. It is shown here on the slide. We meet regularly with the parties, generally weekly, to review the status of compliance, next steps, and also to address any questions or challenges that might arise.

The tracker uses a 1, 2, 3, 4 classification scheme. *The classifications are not, however, intended to reflect a determination of compliance.* That is a determination reserved for the Court. Rather, as we previously have reported, for example, at prior public proceeding at Loyola, our classifications are intended to help the parties deploy their limited resources efficiently. A “1,” for example, means that less attention can be devoted to the paragraph as NOPD, in the view of the Monitoring Team, has satisfied the paragraph’s requirements. A “2” means NOPD is nearing compliance. A “3” means significant progress remains to be made. And a “4” means no progress has been made. Fortunately, at this point, the majority of paragraphs are at a 1 or 2, and there are no 4s.

In other words, the tracker is simply a tool we developed to help the parties and the Monitoring Team stay on the same page, if you will, as we manage through a complex and dynamic process. It is important to understand *the tracker is a snapshot AND a living document.* It captures the state of affairs at a point in time. The classification of paragraphs can change over time. And importantly, it is not a formal or final determination of compliance. As we have said, achieving compliance is not a check the box exercise.

Moreover, not all the paragraphs are of equal weight. Some require more work than others, and some, quite frankly, are more consequential than others. For this reason, we are concerned about statements from the City suggesting that the NOPD’s path to compliance can be measured simply by counting the number of paragraphs that have been classified as a “1”. Compliance is not a mathematical exercise. It is incorrect to say the City is X% compliance because they have a “1” for X% of the paragraphs on the tracker.

I also note, your Honor that in its public statements NOPD has characterized paragraphs *under review* by the Monitor as “compliant.” That is not the case. “Under review” simply means that our team is evaluating the evidence NOPD has submitted to demonstrate compliance. There have been and are instances in which we have found the support insufficient or in some instances inaccurate. For example, NOPD has announced to the public that vehicle pursuits is compliant because it is “under review.” But, as I referenced earlier, our ongoing review includes looking more deeply into concerns about instances of non-compliance with respect to vehicle pursuits.

Similarly, the NOPD has represented Community Engagement as compliant because certain paragraphs are under review. We disagree with that characterization. As we noted, the Department’s Community Engagement report is overdue. Thus, NOPD is not compliant. This is important because we agreed with the NOPD that, to save the City money and as NOPD gains experience conducting audits, we would defer to their report, which we then would test. *A prior community engagement report we reviewed contained a number of significant inaccuracies.* Apart from the report, though, we have found that the NOPD officers are still not engaging in



problem solving activities as required by the Consent Decree (paragraph 225). Thus, to classify paragraphs we are still reviewing as “compliant” misrepresents the true state of compliance.

Ultimately, the NOPD must meet the standards and requirements set forth in the Consent Decree. Whether and when that has been done is a determination for the Court to make. Nevertheless, we certainly agree that NOPD has made great progress and continues to do so. *And, I should add, a return by NOPD to working collaboratively with us almost certainly will lead to more rapid progress in moving toward full and effective compliance.*

Our oft-repeated statement that NOPD has made and continues to make progress often invites the question, “When will NOPD achieve compliance?” We are asked that question frequently. We always have responded, “It is up to the NOPD.” Only NOPD can implement the steps necessary to achieve compliance. Our role is to monitor, support, and report. But, to help forecast when NOPD believes it can achieve compliance, we modified our tracker to include a column in which the NOPD can supply the date by which it expects to achieve compliance, as shown on the accompanying slide.

NOPD has not yet supplied this information, although I encourage it do so. I would hope that the litigation position the City has adopted—that it already has achieved compliance—does not dissuade it from using this tool. Ultimately, all parties and the City are served by working closely to achieve an agreement concerning the City’s level of compliance.

I also note that we further modified the chart to clearly articulate to NOPD the Monitoring Team’s expectations for evidence of compliance, which was another effort on our part to promote clarity and help the parties work seamlessly to achieve compliance. I do want to commend NOPD for working through the tracker. Superintendent Woodfork and Deputy Chief Gernon and their leadership teams, have embraced the process and are working diligently to complete the necessary tasks.

With that, your Honor, I can present a brief forecast on the Monitoring Team’s activities.

Monitoring Team Forecast

We have prepared a report covering our findings from our recent PIB audit, which will be issuing shortly. We also have completed a report of our review of PIB’s handling of the investigation into Officer Jeffrey Vappie, which we also will be issuing shortly. Additionally, we have drafted our first quarter 2003 report of our monitoring activities, which we expect to present at your next hearing. For that reason, in the interest of time, I will save my report on our first quarter activities until then. But, here is what we forecast we will be doing this quarter:

- Issue our 1st Quarter Report
- Complete Sexual Assault & Child Abuse Audit
- Conduct Performance Evaluations Audit



- Conduct Supervision: Insight Audit
- Further auditing of PIB policies and practices
- Hold a public meeting in May

That concludes my update, your Honor. I am happy to address any questions the court might have.