



**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

<b>Problem</b>	<b>Solution</b>	<b>Rationale</b>
<p>Paragraph 392 makes no provision for OIPM Complaint Intake.</p>	<ul style="list-style-type: none"> <li>• Include the OIPM in the consent decree as a complaint intake site.</li> <li>• Include remote intake sites set up in the community by the OIPM.</li> </ul>	<ul style="list-style-type: none"> <li>• The OIPM is an alternative site for complaint intake.</li> <li>• Additionally, the OIPM trains other organizations to be complaint intake sites.</li> <li>• The OIPM creates "safe space" for both citizen and officer to inform the OIPM of problems. It would be difficult for the NOPD to perform this function, as they have a history of complainant retaliation.</li> <li>• The OIPM's complaint intake style is less intimidating than the style used by the NOPD. OIPM has anecdotal reports from citizens, uses more open ended questioning, does not give the impression of bias, and probes deeper in its intake interviews. Additionally, OIPM staff works to identify complaint issues and don't rely on the citizen complainant to point out NOPD administrative rule violations.</li> </ul>
<p>Paragraph 392 also makes provisions to track lawsuits and relies on the City Attorney and the NOPD to perform this task. To this point, the City Attorney has often not cooperated with the OIPM and has often not turned over the information necessary for the OIPM to meet its mandate in tracking police misconduct litigation.</p>	<ul style="list-style-type: none"> <li>• Return the duty to track law suits to the OIPM and require City attorney cooperation.</li> <li>• Require PIB to open a complaint investigation anytime a suit alleging misconduct is filed against an officer.</li> </ul>	<ul style="list-style-type: none"> <li>• There is also a dearth of requirements in the consent decree regarding law suit data against the NOPD. The OIPM is legally required to track lawsuits but the Consent Decree locks the OIPM out of that process.</li> <li>• The OIPM suggests the Consent Decree include a provision that any lawsuit against the NOPD trigger the initiation of a complaint investigation.</li> </ul>

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<p>Paragraph 384 dictates that PIB should conduct an outreach program on the complaint process.</p> <ul style="list-style-type: none"> <li>• The OIPM already performs this function.</li> <li>• The OIPM curriculum is fairly robust and includes advice to complainants on how to properly form a complaint.</li> <li>• PIB's culture has been consistently perceived as unfriendly to citizen complainants. OIPM is concerned about how well received outreach would be if it was conducted by PIB.</li> </ul>	<p>Defer a PIB outreach program until the PIB staffing review mandated in paragraph 380 has been conducted and a community-friendly NOPD staff person can be identified; require this outreach staff to coordinate with the OIPM outreach staff to conduct joint public education efforts OR eliminate PIB outreach provision</p>	<p>The OIPM's Public Outreach on Complaint Intake better informs the public about how to prepare a complaint that is amenable to investigation. The OIPM informs people of how the PIB processes complaints and helps complainants to be prepared to gather the necessary information as the incident is occurring, so that the complainant will be able to submit a more informed complaint.</p>
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## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

### Critical Incidents

As recently as April this year, the NOPD was involved in two Officer Involved Shootings that sparked further community distrust.

Through the course of the investigations into the two shootings, the OIPM uncovered evidence that NOPD would not have collected without its intervention.

Prior to the OIPM involvement in Critical Incident scenes:

- Crime scenes were not taped off or preserved;
- Evidence was not collected;
- Involved officers were not segregated from each other and were involved in the investigation of their own cases; and
- There was no Force Investigation Team in charge of investigations.

Proposed new paragraph:

“The Office of the Independent Police Monitor shall continue to have access to all Use of Force Incidents and to review Critical Incident/Officer Involved Shooting investigations. The NOPD shall provide the Office of the Independent Monitor with any information or material relevant and necessary to the Office of the Independent Police Monitor’s review of Use of Force Incidents and Critical Incident/Officer Involved Shootings. Both of these types of reviews shall assess the quality, completeness, and findings of the investigations and shall include determinations of whether: the investigations were completed in a timely manner, summarized and transcribed statements accurately match the recorded statements, all available evidence was collected and analyzed, and the investigation was properly adjudicated.”

- Revise Paragraph 108 to require that the new Use of Force Review Board meetings be defined as hearings under city ordinance that the OIPM has the right to attend. Don’t we also want to be part of some board?

The OIPM’s officer-involved-shooting review process is built upon the requirements of other consent decrees and is as robust, if not more robust, than the provisions in the current version of the consent decree. The OIPM is already doing what needs to be done. By requiring in the consent decree that the OIPM receive access to integral information relating to the shooting investigation, the Consent Decree can only make the OIPM more effective.



## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

<p>There are ongoing problems with how the NOPD addresses the concerns of surviving family members of OIS shooting victims.</p> <ul style="list-style-type: none"> <li>• Families complain that the NOPD holds press conferences announcing the shooting before they inform the family of the death of their loved ones;</li> <li>• The NOPD refuses to provide information to family members ;</li> <li>• The NOPD is aggressive towards family members and has even arrested them as they have tried to get information; and</li> <li>• The NOPD treats grieving behavior as threatening and does not seem to understand the grief process.</li> </ul>	<p>Write language into the consent decree that makes the OIPM the official liaison between families and the NOPD.</p>	<ul style="list-style-type: none"> <li>• The OIPM has had to step in several times to assist families through the investigative process.</li> <li>• Several families of civilians killed in OIS cases have written letters of support for the OIPM based on the OIPM's work with them.</li> </ul>
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# OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

Community Involvement & Oversight	
<p>Previous reform efforts, however successful, did not last. Citizen involvement can help make reforms stick.</p>	<p>Revise Community Involvement Provisions to include, at the least, a requirement that the city investigate how they might form a civilian review or oversight body.</p>
<p>Paragraphs 436-438 provide for a Police Community Advisory Board that the OIPM finds inadequate for the following reasons:</p> <ul style="list-style-type: none"> <li>• There is no requirement for racial or economic diversity. The only provision requirement that the board be geographically representative.</li> <li>• There is no requirement that this Board have the power to review policies, access critical information, or make any decisions of their own.</li> <li>• The community specifically asked in their “People’s Consent Decree” and in CUC’s motion to intervene for some form of civilian oversight, be it a complaint review board or a police commission.</li> </ul>	<p>Community members played a key role in highlighting our policing problems in New Orleans and they have the greatest stake in reform efforts.</p> <ul style="list-style-type: none"> <li>• The OIPM not only supports community involvement in the reform of our police department, but – as an agency created because of grassroots community efforts- we know that the community is key to making any reforms in the department stick.</li> </ul>
<p>Community members played a key role in highlighting our policing problems in New Orleans and they have the greatest stake in reform efforts.</p> <ul style="list-style-type: none"> <li>• The OIPM formed a citizen stakeholder group to help develop our Police/Community Mediation Project.</li> <li>• The OIPM is developing a citizen advisory board that will advise OIPM on policy and performance issues in their geographic area and work with the OIPM to develop policies to better serve the community. The OIPM board will seek to represent the city’s racial, economic and geographic diversity. The OIPM will also prioritize youth representation on any board.</li> <li>• The OIPM has an ongoing relationship with the surviving family members of notorious OIS incidents through these relationships, we have convened a group of families who have developed policy recommendations specific to the OIS scenes and investigations.</li> <li>• The OIPM community relations staff was part of the community effort to get an</li> </ul>	<p>Community members played a key role in highlighting our policing problems in New Orleans and they have the greatest stake in reform efforts.</p> <ul style="list-style-type: none"> <li>• The OIPM not only supports community involvement in the reform of our police department, but – as an agency created because of grassroots community efforts- we know that the community is key to making any reforms in the department stick.</li> </ul>

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		<p>OIPM and maintains ties to the advocates, community organizations, victims and complainants who are most directly impacted by NOPD misconduct. These connections allow the OIPM unique intelligence into the issues that occur between the community and the NOPD. They have also allowed the OIPM to get volunteers, donated meeting space and other supportive resources while we wait for the city to adequately fund the OIPM.</p>
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## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

### City of New Orleans v. OIPM & Public Access to Records Act

The Mayor, through the city attorney, has denied the OIPM access to documents required to perform OIPM's statutory functions. The City Attorney has also denied community members, media, and attorneys access to information relating to the NOPD, despite state public records provisions that require compliance

- Provide the same access to the OIPM as the Consent Decree Monitor has in Paragraphs 470-476.
- Write in a requirement that the NOPD and the City Attorney turn over all documents to the OIPM that are required for the OIPM to perform its duties mentioned in this Consent Decree, including the OIPM's MOU with the NOPD and the OIPM statute.
- Write in a requirement that the NOPD and the City Attorney comply with state public records law and provide for a way to track all public records requests regarding the NOPD and their outcomes.
- Require the City Attorney to provide to the Court its legal arguments against public records access, so the Court may determine the legal sufficiency of its arguments.

- Even the DOJ acknowledged, in its response to the OIPM motion for intervention, that local police oversight is essential to lasting change in a police department.
- The people of New Orleans mandated the OIPM be responsible for certain duties and any effort to reform the NOPD should include a requirement that the NOPD comply with the City Ordinance and the local oversight mandate.

## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

<b>Retaliation Prevention</b>	
<p>Civilians have been killed in retaliation for filing complaints in the past and are currently being retaliated against in other ways.</p> <p>Police Officers also fear and experience retaliation.</p> <p>Paragraph 375 specifically provides that officers MUST report observed misconduct internally.</p> <p>Many internal retaliation complaints are lodged against departmental leadership. The requirement of paragraph 375 that PIB track and investigate retaliation cases constitutes a conflict of interest as the officers in PIB would have to investigate those of the same rank or even higher ranking officers who are handpicked by the Superintendent of Police as a part of his command team.</p> <p>The city's grievance process is not trusted by police officers or civilians.</p>	<p>Strengthen paragraph 377 to include:</p> <ul style="list-style-type: none"> <li>• Requirements that the OIPM has free access to any whistle blower and any documents related to the person or the incident;</li> <li>• Requires specially trained investigators of retaliation claims;</li> <li>• Name the OIPM as the primary place for retaliation complaints to be lodged;</li> <li>• Assign the OIPM the duty of recording and tracking retaliation complaints;</li> <li>• Provide for an OIPM/NOPD partnership to develop and implement retaliation complaint investigation protocols that will protect the confidentiality of the person reporting retaliation;</li> <li>• Require that the city maintain strict timelines and penalties for the grievance process; and</li> <li>• Require that a NOPD employee grievance automatically initiate and trigger the complaint investigation process, if misconduct it's alleged.</li> <li>• Require PIB to admonish the officer accused of retaliation that he or she stays away from the complainant.</li> </ul>
	<p>The OIPM is an established safe place for officers and civilians.</p> <p>Turning retaliation over to the NOPD will likely discourage officers from reporting misconduct.</p>

**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

<b>Command Staff Investigations</b>		
<p>There is no provision for OIPM Command Staff administrative investigations.</p>	<p>Include the OIPM in the consent decree as the conflict investigator, so the OIPM will investigate all Command Staff administrative misconduct.</p>	<p>The OIPM is a respected body which the community trusts to conduct objective and thorough investigations.</p>
<p>There is no provision for who will investigate allegations of command staff administrative misconduct.</p>	<ul style="list-style-type: none"> <li>• If the court is not inclined to make the OIPM the sole provider for command staff investigations, include a provision requiring the NOPD to choose from a list of alternative agencies which can conduct command staff administrative investigations.</li> <li>• Require the OIPM to monitor whatever investigation an alternative provider conducts so as to ensure the most effective and thorough investigations.</li> </ul>	<p>The OIPM is the body most familiar with the NOPD administrative regulations.</p>
<p>Where a deputy chief or chief is alleged to have committed administrative misconduct, it is a conflict of interest for PIB to investigate these misconduct cases.</p> <ul style="list-style-type: none"> <li>• Where this has occurred in the past, such as with the Investigation of Deputy Chief Defillo, the NOPD realized the inherent conflict in PIB conducting the investigation, and requested the Louisiana State Police conduct the investigation. The OIPM was allowed into the deliberation process, providing the State Police with many different lines of</li> </ul>	<p>Whenever the court orders to conduct these investigations, there should be clear and consistent requirements set in place.</p>	<p>During the Defillo investigation, the OIPM offered the community a level of consistent objectivity, allowing the community to trust the investigation was properly conducted.</p>

**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

questioning which allowed the State Police to conduct a more thorough investigation. However, the OIPM also notes that the State Police works closely with the NOPD on a number of criminal investigations, which may create a conflict for the Louisiana State Police.



**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

Local Oversight Staffing and Resources	
<p>Despite the City's verbal commitment to the mission and work of the OIPM, there has been no provision in the consent decree for the OIPM to have a strong review role and no resulting resource allocation to the OIPM. The OIPM has been told that the city posed an objection to a stronger role for the OIPM. The OIPM cannot be responsible for its current mission and objectives as set out in its ordinance and its MOU with such severe resource anomaly. The OIPM has had to severely cut back its activities in order to effectively accomplish any of its functions and goals.</p>	<p>The OIPM should report upon Consent Decree matters to the court, provided the City of New Orleans is required to provide the OIPM with the resources necessary to complete these tasks. It is inappropriate for the NOPD to critique itself and certify to a court that it is investigating itself appropriately.</p> <p>The following provision should be added to the consent decree:</p> <p>“In the event that full and effective implementation of this agreement requires services of a monitoring body which is permanently situated in the Parish of Orleans, DOJ, NOPD, and/or the Monitor shall inform the City of the need and its relation to the implementation of the Agreement. This need may be raised in the circumstances where for example around-the clock-on-call monitoring is required, including but not limited to the monitoring of:                      Use of force incidents, NOPD’s emergency management response, complaint interviews, and complaint investigation. The City is responsible for providing necessary financial support and resources for this purpose, and shall allocate additional funds as necessary. If either party disagrees with the need for on-call monitoring</p>
<p>The consent decree requires the City to fully support the NOPD but has no similar provision for the OIPM, instead the City will rely on the consent decree monitor to conduct duties that the OIPM has under ordinance and could be conducting as a part of this consent decree.</p>	<p>Community often asks OIPM staff if the OIPM was created to fail. An investment in local oversight will increase public confidence in the overall reform process.</p> <p>The OIPM is the permanent monitor. It will be the body of government that will have to “continue the care” for the NOPD after the federal monitor leaves town. An agency which is so insufficiently resourced cannot be expected to be able to handle that role any better than it is currently handling its role today.</p> <p>If other consent decrees are any measure, local oversight agencies are usually audited in their functions by a federal monitor.</p>

**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

	<p>assistance requested the Party shall, within 15 days of being warned in writing of the requested on-call assistance, inform the Court, which shall resolve the dispute.</p>	
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**OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS**

**Risk Management System**

<p>Paragraph 326 of the Consent Decree provides that the NOPD will share information about at-risk officers with the DOJ and the Consent Decree Monitor, but does not include the OIPM. This is direct contravention of the NOPD/OIPM MOU (Paragraph 61-62) which requires that “[t]he IPM and the NOPD will work together to jointly establish procedures for the IPM to access the Department’s data/information which is necessary to conduct risk management reviews and pattern analyses pursuant to Paragraph 3 of the Ordinance.”</p>	<ul style="list-style-type: none"> <li>• Require the NOPD to continue to report at-risk officers to the OIPM.</li> <li>• Any new database should be monitored by the OIPM; should include protections against tampering and abuse; and should include full OIPM access and limited NOPD employee access.</li> <li>• Create a risk management committee, with the OIPM as a member, to which at-risk officers are referred, monitored and reported on by supervisors.</li> </ul>	<ul style="list-style-type: none"> <li>• At the request of the OIPM, the early intervention software system currently being used by the NOPD was purchased</li> <li>• The IPM, Susan Hutson, has experience with early intervention systems and risk management systems under the Consent Decree in Los Angeles and recommended NOPD adopt a similar one over a year ago.</li> <li>• It is worthy of note that, even in the middle of the 1990s, Police Chief Richard Pennington built an early warning system that was nationally praised. However, this system fell into disrepair when not monitored by an entity outside of the department.</li> <li>• The OIPM, by law, is responsible for monitoring and for reporting on the Risk Management system.</li> <li>• The NOPD signed a legally binding agreement empowering the OIPM to review their Risk Management System and also agreed to an open flow of information in this system. Further, the agreement specifies that the server for the system will be housed at OIPM offices.</li> </ul>
<p>It also contradicts the OIPM Ordinance, which requires the OIPM to monitor the system for effectiveness</p>	<p>Require the NOPD to provide the OIPM with all information necessary to publish a Risk Management section in its Annual Report. This may be done in lieu of PIB publishing a redundant report.</p>	

## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

Constitutional Policing Review (Stop and Frisk)		
<p>Paragraph 150 of the Consent Decree requires supervisors to review investigatory stops, detentions and searches within 12 hours of receiving a report.</p>	<ul style="list-style-type: none"> <li>• Empower the OIPM with the duty of conducting a detailed pattern analysis for at-risk employees and conducting a profile of each employee.</li> <li>• When conducted properly, such an analysis will reveal any pattern and potential issues with respect to the subject employee and suggest the proper approach to correct the situation.</li> </ul>	<ul style="list-style-type: none"> <li>• The OIPM is already reviewing NOPD stops and frisks.</li> <li>• Stop and Frisk, by DOJ's own admission, is a practice that can be abused by officers.</li> <li>• Independent review is necessary to ensure that this practice isn't being abused by officers.</li> </ul>
<p>The public cannot wait for the annual reviews contemplated in Paragraph 152, because this type of action affects them every day.</p>	<p>Either the OIPM or the Consent Decree Monitor needs to conduct regular monthly reviews of supervisory actions to verify that officers are being held accountable.</p>	<p>Constitutional Policing is a great concern of the general public.</p>
Search & Arrest Warrant Review		
<p>Paragraphs 136 and 146 provide very little guidance to the NOPD and its supervisors about the review measures they need to put in place prior to approving warrants.</p>	<p>Revise paragraphs 136 and 146 to provide for a more robust warrants review by supervisors and allow the OIPM to annually audit NOPD supervisors' documentation. Consider requiring the City to fund additional District Attorney positions to review affidavits.</p>	<p>There is a problem with warrant applications in New Orleans. The OIPM has found materially untrue statements in warrant applications as recently as this year. The OIPM is qualified and is already doing an appropriate review of such practices.</p>

## OIPM CONSENT DECREE FAIRNESS HEARING COMMENTS

### Community Based Restorative Justice Project

<ul style="list-style-type: none"> <li>• Paragraph 439 expressly provides that the NOPD must fund and participate in a community-based restorative justice project.</li> <li>• The aim of this project must be to remedy mistrust between the NOPD and the broader New Orleans community and create an environment for successful problem-solving partnerships.</li> </ul>	<p>Paragraph 439 should include language that requires the NOPD to adopt the Community/Police Mediation Program as its community-based restorative justice project.</p>	<p>Require the NOPD to make the Community/Police Mediation Program its community-based restorative justice project and to fully cooperate with the OIPM in the administration of the mediation program will save both time and money. More specifically, this amendment to the consent decree would mean that:</p> <ul style="list-style-type: none"> <li>• The NOPD's community-based restorative justice program would be fully operational in months, rather than years, which it would take if the NOPD were allowed to create an entirely new program; and</li> <li>• The NOPD would only be required to fund a single community-based restorative justice program, i.e., the Community/Police Mediation Program, instead of two such programs, i.e., the mediation program, which is required by the OIPM's statute and a second such program, required by the consent decree.</li> </ul>
<p>The OIPM statute also includes a provision that specifically requires the OIPM and the NOPD to create a community-based restorative justice project.</p>	<p>Furthermore, the NOPD should be required to completely fund and cooperate with the OIPM in its administration of the newly established mediation program.</p>	
<p>Accordingly, over the past year, the OIPM and the NOPD have been working together to create such a community-based restorative justice project. The result of this collaboration between the OIPM and the NOPD has been the creation of the Community/Police Mediation Program.</p>		
<p>The NOPD has been involved in the creation of this community-based restorative justice program, i.e., the Community/Police Mediation Program, which is consistent with the OIPM statute, however, the NOPD has not yet agreed to fund this mediation program.</p>		



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* CIVIL ACTION  
\*  
versus \* NO. 12-1924  
\*  
THE CITY OF NEW ORLEANS \* SECTION "E"  
\*  
\* MAGISTRATE DIVISION "2"  
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EXHIBIT LIST OF CRESCENT CITY LODGE NO. 2, FRATERNAL ORDER OF POLICE, INCORPORATED, AND WALTER POWERS, JR.

Crescent City Lodge No. 2, Fraternal Order of Police, Incorporated and Walter Powers,

Jr. will introduce the following exhibits at the Fairness Hearing:

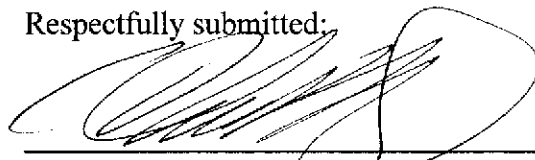
- 1. New Orleans Police Department Operations Manual, Chapter 1.7 "Oleoresin Capsicum Spray;
- 1.1 New Orleans Police Department Operations Manual, Chapter 1.7.1 "Electronic Control Weapon (ECW);
- 1.2 New Orleans Police Department Operations Manual, Chapter 1.13 "Policy on the Use of Force;
- 2. New Orleans Police Department Operations Manual, Chapter 1.2 "Use of Force";
- 3. Excerpt from Record Document 3-1, United States of America v. City of Seattle; United States District Court, Western District of Washington at Seattle, Civil Action No. 12-CV-1282;
- 4. *Perceptual and Memory Distortion During Officer-Involved Shootings*, FBI Law Enforcement Bulletin, Vol. 71, No. 10 (October 2002);
- 5. *Working Towards the Truth in Officer-Involved Shootings*, FBI Law Enforcement

*admitted*

Admitted

- Bulletin, Vol. 81, No. 5 (May 2012);
6. *Officer-Involved Shooting Guidelines*, International Association of Chiefs of Police Psychological Services Section (2009);
  7. Memorandum from Alexandra Norton to Andrew Kopplin, Judy Reese-Morse, Michelle Thomas, Emily Arata, Richard Cortizas, Allen Square and Ryan Berni re Civil Service and Human Resources Transformation Initiative, August 15, 2012;
  8. City of New Orleans Civil Service and HR Transformation Initiative Preliminary Report, August 21, 2012;
  9. City of New Orleans Civil Service and Human Resources Transformation Initiative Preliminary Report of Recommendations, August 22, 2012;
  10. Civil Service Reform: A Customer Service Model, September 6, 2012; and,
  11. Civil Service Reform: A Customer Service Model, June 29, 2012.

Respectfully submitted:



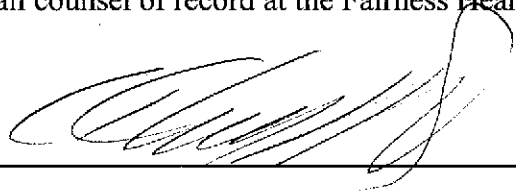
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**INCORPORATED and WALTER POWERS,**  
**JR.**



**CERTIFICATE OF SERVICE**

I do hereby certify that on this 21<sup>st</sup> day of September, 2012 a copy of the above and foregoing Exhibit List was hand delivered to all counsel of record at the Fairness Hearing.



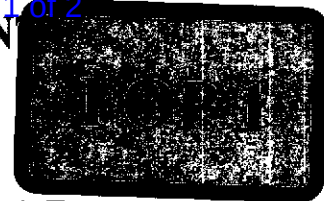
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# NEW ORLEANS POLICE DEPARTMENT

## OPERATIONS MANUAL



### CHAPTER: 1.7

## TITLE: OLEORESIN CAPSICUM SPRAY

**EFFECTIVE: May 23, 1999**

**REVISED: 02/02/2003; 11/23/2003; 11/9/2011**

**Page 1 of 2**

### PURPOSE

To establish the Department's guidelines for the authorized carrying and certification of Oleoresin Capsicum (O.C.) spray.

### GENERAL

1. O.C. Spray is an intermediate non-lethal use of force alternative.
2. The following Oleoresin Capsicum Sprays are authorized for use:
  - Defense Technology 360 1.3% Capsaicinoid content stream pattern #56833
  - Defense Technology 1.3% Capsaicinoid content stream pattern #43345
  - Sabre Red Crossfire 1.33% Capsaicinoid content stream pattern #52CFT10
  - Sabre Red 1.33% Capsaicinoid content stream pattern #52H2O10
3. Each commissioned employee shall use a plain, black, leather holder with flap and nickel snap.

### INSTRUCTIONS

4. While on duty or working a paid detail, all uniformed, commissioned employees, who have been certified, are required to carry the Department authorized O.C. spray and holder on their duty belt. The wearing of the authorized spray by officers assigned to administrative duties is optional.
5. Carrying the Electronic Control Device (E.C.D.) does not eliminate the requirement of carrying O.C. Spray. While the E.C.D. is at the same Use of Force level as O.C. Spray, certain factors may dictate the use of O.C. spray instead of using an E.C.D.
6. In all instances where O.C. spray is used, the suspect shall be transported to a medical facility for treatment as required by current regulation covering Use of Force. In all instances of O.C. spray use, a Resisting Arrest report shall be completed.
7. In instances of O.C. spray use, an emergency medical services unit will be summoned to the scene. The medical technician shall employ current post exposure cleansing procedures, recognized by the manufacturer and current medical practice, in cleansing the affected area. Officers shall utilize the resources on hand, while awaiting arrival of a medical technician, to assist the incapacitated individual in cleansing the affected area in accordance with the manufacturer's recommendations.

8. As soon as practical after O.C. spray use, officers shall attempt to ascertain from the individual who was sprayed, if any medical condition exists (such as asthma or other respiratory conditions) which might be exacerbated by O.C. spray use. If any such conditions are observed or suspected, or if the individual affected exhibits a difficulty in breathing, the affected individual shall be immediately transported to a medical facility for treatment.
9. All commissioned employees shall be required to participate in an O.C. spray certification course conducted by the Education and Training Division prior to being authorized to carry O.C. Spray. Any employee hired prior to the effective date of this regulation, who has been exposed to CS, CN, tear gas, etc., has the option of being sprayed in the face or one of the following alternatives.
  - Administering the agent by applying an amount under the eyes through wiping.
  - Exposure to the agent from within a container (i.e. inhaling from within a bag, can, bucket, etc.).
  - Other methods as deemed appropriate by the Education and Training Division where the agent is applied without the use of propellants.
10. Employees hired after the effective date of this regulation shall be exposed to O.C. spray as per current educational guidelines developed by the Education and Training Division.
11. Following initial certification, commissioned employees shall undergo re-qualification every three years. Certification will be conducted by the Education and Training Division during the employee's annual In-Service training. Employees will not have to be sprayed after initial qualification.
12. Inspection of the O.C. canister and leather holder shall be conducted by certified instructors assigned to the Education and Training Division during the annual certification exercise. Instructors will recommend that any O.C. spray canister or leather holder found to be unsafe, not functioning properly, or past the expiration date should be replaced by the officer.
13. Nothing in this regulation shall prohibit the use of other non-lethal chemical agents currently authorized for use by specialized units within the Department.



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.7.1

### TITLE: ELECTRONIC CONTROL WEAPON (ECW)

**EFFECTIVE:** October 3, 2004

**REVISED** 12/18/08; 09/27/2009; 11/09/2009; 04/03/2012

Page 1 of 14

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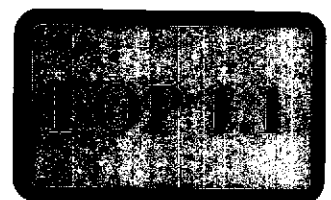
#### Purpose

The purpose of this regulation is to establish the Department's guidelines for the authorized carrying and certification of Electronic Control Weapon (ECW); including the retrieval and storage of video/audio downloaded from an ECW; define circumstances under which an ECW may be intentionally discharged; and to establish systems to record all instances where an ECW has been used, either intentionally or accidentally. The proper use of ECW force technology can reduce the need for an officer to apply a higher level of force, which might increase suspect injury or death.

Any use of an ECW contrary to the direction of this policy will result in the revocation of the officer's right to carry such a device and subject the officer to additional disciplinary action.

#### Definitions

- **Active Aggression** - A threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.
- **Active Resistance** - A subject's physical actions to defeat an officer's attempt at control and to avoid being taken into custody. Verbal statements alone do not constitute active resistance.
- **Application** - The actual contact and delivery of electrical impulse to the subject via probe discharge or drive stun.
- **Arcing** - Pulling the trigger to activate an ECW without discharging the probes. This may be done as a warning to the subject or to test the ECW prior to deployment (sometimes referred to as a spark test).
- **Cartridge** - A replaceable vessel that generally contains compressed gas, probes, connecting wires, and confetti tags.



## Chapter 1.7.1

Page 2 of 14

- **Complete the Circuit** - When there is not adequate spread between probes attached to a subject, or one probe misses the subject or dislodges, the ECW may be used in drive stun mode to incapacitate the subject. This allows for the electrical pulse to travel between the attached probe(s) and the point where the front of the ECW makes contact with the subject. This tactic is sometimes referred to as a three-point contact.
- **Confetti Tags** - Small identifying cards expelled from an ECW cartridge when probes are discharged. Each confetti tag contains a serial number unique to the specific cartridge used. Confetti tags are sometimes referred to as Anti-Felon Identification (AFID) tags.
- **Cycle** - The period during which electrical impulses are emitted from the ECW following activation. In most models, a standard cycle is 5 seconds for each activation. The duration of a cycle may be shortened by turning the ECW off, but may be extended in certain models by continuing to pull the trigger.
- **Discharge** - Pulling the trigger of an ECW resulting in probe release and/or drive stun.
- **Display** - Drawing and exhibiting the ECW as part of a warning tactic, typically accompanied by appropriate verbalization.
- **Drive Stun** - Drive stun mode is possible whether or not the cartridge has been expended or removed from the ECW. (If the cartridge is not removed, the probes will enter the body.) This action requires pulling the trigger and placing the ECW in direct contact with the subject, causing the electric energy to enter the subject directly. Drive stun is frequently used as a non-incapacitating pain compliance technique. It may also be used to incapacitate the subject where at least one probe is attached to the subject's body and the ECW contact will complete the circuit.
- **Duration** - The aggregate time that the ECW is activated. It is important to note that the duration of activation may differ from the duration of time that a subject is subjected to the electrical impulse from the ECW.
- **Electronic Control Weapon (ECW)** - A weapon designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses. Originally called Conducted Energy Device (CED).
- **Exigent Circumstances** - Circumstances that would cause a reasonable person to believe that prompt and unusual action is necessary to prevent physical injury to self or others.
- **Firing** - Discharging ECW probes at an intended target.
- **Laser Painting** - The act of unholstering and pointing an ECW at a subject and activating the ECW's laser dot to show that the weapon is targeted at the subject.

**Chapter 1.7.1**

**Page 3 of 14**

- **Less-Lethal Weapon** - Any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional police lethal weapon (e.g., firearm).
- **Passive Resistance** - Physical actions that do not prevent the officer's attempt to control, for example, a person who remains in a limp-prone position, passive demonstrators, etc.
- **Positional Asphyxia** - Death that occurs when a subject's body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the subject's head obstructs the airway.
- **Probe Discharge** - Pulling the trigger to release the probes from the cartridge to make contact with the subject and achieve neuromuscular incapacitation.
- **Probes** - Projectiles with wires contained in an ECW cartridge. When the ECW is discharged, probes are expelled from the ECW and penetrate the subject's clothing and/or skin, allowing application of the electric impulse.
- **Sensitive Areas** - An area of the subject's body that may cause more serious injury to the subject if struck with an ECW probe (e.g., head, neck, genitalia)
- **Serious Bodily Injury** - An injury to a person that, either at the time of the actual injury or at a later time, involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body, as well as any breaks, fractures, or burns of the third degree.

**General**

An 'Electronic Control Weapon' (ECW) is a conducted energy device which functions as follows:

*X2, X3, or X26 handheld model ECW's*

- Uses compressed nitrogen to project two probes a maximum of 35 ft depending on the cartridge used. An electrical signal is then sent to the probes, via small wires, which disrupts the body's ability to communicate messages from the brain to the muscles and causes motor skill dysfunction.
- Can be used in a drive stun mode when brought into immediate contact with a person's body.

*X12/XREP shotgun model ECW*

- The Taser XL12 LLS Mossberg Shotgun is a less-lethal alternative for tactical use. It uses a twelve gauge XREP Electronic Control Weapon round. It has a range of fifteen to one hundred feet.

Chapter 1.7.1

Page 4 of 14

1. Anytime an E.C.W. is confiscated as evidence or as part of an internal investigation, the battery source shall only be removed by authorized Academy personnel.

**Scope of Use**

2. The ECW is an alternative use of force device considered to be a less-lethal weapon, which is listed as an intermediate device in the force continuum (at the same level as OC Spray).
3. An ECW may be used to control a violent or potentially violent suspect when lethal force does not reasonably appear to be justifiable and/or necessary; and attempts to subdue the suspect by other conventional tactics, such as verbal commands and/or physical presence, have been or will likely be ineffective in the situation at hand; or there is a reasonable expectation that it will be unsafe for officers to approach the suspect within contact range due to active aggression or active resistance by the suspect. The decision to utilize an ECW must be made dependent on the totality of the circumstances or any exigent circumstances surrounding the incident, including the actions of the subject and/or the imminent threat that the officer reasonably believes he/she is faced with.
4. ECW's shall only be used in accordance with NOPD training as taught by a certified instructor and in accordance with NOPD Policy and Local, State, and Federal law.
5. The ECW is **not intended to be used as a substitute weapon in deadly force situations.** The ECW should not be used without a firearm back-up in those situations where there is a substantial threat towards the officer or others present.
6. The ECW shall **never** be used in a punitive or reckless manner. It is to be used as a way of averting a potentially injurious or dangerous situation.
7. The ECW shall **not** be used in an indiscriminate manner when working parade assignment or other situation involving a large crowd.
8. ECW's shall **not** be used in drive stun mode as a pain compliance technique. ECW's should be used in drive stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between an officer and the subject so that officer can consider another force option.
9. ECW's shall **not** be used on handcuffed subjects, unless doing so is absolutely necessary to prevent them from causing imminent serious bodily injury to themselves or others and if all lesser attempts of control have been ineffective.



10. The ECW shall **not** be generally used against pregnant woman, elderly persons, young children, visibly frail persons or in circumstances where the ECW would probably necessitate a water rescue (i.e., person on a boat in open water, at the edge of a swimming pool, etc.). Personnel should evaluate whether the use of the ECW is reasonable, based upon all circumstances, including subject's age and physical condition. In some cases, other control techniques may be more appropriate as determined by the subject's threat level to themselves or others. Nevertheless, each situation is unique; therefore, the officer's actions should be dictated by the circumstances of each situation and the training he or she has received prior to being authorized to carry and use the ECW. Officers shall be required to justify each application of an ECW.

#### **Deployment of an ECW on Target Person**

11. In conformity with all other departmental guidelines set forth in this chapter, deployment of an ECW may be permitted, but is not limited to, situations where other means of controlling the subject are unreasonable or have been ineffective AND the officer reasonably believes that use of an ECW is necessary to protect the officer(s), others, or the target himself from unlawful use of physical force; or effect the arrest or control of a subject resisting arrest.
12. The ECW has an effective probe deployment range of up to thirty-five (35) feet depending on the cartridge. A range of less than three (3) feet may not provide adequate probe spread to allow the unit to function to its full effectiveness. **Nevertheless, discharging the ECW at a range closer than three (3) feet to the target does not inherently present a greater risk of injury to the subject resulting from probe impact.**
13. The officer shall ensure the ECW is held in a manner not to obstruct the ECW video camera lens (avoid a two-handed grip of the device; ensure lens is not covered by fingers or hands). The officer should attempt to utilize the ECW video camera to record as much of an incident as reasonably possible by keeping the ECW pointed at the suspect.
14. The ECW shall **only** be worn on the **opposite** side of the duty firearm (non-dominant side) in a cross draw mounting on the duty belt.
15. Prior to the deployment of the ECW, the deploying officer must:
- Visually and physically confirm the tool selected is in fact an ECW and not a firearm;
  - Notify any on-scene assisting officer that they intend to deploy an ECW, if possible and feasible; and
  - Unless doing so would place any person at risk, officers shall issue a verbal warning to the subject that the ECW will be used prior to deployment. Warnings may be in the form of verbalization, arcing, laser painting or a combination of these tactics. Such a warning may induce the suspect to comply and surrender without having to deploy the ECW.

**Targeting a Person with an ECW :**

16. Where it is necessary, pursuant to this chapter, to use an ECW on a person, the deploying officer shall adhere to the following guidelines:
- Anatomical Instructions:
  - The preferred target areas recommended when firing the ECW are the lower chest/abdomen area if facing the front of the target or the center mass of the back if facing the back of the target, as clothing tends to be tighter on these parts of the body. Nonetheless, an officer is permitted to target the center mass of the back or the central area of the chest if he/she is legally justified in using force.
  - Where a target-subject is wearing heavy or loose clothing on the upper body, the officer should consider targeting the legs if possible.
  - Under no circumstances should an officer intentionally target sensitive areas, such as the head, face, neck, or groin, unless it can be justified as the appropriate level of force based on the totality of circumstances or exigent circumstances.

**Precautions**

17. ECW 's shall not be used where such deployment may cause serious injury or death from situational hazards, including drowning, losing control of a moving vehicle, or becoming ignited from the presence of a potentially explosive or flammable material or substance, except where lethal force would be permitted.
18. Proper consideration and care should be taken when deploying the ECW on subjects who are in an elevated position or in other circumstances where a fall may cause substantial injury or death.
19. After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers are to be cognizant of the risks of prolonged or repeated ECW exposure, including that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Officers shall independently justify each cycle used against a subject in written Use of Force Report.
20. Personnel should not intentionally activate more than one ECW at a time against a subject.
21. Personnel should be cognizant of the risk of positional asphyxia following an ECW application and avoid using a restraint technique or position that would impair a subject's respiration. Once controlled, target subject should be monitored closely for any signs of distress.

**Post-Application Responsibilities**

22. Following the application of an ECW, immediate action should be taken to secure the suspect, provide necessary medical care for any injuries sustained, and protect the scene.

Chapter 1.7.1

Page 7 of 14

23. Once the subject is restrained or if he/she has complied, the ECW should only be reactivated if the subject poses a threat or attempts escape.
24. An Officer shall be responsible for monitoring any subject who has received ECW application while in NOPD custody.
25. An ECW shall **not** be left unattended except in exigent circumstances where the officer is forced to act alone in taking custody of an immediate threat.
26. As soon as practical, a Communications Dispatcher shall be notified of the ECW discharge and the officer shall request a ranking supervisor respond to the scene.
27. Whenever an ECW is deployed, either through actual discharge or by employing arcing/laser targeting methods to induce the suspect to comply and surrender, a ranking supervisor shall respond to scene to for investigation purposes and completion of a Use of Force Report.
28. Officers shall refrain from discussing the incident until the arrival of an on-scene supervisor. The involved officer will brief the on-scene supervisor of the circumstances surrounding the incident and what actions have taken place.
29. Medical personnel should be summoned to the scene if there are visible signs of injuries to a subject or complaint of injury. Medical care shall not be refused for anyone who requests it.
30. **All subjects who have been exposed to an ECW discharge (probe or drive stun modes) are required to be treated at a hospital.**
31. Removal of Probes:
  - Hospital medical personnel will remove any probes located in **sensitive areas** such as the **head, face, neck, breast, or groin**.
  - Officers who are trained may remove probes in other areas. Officers shall ensure first aid is available if necessary following the removal of the probes. Officers should inspect the probes after removal to ensure the entire probe barb has been removed. In the event a probe or probe barb has broken off and is still imbedded in a subject's skin, the subject must be provided the appropriate medical attention at the appropriate medical facility to facilitate the removal of the object.
  - Probes that have been removed from the skin will be treated as biohazard sharps. They should be placed point down into the expended cartridge bores and secured with tape before being given to medical personnel for disposal in a biohazard sharps box.
  - The XREP shotgun probe removal shall be performed by **hospital staff only** at the hospital.
32. Involved personnel shall attempt to locate and identify and witnesses to the incident.
33. A subject controlled by the use of an ECW shall be transported according to departmental policy.
34. Central Lock-Up personnel shall be informed that the subject was controlled by use of an ECW .

**Chapter 1.7.1****Page 8 of 14**

35. In the event of serious bodily injury or death involving a subject who has been exposed to an ECW discharge, the on-scene immediate supervisor shall notify PIB and request Crime Lab response for the processing and the collection of evidence. Photographs shall be taken of the impact sites of the ECW probes. All ECW probes, confetti tags (also referred to as Anti-Felon Identification (AFID) tags), cartridges, wires, and photographs shall be placed into evidence. For the purposes of this procedure, serious bodily injury is defined as an injury to a person that, either at the time of the actual injury or at a later time, involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body, as well as any breaks, fractures, or burns of the third degree.

**Use of an ECW on Dangerous Animals**

36. An ECW may be deployed on a dangerous animal where:
- Other conventional means to control the animal have been exhausted, may be unreasonable, or unavailable; AND
  - The officer reasonably believes that use of an ECW is necessary where a dangerous animal either:
    - Is threatening or attacking a citizen, an officer, or another animal; or
    - Has threatened or attacked a citizen, an officer, another animal, or has caused a continuing public nuisance and needs to be controlled for reason of public peace and safety, preservation of property, or other legitimate purpose; and the animal poses an active threat to officers in their efforts to perform their duty.
  - Targeting a dangerous animal with an ECW:
    - Officers should target the center mass of the animal. Care should be taken to ensure the head and other sensitive areas on the animal are not targeted, if possible. It is understood that deployment against vicious animals may be very dynamic in nature and the probes may impact unintentional areas. Officers should exercise due care when removing probes from the animal.
  - It is generally understood that as long as the officer acted appropriately, the owner of the animal will be responsible for any medical attention needed by the animal.
  - Immediately after the deployment of an ECW on a dangerous animal temporarily disables the animal, officers should be prepared to act quickly with control devices or restraints, if available, as animals have shown the ability to quickly recover from the effects of an temporarily disables due to difference in their nervous system. As such, conventional means of controlling the animal (e.g., control sticks, collars, cages) should be on hand at the scene, if available, prior to the use of the ECW .
  - Although the full effect of the use of ECW 's on animals is not yet proven, field applications have shown positive results, and the ECW has proven to be an effective tool against dangerous animals. Furthermore, using the ECW against dangerous animals may reduce the need for greater, more injurious force against such animals. Thus, the use of an ECW on an animal should be based on the intent to provide a safer, more humane, and less traumatic conclusion to the incident.

**ECW Issuing Procedure**

37. Department personnel shall only carry and use ECW 's approved by the Superintendent of Police. Members of the department may have an ECW assigned to them upon completion of the ECW training program as authorized the Superintendent. Officers may carry their personally owned ECW , which must be the device currently approved by the Superintendent of Police, with approval from the Training Academy Commander. They must supply the device for inspection and supply the serial number to the Academy for record keeping purposes.
38. Members may only use Department issued ECW cartridges. A record of cartridge serial numbers provided with each device shall be maintained in a database accessible to both the Training Academy and the Public Integrity Bureau. All replacement cartridges will be issued through the Academy. Routine audits of the ECW database shall be conducted by authorized Academy and Public Integrity Bureau personnel.
39. A record shall be kept of all ECW 's, their serial numbers, and to which officer or division they have been issued. The Training Academy will issue all department owned ECW units. In the event that an ECW is returned for repairs or no longer remains the property of the New Orleans Police Department, the use history of that particular ECW will be downloaded using the data port access and appropriate software. The use history will be maintained for a period of three years from the time the ECW was taken out of service or until the completed adjudication or any pending criminal or civil litigation.
40. All personnel carrying an X2, X3, or X26 ECW shall check the CID (Central Information Display) prior to each tour of duty to ensure that the power supply registers higher than 50%. Power supply packs must be recharged prior to dropping below 50%. If the device is utilizing a non-rechargeable power supply pack, it must be replaced when the power supply registers 20%.
41. ECW 's, ECW Cameras, power supply packs, cartridges and replacement needs shall be handled by the Training Academy.
42. Use histories shall be downloaded on each ECW unit once a year. Any indication of misuse of the device may result in disciplinary action or revocation of the officer's certification. The Office of Compliance and the Training Academy shall conduct this process, either at annual recertification or upon demand.
43. Officers shall only use ECW 's and cartridges, which have been assigned to him/her. If exigent circumstances exist where the ECW /cartridge is used by someone other than the assigned officer the reporting requirements set forth in this chapter must still be completed by the assigned officer and the supervisor on the scene.

**Training and Certification**

44. All members who carry and/or use an ECW must first successfully complete the N.O.P.D. eight (8) hour ECW certification program, to include written and practical skills. Each member seeking initial certification will be required to experience a five second exposure to the ECW in order to carry the device. Certifications should consist of physical competency; weapon retention; NOPD policy, including any policy changes; technology changes; and scenario-based training.
45. After the initial certification, all members must attend a mandatory eight (8) hour recertification program that will be completed annually by the Training Academy personnel.
46. All members shall recertify annually during their birth month.

**Reporting Procedures - ECW Discharge/Use Report (NOPD Form #213)****Officer Responsibilities:**

47. **Application/Discharge:** After an ECW is discharged for any reason other than spark testing or training (i.e., drive stun or probe deployment), the officer who deployed the ECW shall:
  - Complete a ECW Discharge/Use Report;
  - Have the on-scene supervisor sign the ECW Discharge/Use Report; and
  - Deliver the following to the Training Academy Monday through Friday, between the hours of 8:00 a.m. and 3:35 p.m.; and within seventy-two (72) hours of the incident:
    - ECW
    - Spent cartridge
    - Completed ECW Discharge/Use Report
48. **Arcing/Laser Targeting:** Documentation of ECW use via an ECW Discharge/Use Report shall **also** be required whenever, **in addition to** a verbal warning of intent to use an ECW, the device is displayed out of the holster in the two following methods:
  - Arching Technique (Pulling the trigger to activate an ECW without discharging probe)
  - Laser Painting Technique (Unholstering and pointing an ECW at a subject and activating the ECW's laser dot to show weapon is pointed at suspect)
  - In these instances the officer shall:
    - Complete an ECW Discharge/Use Report;
    - Have the on-scene supervisor sign the ECW Discharge/Use Report; and
    - Deliver the following to the Training Academy Monday through Friday, between the hours of 8:00 a.m.- 3:35 p.m.; and within seventy-two (72) hours of the incident:
      - ECW
      - Completed ECW Discharge/Use Report

## Chapter 1.7.1

Page 11 of 14

49. **Accidental Discharge:** Any accidental discharge involving an ECW shall require the officer to:
- Complete a ECW Discharge/Use Report;
  - Have the immediate supervisor sign the ECW Discharge/Use Report;
  - Complete a Form 105 via their chain of command to the Commander of the Training Academy describing the circumstances of the discharge; and
  - Deliver the following to the Training Academy Monday through Friday, between the hours of 8:00 a.m. - 3:35 p.m.; within seventy-two (72) hours of the incident:
    - ECW
    - Spent Cartridge
    - Completed ECW Discharge/Use Report
    - Provide a Form 105 on the circumstances surrounding the accidental discharge
50. The Training Academy personnel will review the ECW Discharge/Use Report and complete an 'ECW ' Discharge Interview Form ([www.nopd.org](http://www.nopd.org) under the "Forms" tab) The Academy staff will then download the audio/video and issue another cartridge if needed. If the Training Academy is not open within the seventy-two (72) hour period, the officer is responsible for bringing the above listed items to the Training Academy the morning of the first business day.

**Supervisor Responsibilities**

51. In addition to Use of Force reporting requirements previously described in 'Paragraph 26' of this Chapter, the on-scene reporting supervisor shall:
- Make sure proper care is given to the injured officers and/or citizens.
  - Make sure the proper notifications of the Department Command Staff are made as soon as possible by notifying the Command Desk of the ECW deployment.
  - Make sure all responsibilities of the officer have been carried out regarding care for the injured, apprehension of the suspects, and protection of the scene.
  - Notify both the Public Integrity Bureau and District/Division Commander if any serious bodily injury has resulted due to the use-of-force involving the ECW .
  - Ensure ECW Discharge/Use Report and all other written reports associated with the incident are completed and delivered to the Academy by the officer according to established protocol.

**Training Academy Responsibilities**

52. The Training Academy shall be responsible for identifying training issues and conduct all follow-up training. If an officer has more than three accidental discharges in one year, the officer will lose the privilege of carrying an ECW



**Chapter 1.7.1**

**Page 12 of 14**

53. The Training Academy will be responsible for notifying the Public Integrity Bureau of all accidental ECW discharges.

**Discharges Outside Orleans Parish**

54. **Member's Responsibilities:** A member involved in a ECW discharge which occurs outside of Orleans Parish shall:

• **Accidental / Non-Contact Discharge**

- As soon as practical, the member shall notify their immediate supervisor or an on-duty supervisor from within their chain of command;
- Complete a ECW Discharge/Use Report;
- Complete a 105 to the Commander of the Training Academy describing the circumstances of the discharge; and
- Follow the "Accidental Discharge" procedure listed in this Chapter.

• **Intentional or Accidental / Contact Discharge**

- Immediately notify the Police/Sheriff's Department within jurisdiction where deployment occurred and have a police report completed;
- Obtain the police report item number;
- Contact immediate NOPD supervisor or an on-duty supervisor from within chain of command; and
- Follow appropriate reporting procedures listed in this Chapter.

55. **Supervisor's Responsibilities:** Upon notification of an accidental or intentional discharge outside the Parish of Orleans, the supervisor shall:

- Notify the Command Desk of the ECW Discharge;
- Ensure the officer completes an ECW Discharge/Use Report and sign the report;
- Ensure the officer completes a 105 to the Commander of the Training Academy describing the circumstances of the discharge.
- Ensure required documentation is delivered by the officer to the Training Academy within seventy-two (72) hours, or no later than close of business the first business day should the incident occur on a weekend or holiday.

**Spark Testing**

56. Each ECW device **SHALL** be Spark Tested prior to the officer beginning his/her tour of duty in the following manner in a safe location out of public view:
- Remove all cartridges
  - Point in a safe direction
  - Disengage the safety
  - Observe battery power percentage
  - Ensure the low intensity light (LIL) and laser beam is activated
  - Pull the trigger, and release and allow the ECW to discharge for the five second cycle
  - Observe a visible spark between the electrodes during the cycle
  - Reengage the safety
  - Re-insert the cartridges for field use

**Malfunctions**

57. If the device malfunctions during normal business hours for the Training Academy, the officer should immediately take the ECW to the Training Academy and turn it over to the Training Academy personnel. If the device malfunctions when the Training Academy is closed, the officer is to remove the device and holster from his belt and not carry a malfunctioning device while working. The officer shall bring the device to the Training Academy on the first day the Training Academy is open after the malfunction is discovered during the Training Academy's hours of operation. If the officer is on extended leave prior to the next open day of the Training Academy, he/she shall make arrangements with their Supervisor to leave the device with the Supervisor, who shall make arrangements to have the device delivered to the Training Academy on the next business day the Training Academy is open.

**Public Integrity Bureau Responsibilities**

58. An investigator from the Public Integrity Bureau shall perform an administrative review of **all** ECW uses. After this review is conducted, a determination shall be made as to whether any violation of departmental policy or procedure has occurred, and the investigator shall determine whether an administrative or internal disciplinary investigation (DI-1; DI-2; DI-3) shall be conducted.
59. If an investigator from the Public Integrity Bureau shall secure an ECW from an officer as part of his/her investigation, the Commander of the Public Integrity Bureau or his/her designee shall send a Form 105 to the Commander of the Training Academy listing the involved officer's name, the ECW serial number, the ECW Video Camera serial number and any ECW Cartridge serial numbers. Once it is determined that the ECW is no longer needed for the investigation or will not be needed as evidence it shall be returned to the Training Academy.

60. PIB shall respond to all ECW deployment scenes involving serious bodily injury and handle in accordance with established 'Force Investigation Team' protocols.
61. PIB shall include the number of ECW 's in operation and the number of ECW uses as elements of the Early Warning System (EWS). Analysis of this data shall include a determination of whether ECW 's result in an increase in the use of force and whether officer and subject injuries are affected by the rate of ECW use. In addition, the analysis shall include a breakdown of deployments involving the use of arcing and/or laser painting techniques to measure the prevention/deterrence effectiveness associated with the use of ECW's. ECW data and analysis shall be included in PIB's Use of Force Annual Report.

**Integrity Control Officer Responsibilities**

62. District/Division Integrity Control Officers shall develop and implement integrity safeguards on the use of ECW 's to ensure compliance with NOPD policy, including conducting random and directed audits of ECW deployment data. The audits should compare the downloaded data to the supervisor's report on use of force. Discrepancies within the audit shall be appropriately investigated and documented.



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.13

### TITLE: POLICY ON THE USE OF FORCE

**EFFECTIVE: June 7, 1992**

**REVISED: 09/13/1998**

**Page 1 of 1**

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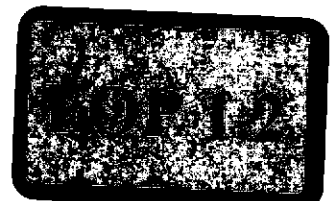
The New Orleans Police Department recognizes and respects the value and integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interest is required. Police Officers shall use only that force reasonably necessary to effectively bring an incident under control, while protecting the lives of citizens and officers.

It is in the public interest that every police officer of this department be guided by a policy which the people believe to be fair and appropriate and which creates public confidence in the department and its individual officers.

A reverence for the value of human life shall guide officers in considering the use of deadly force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly force is not justified merely to protect property interests.

The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. It has the most far reaching consequences for all of the parties involved. It is, therefore, imperative not only that he act within the boundaries of legal guidelines, ethics, good judgement, and accepted practices, but also that he be prepared by training, leadership, and direction to act wisely whenever using a firearm in the course of his duty.

This policy is not intended to create doubt in the mind of an officer at a moment when action is critical and there is little time for meditation or reflection. It provides basic policies governing the use of force so officers can be confident in exercising judgement as to the use of deadly force. Such a policy must be viewed as an administrative guide for decision making before the fact and as a standard for administrative judgement of the propriety of the action taken. It is not to be considered a standard for any judgement concerning the propriety of any action taken before the effective date of the policy, nor is it to be considered a standard of judgement by any court or jury in any civil or criminal litigation or proceedings concerning the lawfulness of any action taken. Established law, not this policy, governs civil and criminal liability for use of force.





# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2

### TITLE: USE OF FORCE

Effective: June 7, 1992

Revised: 05/10/1998; 01/23/2000; 07/08/2001; 11/23/2003

Page 1 of 4

#### DEFINITIONS

**Lethal/Deadly Force**

The discharge of a firearm or use of a knife to stab or cut another person, even though no intent exists to kill or inflict bodily harm; or any force applied in a any manner by any means that could reasonably be expected to cause death or great bodily harm.

**Great Bodily Harm**

Bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

**Less-than-Lethal Force**

Force employed which is neither likely nor intended to cause death or serious injury. This includes the use of less-than-lethal devices, such as a baton or chemical agents.

**Reasonable Cause to Believe**

When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

**Serious Physical Injury**

A physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

**Excessive Force**

Force is excessive when its application is illegal, inappropriate, or unreasonable under the circumstances. The force may result in serious injury or death to the suspect, but this is not absolutely necessary for the force to be excessive. No single objective definition of excessive force can be offered, rather each situation must be evaluated according to its particular circumstances and within the guidelines established herein.

#### PURPOSE:

The purpose of this regulation is to define the Department's policy on the use of force and the circumstances in which the use of force is appropriate and justifiable.



1. According to Louisiana Revised Statute 14:19, Police Officers may use reasonable force to compel obedience to a valid police order or to protect persons or property from illegal harm.
2. The legal right to use force is contingent upon the reasonableness of the act. The concept of reasonableness is applied in two ways:
  - a. The need to resort to force to accomplish a lawful police objective must be reasonable. That is, if another alternative, such as verbal persuasion, would reasonably be expected to be effective under the particular circumstances, and this alternative was not attempted, the use of force is not legal.
  - b. The degree of force used must be reasonable. The officer may only use enough force to overcome the amount of resistance or aggression met. When such resistance or aggression is reduced, the officer must correspondingly and immediately reduce the degree of force he is applying, or the use of force is not legal.
3. There are a number of non-lethal skills and equipment which are authorized for use when necessary to accomplish valid police objectives.
  - a. Verbal communication and/or persuasion is a basic defensive tactic.
  - b. Capsicum spray or other authorized chemical reagent is an intermediate level of force. The officer must complete departmental training before using this spray. If capsicum spray is used, the arresting officer shall handle the subject in accordance with current departmental regulations and the supervisor shall submit a Resisting Arrest Report along with an incident report through the chain of command.
  - c. Bodily force, including hands, fist, and feet may be used in a variety of situations depending upon the individual officer's skill. If injuries result from the use of bodily force, the arresting officer shall handle the injured subject in accordance with current departmental regulations and the supervisor shall submit a Resisting Arrest Report along with an incident report through the chain of command.
  - d. The baton is an intermediate level of force. The side handle baton or expandable baton is capable of causing serious injury. The officer must complete Departmental training before using the side handle baton or expandable baton. If injuries result from the use of the baton, the arresting officer shall handle the injured subject in accordance with current Departmental regulations and the supervisor shall submit a Resisting Arrest Report along with an incident report through the chain of command.
  - e. A Resisting Arrest Report shall be prepared when an employee of the Department is involved in any situation where lethal and/or less than lethal force is used by or toward the employee.
4. In all instances where physical force is used to control an individual, and the individual is injured or complains of injury, the supervisor shall complete an offense report covering the circumstances surrounding the incident. A copy of the report shall be forwarded to the Public Integrity Bureau within twenty-four (24) hours of its approval by a supervisor.
5. In all instances where lethal force or less than lethal force is used (including chemical agents) and the suspect is injured, or complains of injury, the suspect shall be transported to a medical facility for treatment.
  - a. If chemical agents are used, the officer shall follow the manufacturer's instructions relative to flushing or cleansing the affected area (if possible), and the suspect shall be

- transported to a medical facility for treatment.
- b. Any loss of consciousness, however slight, shall result in the suspect being transported to a medical facility for treatment.
  - c. If the officer determines that by the amount of force used, the suspect has received an injury, the suspect shall be transported to a medical facility for treatment.
6. In the event that a suspect swallows or attempts to swallow any controlled substance or object, officers shall refrain from using physical force, such as grabbing the suspect's throat or jaws, or utilizing capsicum spray to prevent the suspect from swallowing the substance or object. Such tactics are usually ineffective and the combination of swallowing the substance or object and the introduction of force and/or capsicum spray could cause the suspect to choke, thus causing serious injury or death. Officers shall verbally order the suspect to spit out the substance or object and if that fails, allow the suspect to swallow the substance or object. The suspect then shall be placed under arrest and immediately transported to an appropriate medical facility. The officer(s) shall obtain a search warrant for the contents of the suspect's stomach. The contents shall be deposited in Central Evidence and Property as evidence. Upon release, the suspect shall be transported to Central Lock-Up and booked appropriately.
7. Deadly force is defined as that degree of force which is likely to cause death or serious injury. The discharging of a firearm constitutes deadly force, even if there is no intent to kill or injure.
8. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm.
9. An officer shall exercise extreme caution with respect to use of deadly force. In all cases, only the minimum degree of force which is necessary shall be used, and every other available alternative shall be exhausted before deadly force is applied.

## STATUTORY AND ADMINISTRATIVE RESTRICTIONS

10. The use of deadly force is justified when the officer has reasonable cause to believe that such force is necessary to prevent death or great bodily harm to himself or others (in accordance with **Louisiana R.S. 14:20 and R.S. 14:22**):
- a. *"When committed in self defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm, and that the use of deadly force is necessary to save himself from that danger"; or*
  - b. *"When committed for the purpose of preventing a violent or forcible felony involving danger to life or great bodily harm, by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the use of deadly force"; or*
  - c. *"When in defense of another person, it is reasonably apparent the person attacked could have justifiably used such means himself, and when it is reasonably believed such intervention is necessary to protect the other person."*



11. Police Officers shall not use deadly force for the purpose of apprehending or stopping a fleeing felon.
12. Officers should be extremely cautious in using deadly force in self-defense when the deadly force used by the other person is an automobile and the other person is trying to get away. The suspect's intentions are usually ambiguous, and the officer can usually escape harm at least as well by evading the vehicle as he can by standing his ground and firing at the oncoming vehicle. An officer almost never has a safe or effective shot at a moving vehicle. In making this determination, the officer must consider the consequences of stray shots endangering innocent parties and must consider the consequences of the vehicle going out of control at a high rate of speed. Police Officers shall not discharge a firearm from a moving vehicle or at a moving vehicle, unless the occupants of the vehicle are using deadly force, other than the vehicle, against the member or another person, and such action is necessary for self-defense or to protect the other person.
13. Police Officers shall not fire warning shots.
14. A Police Officer may fire his weapon to stop a dangerous animal if there is an immediate threat of serious injury to himself or to another person.
15. **Special Weapons And Tactics (S.W.A.T.) -**

The use of force and related specialized equipment by Special Weapons And Tactics personnel shall be guided by state statute, accepted practices, and procedures involving S.W.A.T. incidents.

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

UNITED STATES OF AMERICA,

Plaintiff,

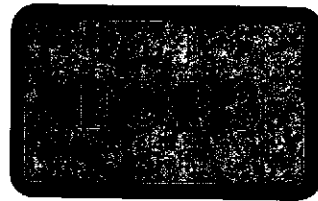
v.

CITY OF SEATTLE,

Defendant.

**Civil Action No. 12-CV- 1282**

**SETTLEMENT AGREEMENT AND  
STIPULATED [PROPOSED] ORDER OF  
RESOLUTION**



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**I. INTRODUCTION..... 1**

A. STRUCTURE OF THE AGREEMENTS ..... 1

B. COMMUNITY POLICE COMMISSION..... 2

C. BACKGROUND ON AGREEMENTS..... 4

**II. DEFINITIONS..... 6**

**III. COMMITMENTS..... 12**

A. USE OF FORCE..... 12

    1. Use of Force Principles..... 12

    2. Weapon-Specific Policies ..... 14

        a. Firearms ..... 14

        b. Conductive Energy Devices (ECD, CED, or TASER)..... 15

        c. Oleoresin Capsicum Spray (“OC Spray”)..... 16

        d. Impact Weapons..... 17

    3. Use of Force Reporting and Investigation ..... 18

        a. Type I Reporting and Investigation Requirements ..... 21

        b. Type II and III Reporting Requirements..... 22

        c. Supervisory Investigations of Type II Uses of Force ..... 22

        d. Supervisor’s Force Investigation Report for Type II  
            Uses of Force ..... 25

        e. Type II Report Review by Chain of Command ..... 26

        f. Force Investigation Team (FIT) Investigations of Type III  
            Uses of Force ..... 28

        g. Use of Force Committee (“UFC” or “Committee”) ..... 33

        h. Use of Force Reports ..... 34

    4. Use of Force Training ..... 35

B. CRISIS INTERVENTION..... 37

C. STOPS AND DETENTIONS ..... 39

    1. Policy ..... 39

    2. Training..... 40

    3. Supervision ..... 41

D. BIAS-FREE POLICING..... 41

    1. Bias-Free Policing Policies ..... 41

    2. Bias-Free Policing Training..... 42

    3. Supervision ..... 43

E. SUPERVISION..... 44

    1. Supervision Generally..... 44

    2. Early Intervention System..... 45

F. OFFICE OF PROFESSIONAL ACCOUNTABILITY ..... 46

    1. Reporting Misconduct and Retaliation ..... 46

    2. OPA Manual ..... 47

    3. OPA Liaison Officers ..... 48

1 **IV. MONITORING..... 48**

2 A. ROLE AND SELECTION OF THE MONITOR ..... 48

3 B. GENERAL DUTIES OF THE MONITOR ..... 49

4 C. AGREEMENT MODIFICATION..... 50

5 D. DEVELOPMENT OF POLICIES PROCEDURES AND TRAINING ..... 51

6 1. Schedule..... 51

7 2. Review ..... 51

8 E. DETERMINATION OF FULL AND EFFECTIVE COMPLIANCE..... 52

9 1. Compliance Reviews and Audits..... 53

10 2. Use of Outcome Assessments..... 54

11 F. COMMUNICATION BETWEEN THE MONITOR AND PARTIES ..... 57

12 G. COMMUNICATION BETWEEN THE MONITOR AND COMMUNITIES .... 58

13 H. SPD COMPLIANCE COORDINATOR ..... 58

14 I. REPORTS AND RECORDS..... 59

15 J. ACCESS AND CONFIDENTIALITY..... 62

16 K. COMPENSATION OF THE MONITOR..... 64

17 **V. JURISDICTION, TERMINATION AND MODIFICATION OF THE**

18 **SETTLEMENT AGREEMENT..... 66**

19 A. COURT JURISDICTION, MODIFICATION OF THE SETTLEMENT

20 AGREEMENT, AND ENFORCEMENT..... 66

21 B. TERMINATION OF THE SETTLEMENT AGREEMENT ..... 70

22

23

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1 I. INTRODUCTION

2 The United States and the City of Seattle (collectively “the Parties”) enter into a  
3 Settlement Agreement and Memorandum of Understanding (“MOU”) (collectively,  
4 “Agreements”) with the goal of ensuring that police services are delivered to the people of  
5 Seattle in a manner that fully complies with the Constitution and laws of the United States,  
6 effectively ensures public and officer safety, and promotes public confidence in the Seattle  
7 Police Department (“SPD”) and its officers. The United States recognizes that SPD is also  
8 committed to these goals and has already taken steps to better effectuate them. The Parties also  
9 recognize that the City’s police officers often work under difficult circumstances, risking their  
10 physical safety and well-being for the public good.

11 A. STRUCTURE OF THE AGREEMENTS

12 1. The Parties intend the Agreements to provide clear, measurable obligations, while  
13 at the same time leaving Seattle with appropriate flexibility to find solutions suitable for this  
14 community. The requirements of the Agreements identify the goals that must be achieved, the  
15 mechanism to achieve them, and specific elements that must be addressed. However, within the  
16 requirements of the Agreements, Seattle will have the ability to develop local and cost effective  
17 solutions.

18 2. To achieve the goals described above, the Parties have developed two  
19 Agreements. First, the Parties have agreed to jointly move that this Settlement Agreement be  
20 entered as an order of the United States District Court for the Western District of Washington.  
21 Second, the Memorandum of Understanding will be a contract between the City of Seattle and  
22 the United States. In both of these Agreements, the Parties, a jointly selected monitor, and the  
23

1 Community Police Commission (“Commission”) have specific duties, roles, and responsibilities  
2 as described.

3 **B. COMMUNITY POLICE COMMISSION**

4 3. Effective and constitutional policing requires a partnership between the Police  
5 Department, its officers, community members, and public officials. The Parties are committed to  
6 developing reform strategies that will work for Seattle and leverage the unique assets of all  
7 components of the community.

8 4. There is significant community interest in this reform effort. The community is a  
9 critical resource. Certain aspects of the reform efforts embodied in the Agreements are best  
10 developed by dialogue and wide-spread input. Moreover, ongoing community input into the  
11 development of reforms, the establishment of police priorities, and mechanisms to promote  
12 community confidence in SPD will strengthen SPD and facilitate police/community relationships  
13 necessary to promote public safety.

14 5. Police officers also bring an important voice to the reform process. Their views,  
15 whether presented through their labor organizations or through other channels, should inform the  
16 development of the reform effort and its implementation.

17 6. To leverage the ideas, talent, experience, and expertise of the community, the City  
18 of Seattle will establish within 90 days, by executive order, the Community Police Commission.  
19 The Executive Order will establish the number of members, a mechanism to ensure that  
20 membership is representative of the many and diverse communities in Seattle, including  
21 members from each precinct of the City, police officer unions, faith communities, minority,  
22 ethnic, and other community organizations, and student or youth organizations. The members  
23 and the Chair will be appointed by the Mayor and confirmed by the City Council and be

1 provided such staff support as the City of Seattle deems necessary to perform the duties and  
2 responsibilities identified in the Agreements.

3 7. The Commission will have the following distinct roles:

- 4 a) The Commission will undertake the responsibilities assigned to the  
5 Commission in the Agreements.
- 6 b) The Commission will review the reports and recommendations of the  
7 Monitor, described below, and may issue its own reports or  
8 recommendations to the City on the implementation of the Settlement  
9 Agreement.
- 10 c) The Commission may review and issue reports or recommendations as to  
11 the implementation of SPD's 20/20 initiative and other initiatives of SPD  
12 and the City to support the reform process.
- 13 d) The Commission may consider other issues as referred by the Parties in  
14 Section III.C of the MOU.

15 8. The Commission will maintain regular contact with the City to ensure effective  
16 and timely communication regarding its responsibilities under the Agreements.

17 9. The Commission will hold public meetings at regular intervals to discuss the  
18 Monitor's reports and to receive community feedback about SPD's progress or compliance with  
19 the Agreements. The City will provide the Commission with reasonable administrative support  
20 as determined by the City, including meeting space.

21 10. The Commission's reports and recommendations will be posted to the City's  
22 website. The City will consider and respond to the Commission's recommendations in a timely  
23 manner.



1 11. In the event that a member of the Commission is no longer able to perform his/her  
2 functions, the Mayor will appoint a replacement in a timely manner, subject to City Council  
3 approval.

4 12. The Commission will not review or report on specific cases of alleged  
5 misconduct, review or comment on discipline, and will not seek to influence the course or  
6 outcome of a specific complaint investigation or the discipline of specific police officers. The  
7 Commission will not have access to any non-public information regarding an individual police  
8 officer or allegation of misconduct or disciplinary action.

9 **C. BACKGROUND ON AGREEMENTS**

10 13. In March 2011, the Department of Justice ("DOJ") formally notified the City that  
11 it was initiating an investigation of an alleged pattern or practice of excessive force and  
12 discriminatory policing in SPD, pursuant to the Violent Crime Control and Law Enforcement  
13 Act of 1994, 42 U.S.C. § 14141 ("Section 14141"); the anti-discrimination provisions of the  
14 Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act");  
15 and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d ("Title VI").

16 14. The Parties note that DOJ's investigation was conducted in collaboration with and  
17 with the full and open cooperation of the City and SPD. The City timely provided the United  
18 States with access to its documents, information, and personnel.

19 15. DOJ issued a written report of its findings ("Report") on December 16, 2011. The  
20 Report conveyed DOJ's finding that it had reasonable cause to believe that SPD engages in a  
21 pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment  
22 to the United States Constitution and Section 14141.

1           16.     The Agreements are the product of a continued cooperative effort built on the  
2 Parties' mutual and deeply-held commitment to constitutional policing. The Agreements are  
3 also the product of input from the many varied communities of Seattle, including police officer  
4 unions, community advocacy organizations, and minority and ethnic community organizations,  
5 whose input DOJ and the City have solicited and jointly acknowledge has been indispensable to  
6 the resolution of this matter.

7           17.     The City does not admit or agree with DOJ's findings and conclusions. It enters  
8 into the Agreements because it wishes to ensure that its police department is functioning at an  
9 exceptional level and that it has positive relationships with all its communities. To achieve these  
10 goals, the City commits to ensuring that its police department's policies, procedures, training,  
11 and supervision are based on recognized standards of the policing profession, legal and  
12 constitutional standards, research and evidence, department and community values, and internal  
13 and external collaboration. The Parties agree that the reforms contained in the Agreements are  
14 intended to reflect those goals and principles in a cost effective, timely, and collaborative  
15 manner.

16           18.     The City enters into the Agreements to avoid the cost, delay, and effect on the  
17 City's interests of protracted litigation, noting the general principle that settlements are to be  
18 encouraged, particularly settlements between government entities. Nothing in the Agreements  
19 will be construed as an acknowledgment, agreement, admission, statement, or evidence of  
20 liability of the City, SPD, or any of its officers or officials under 42 U.S.C § 14141. Nor will the  
21 Agreements constitute or be construed as an acknowledgement, agreement, admission, statement,  
22 or evidence of any violation of applicable law or of the existence of a pattern or practice of  
23 conduct by law enforcement officers of the City that deprives persons of rights, privileges, and  
24

1 immunities secured or protected by the Constitution and laws of the United States. The  
2 Agreements do not constitute an admission that any individual complaint reviewed by DOJ was  
3 meritorious or improperly addressed by SPD.

## 4 **II. DEFINITIONS**

5 19. "Case Master" means an experienced command-level officer appointed by the  
6 Investigations Chief in consultation with the Homicide Commander. When a case is bifurcated  
7 due to possible criminal liability on behalf of an officer, the Case Master is responsible for  
8 ensuring the Clean Team is not exposed to any information obtained or derived from a  
9 compelled statement. The Case Master also controls what information may be shared between  
10 the Clean Team and the Exposed Team and how that information is exchanged.

11 20. "CED" means Conductive Energy Device, also referred to as ECD (electronic  
12 control device) and TASER.

13 21. "Chief" means the Chief of Police of SPD.

14 22. "CIC" means Crisis Intervention Committee, as described in the MOU.

15 23. "CI Team" stands for Crisis Intervention Team.

16 24. "CI training" stand for Crisis Intervention training, which is training on how to  
17 respond to persons in behavioral or mental health crisis, including persons under the influence of  
18 drugs or alcohol. Officers who receive such training are "CI trained."

19 25. "City" means the City of Seattle, including its agents, officers, and employees in  
20 their official capacity.

21 26. "Clean Team" means an investigative team that has not been privy to any  
22 information derived from a compelled statement.

1 27. "Commission" means the Community Police Commission as described above in  
2 Section I.B.

3 28. "Court" means the United States District Court Judge for the Western District of  
4 Washington presiding over this case.

5 29. "De Minimus Force" means physical interactions, for a lawful purpose, between  
6 an officer and a member of the public meant to separate, guide, and/or control without resort to  
7 control techniques that are intended to or are reasonably likely to cause pain. Examples include  
8 using hands or equipment to stop, push back, separate, or escort and the use of compliance holds  
9 without the use of sufficient force to cause pain.

10 30. "Discriminatory policing" and/or "biased policing" means selective enforcement  
11 or non-enforcement of the law, including the selecting or rejecting of particular policing tactics  
12 or strategies, based on membership in a demographic category specified in this Agreement.  
13 Discriminatory policing does not include using race, ethnicity, or any other status in any reliable  
14 suspect(s) description.

15 31. "DOJ" means the United States Department of Justice's Civil Rights Division, the  
16 United States Attorney's Office ("USAO"), and its agents and employees in their official  
17 capacity.

18 32. "Effective Date" means the day this Agreement is entered by the Court.

19 33. "EIS" means the Early Intervention System.

20 34. "Exposed Team" means an investigative team that has been exposed to  
21 information that was derived from an officer's compelled statements. To protect the ability of  
22 the case to be criminally charged, the Exposed Team can only be responsible for the  
23 administrative investigation.

1 35. "Firearm" means any instrument capable of discharging a bullet or shot as defined  
2 in SPD Manual 8.030.

3 36. "Firearm Discharge" means each discharge of a firearm by a SPD officer as  
4 defined by SPD Manual 8.060. This term includes discharges at persons where no one is struck.

5 37. "Firearms Review Board" or "FRB" means the Board that is described in  
6 SPD Manual 11.030.

7 38. "FIT" is the "Force Investigation Team," the SPD unit tasked with conducting the  
8 investigations of all uses of force by a SPD officer that result in death, Great Bodily Harm, or  
9 Substantial Bodily Harm, and other uses of force specified in this Agreement.

10 39. "Full Restraint Position" means placing a person with hands secured behind the  
11 back, legs secured together, and the legs and hands connected together behind the back of the  
12 subject with the subject's legs flexed at the knees.

13 40. "Great Bodily Harm" means harm as defined in RCW 9A.04.110 as bodily injury  
14 which creates a probability of death, or which causes significant serious permanent  
15 disfigurement, or which causes a significant permanent loss or impairment of the function of any  
16 body part or organ.

17 41. "Impact weapons" means any authorized intermediate weapons or objects used to  
18 strike, including, but not limited to batons as defined in SPD Manual 9.050.

19 42. "Implement" or "implementation" means the development or putting into place of  
20 a policy or procedure, followed by appropriate training of all impacted personnel, and ensuring  
21 that the policies and procedures are being carried out in practice.

22 43. "Injury" means bodily harm beyond temporary transient pain or redness.  
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1 44. "LEED" is the "Listen and Explain with Equity and Dignity" training, which  
2 focuses on respect, listening skills, and the use of verbal tactics as an alternative to the use of  
3 force.

4 45. "Less Lethal Device" means a device that is not expected or intended to cause  
5 death or Great Bodily Harm.

6 46. "Less Lethal Force" means a level of force such that the outcome is not expected  
7 or intended to cause death or Great Bodily Harm.

8 47. "Lethal Force" means the application of force through the use of firearms or any  
9 other means reasonably likely to cause death or Great Bodily Harm.

10 48. "Misconduct" means conduct by an officer or other SPD employee that, if proven  
11 by a preponderance of evidence, would be a violation of law, SPD policy, procedure, rules, or  
12 regulations. Misconduct excludes minor misconduct as defined in SPD Manual 11.001.IV.A or  
13 violations unrelated to the substantive terms of this Agreement.

14 49. The "Monitor" means a person who will be selected by DOJ and the City to  
15 monitor and report on implementation of this Agreement.

16 50. "OPA" means SPD's Office of Professional Accountability.

17 51. "Personnel" means SPD officers and employees.

18 52. "Police Officer" or "Officer" means any law enforcement agent employed by  
19 SPD, including supervisors.

20 53. "Policies and Procedures" means regulations or directives, regardless of the name,  
21 describing the duties, functions, and obligations of SPD officers and/or employees, and  
22 providing specific direction in how to fulfill those duties, functions, or obligations.

1           54.     “Precinct” means one of the five police service areas of SPD, which together  
2 cover the entire geographic area of the City of Seattle and each of which is led through the chain-  
3 of-command by a precinct commander.

4           55.     “PSS” is the Professional Standards Section, the SPD subdivision that, among  
5 other functions, is charged with researching, drafting, and revising policy.

6           56.     “Reasonable Force” means force that complies with the Fourth Amendment’s  
7 requirement of objective reasonableness under *Graham v. Connor*.

8           57.     “SPD” or “Department” means the Seattle Police Department and its agents,  
9 officers, supervisors, and employees (both sworn and unsworn) in their official capacity.

10          58.     “Shall” or “will” means that the provision imposes a mandatory duty; “should”  
11 does not indicate a mandatory duty.

12          59.     “SPD Manual” refers to SPD’s Policy and Procedure Manual.

13          60.     “SPD Unit” or “Unit” means any designated organization of officers within SPD,  
14 including precincts and specialized units.

15          61.     “Substantial Bodily Harm” means harm as defined in RCW 9A.04.110 as bodily  
16 injury which involves a temporary but substantial disfigurement, or which causes a temporary  
17 but substantial loss or impairment of the function of any bodily part or organ, or which causes a  
18 fracture of any body part.

19          62.     “Supervisor” means a sworn SPD employee at the rank of sergeant or above (or  
20 anyone acting in those capacities) and non-sworn personnel with oversight responsibility for  
21 other officers.

22          63.     “Training” means any adult-learning methods that may incorporate role-playing  
23 scenarios and interactive exercises that instruct officers about how to exercise their discretion, as



1 well as traditional lecture formats. Training also includes testing, writings, or other measures  
2 that indicate that the officer comprehends the material taught.

3 64. "Type I use of force" means the use of low-level physical force that is greater  
4 than De Minimus Force, is not reasonably expected to cause injury and does not result in an  
5 actual injury or complaint of an injury, but causes transient pain and/or disorientation during its  
6 application as a means of gaining compliance. Examples of this type of force include  
7 disorientation techniques (e.g., open or empty hand strike), weaponless pain compliance  
8 techniques while using sufficient force to cause pain (e.g., wrist lock), and "soft" take-downs  
9 (e.g., controlled placement of a subject, including on the ground or floor) not included in a  
10 Type II use of force. Pointing a firearm at a person is reportable as a Type I use of force. Un-  
11 holstering or displaying a firearm without intentionally pointing it at a person, or simply  
12 displaying any weapon, is not a reportable use of force.

13 65. "Type II use of force" means a use of force which causes an injury, could  
14 reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise  
15 to the level of a Type III use of force. Examples of this type of force include: a "hard" strike,  
16 take-down, or kick; CED deployment of any type against a subject; use of an impact weapon  
17 (including batons and flashlights) to strike a subject; deployment of canine that results in an  
18 injury or complaint of injury; deployment of Oleoresin Capsicum Spray (OC Spray) at a subject;  
19 and placing a subject in a full restraint position.

20 66. "Type III use of force" means all uses of force by a SPD officer that have the  
21 likelihood of significant injuries to a subject including: (1) any use of "Lethal Force;" and  
22 (2) any use of force that results in or could reasonably be expected to result in "Great Bodily  
23 Harm" or "Substantial Bodily Harm."



- c) The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.
- d) Officers should use improvised weapons, such as flashlights, only in compliance with a proper policy and training on impact weapons.
- e) Officers should be trained that a hard strike to the head with any impact weapon, including a baton, could result in death, and any strikes to the head should be consistent with policy and training.
- f) Officers normally should not use reportable force against handcuffed or otherwise restrained subjects unless necessary or reasonable under the circumstances to stop an assault, escape, or as necessary to fulfill other legitimate law enforcement objectives.
- g) Officers should not use force against individuals who only verbally confront them and do not impede a legitimate law enforcement function.
- h) As soon as practicable following a reportable use of force, SPD should ensure that the incident is accurately and properly reported, documented, and investigated.

71. SPD will revise, as necessary, its use of force policies, procedures, and/or training consistent with the principles above.

72. A fundamental goal of the revised use of force policy will be to account for, and review or investigate, every reportable use of force and, where necessary, to reduce any improper uses of force while serving to direct resources to the most serious uses of force.

1 73. Consistent with current practice, when SPD conducts its review of the  
2 implementation of the revised use of force policies, it will seek the timely input of the relevant  
3 members of the Training Section, line officers, supervisors, and PSS.

4 **2. Weapon-Specific Policies**

5 74. Revisions to SPD's weapons-specific policies, procedures, and training will be  
6 guided by the principles contained in this section.

7 75. The use of force policies will address the use and deployment of all authorized  
8 force weapons that are available to SPD officers. The specific policies for each force weapon  
9 will provide guidance for each weapon's use.

10 76. The weapon-specific policies will continue to include training and certification  
11 requirements that each officer must meet before being permitted to carry and use the authorized  
12 weapon. Officers will only carry weapons authorized by the Department. SPD will consult with  
13 the Monitor as to whether and when each uniformed officer should be required to carry at least  
14 one Less Lethal Device.

15 77. SPD will implement policies for each of the following weapons using these  
16 guidelines.

17 **a. Firearms**

18 78. Officer Discharges of Firearms will continue to be tracked as critical firearms  
19 discharges in EIS as uses of force. SPD will continue to document critical firearms discharges in  
20 SPD's annual use of force report.

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1           **b. Conductive Energy Devices (ECD, CED, or TASER)**

2           79. The CED policy will continue to contain the training and tactics guidance  
3 regarding Less-Lethal Options and SPD's Annual CED Recertification Course, and other  
4 sources, and will continue to incorporate the following guidelines:

- 5           a) A verbal warning should be given before use unless it is unsafe to do so or  
6 if it compromises a legitimate law enforcement objective.
- 7           b) As with the initial CED application, each subsequent application is a  
8 separate application of force that must be individually justified as  
9 reasonable.
- 10          c) All CED users will be trained in: 1) the potential risks of prolonged or  
11 repeated applications; 2) the appropriate procedures following a CED  
12 application; 3) the required documentation of a CED application in a use  
13 of force report; and 4) the appropriate use of the CED in drive stun mode.
- 14          d) All CED users will also be trained in the considerations of the additional  
15 environmental hazards such as flammable materials or falling hazards that  
16 may preclude the use of a CED.
- 17          e) All CED users will also be trained on the consideration of unique  
18 characteristics of the subject such as age, frailty, pregnancy and other  
19 medical conditions.
- 20          f) CED users will not intentionally target the subject's head, neck, or genital  
21 area unless to protect officer or public safety, or to accomplish a legitimate  
22 law enforcement objective.
- 23
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1           80. Officers will continue to receive annual CED certifications consisting of physical  
2 competency, weapon retention, SPD policy, including any policy changes, technology changes,  
3 and scenario-based training.

4           81. SPD will continue to implement integrity safeguards on the use of CEDs to ensure  
5 compliance with SPD policy, including conducting random and directed audits of CED  
6 deployment data. The audits will compare the downloaded data to an officer's reports on use of  
7 force. Discrepancies within the audit will be addressed and appropriately investigated.

8           82. When a supervisor or FIT conduct investigations of CED use in Type II or  
9 Type III investigations, the investigator will assure that the use of force report thoroughly  
10 describes each CED application and that the CED data is downloaded and that data analysis is  
11 included in the use of force report.

12           83. SPD will continue to track CED applications as uses of force in EIS and continue  
13 to include CED data and analysis in its use of force annual report.

14           c.       **Oleoresin Capsicum Spray ("OC Spray")**

15           84. The OC Spray policy and training will incorporate the evolving guidance  
16 contained within the SPD Post-Basic Law Enforcement Academy ("BLEA") course on Less-  
17 Lethal Force as well as guidance from the medical community. The policy and training will  
18 include at least the following guidelines:

- 19           a) Officers will use OC spray only when such force is reasonable, including  
20 when used for crowd dispersal or protection.
- 21           b) Unless it presents a danger to the officer or others, or compromises a  
22 legitimate law enforcement objective, officers should use a verbal warning  
23 to the subject or crowd that OC spray will be used and defer using

1 OC spray a reasonable amount of time to allow the subject to comply with  
2 the warning.

3 c) After the initial application of OC spray, each subsequent spray must also  
4 be reasonable and the officer should reevaluate the situation accordingly.

5 d) The application of OC Spray on persons in restraints such as handcuffs  
6 must be consistent with a legitimate law enforcement objective, or to  
7 protect officer or public safety.

8 85. Officers will continue to be trained in and follow protocols developed by SPD on  
9 their responsibilities following OC Spray use, including minimizing exposure of non-targeted  
10 individuals and decontamination of exposed subjects. Officers will continue to request medical  
11 response or assistance for subjects exposed to chemical spray when they complain of continued  
12 effects after having been decontaminated, or they indicate that they have a pre-existing medical  
13 condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by  
14 chemical spray.

15 86. Officers will use only agency-issued or approved OC Spray.

16 87. SPD will continue to maintain written documentation of the number of OC Spray  
17 canisters annually distributed to, and utilized by, each officer. Analysis of OC deployments will  
18 continue to be included in SPD's use of force annual report and tracked in EIS as a use of force.

19 d. **Impact Weapons**

20 88. SPD will incorporate in its use of force policies specific provisions concerning the  
21 use of impact weapons and guidelines for use. Officers will be trained and certified for  
22 department-approved impact weapons before being authorized to carry these weapons. Officers  
23 will also be recertified at reasonable intervals. Use of any improvised impact weapons will fall



1 under the same guidelines and officers will be required to articulate how the use of the weapon  
2 was objectively reasonable. Consistent with current policy, impact weapon use will be limited to  
3 situations in which such force is reasonable and consistent with training, for example, when it is  
4 necessary to protect the officer, the subject, or another party from immediate physical harm.

5 89. When a supervisor or FIT conduct investigations of impact weapon use in Type II  
6 or Type III investigations, the investigator will assure that the use of force report thoroughly  
7 describes each impact weapon strike that the officer recalls. Consistent with current training  
8 policy and practice, impact weapons should not be used on persons who are handcuffed and  
9 under control or otherwise restrained persons under control, or persons complying with police  
10 direction.

11 90. Analysis of data regarding the use of impact weapons will continue to be included  
12 in SPD's use of force annual report and tracked in EIS as a use of force.

### 13 3. Use of Force Reporting and Investigation

14 91. Uses of force will be divided into three types for reporting, investigative, and  
15 review purposes. The goal is to focus police resources on the most serious cases, while also  
16 requiring that all reportable uses of force cases are reported and not under-classified.

17 92. The three levels for the reporting, investigation, and review of use of force  
18 correspond to the amount of force used and/or the outcome of the force. This Agreement's  
19 categorization of these types of uses of force is based on the following factors: degree of injury  
20 caused; potential of the technique or weapon to cause injury; degree of pain experienced; degree  
21 of disability experienced by the subject; complaint by subject; degree of restraint of the subject;  
22 impairment of the functioning of any organ; duration of force; and physical vulnerability of the  
23 subject.

1           93.     The three types of force will have different levels of departmental reporting and  
2 review that become more rigorous depending on the type of the force used. Each level will have  
3 four essential components:

- 4           a)     Initial Reporting: reporting and documentation requirements that,  
5                 consistent with this Agreement, include the immediate response to the  
6                 incident.
- 7           b)     Investigation and Supervisory Assessment: investigation or assessment  
8                 requirements that detail how the investigation or assessment is conducted  
9                 and who is responsible for the investigation and assessment as to the use  
10                of force.
- 11          c)     Review: for Type II and III uses of force, a review process requiring  
12                 critical examination of the incident to assess its appropriateness, as well as  
13                 identify any shortcomings in policy, procedure, training, tactical  
14                 performance, and supervisory action. The review process will also  
15                 consider how information gathered on the incident could be used to  
16                 increase the effectiveness of the officer and the Department as a whole.
- 17          d)     Record Keeping and Follow-up: the facts regarding the incident will be  
18                 stored, reported, and analyzed, and any deficiencies or concerns  
19                 addressed.

20           94.     Officers will notify their supervisor as soon as practicable following any use of  
21 Type I, II, or III use of force.

22           95.     Consistent with other policies, a supervisor can always opt to require a higher  
23 level of response to a given incident. Factors to consider in determining whether a higher level

1 response is appropriate include, but are not limited to, the following: the nature of the resistance  
2 encountered; force used against a handcuffed or otherwise restrained, under control, or in-  
3 custody subject; force used against pregnant or vulnerable subjects (e.g. age or infirmity);  
4 incidents resulting from faulty information or unintentional error; and when it is unclear whether  
5 the officer acted consistent with policy or law.

6 96. When multiple officers are involved in a use of force incident, the entire incident  
7 will be reported and investigated at the highest level reached by any single officer during the  
8 incident. All involved officers will be required to submit statements in accordance with that  
9 level's requirements. For example, if four officers are restraining a subject's limbs and only use  
10 Type I force, and a fifth officer uses a CED, each officer must submit a statement as required  
11 under at least the Type II protocol.

12 97. Each supervisor reviewing the incident is responsible for ensuring a full and  
13 accurate account of the incident, and identifying and resolving any inconsistencies or  
14 alternatively, bringing them to the attention of OPA or his/her supervisor.

15 98. Whenever a supervisor uses, directs, or is otherwise personally involved in any  
16 type of force, the investigation will be conducted by a supervisor uninvolved in the use of force  
17 unless impractical.

18 99. SPD will continue to analyze the force data captured in officers' force reports and  
19 supervisors' investigative reports on an annual basis to determine significant trends, to identify  
20 and correct deficiencies revealed by the analysis, and to document its findings in an annual  
21 public report.

1           a.     **Type I Reporting and Investigation Requirements**

2           100. Officers will document a Type I use of force in a searchable and retrievable  
3 format that contains the following information: 1) an account of the officer's actions in using  
4 force; 2) the suspect's actions that led to the application of force; 3) the identity of the officer  
5 who used force; 4) the names of other officers or identified witnesses present; and 5) the name of  
6 the supervisor screening the incident. The officer's immediate supervisor will review the  
7 documentation as soon as practicable and direct the officer to supply more information, if  
8 needed.

9           101. A Type I use of force report must be provided orally and screened in person by a  
10 supervisor, unless impractical under the circumstances, prior to the subject being booked,  
11 released, or the contact concluded. If the subject is free to leave, the detention will not be  
12 extended to facilitate the screening process; however, the subject may choose to remain at the  
13 scene to speak with a supervisor. If there is any uncertainty or concern about the reason or  
14 nature of the force used, or the existence of any injury, the supervisor will immediately roll out  
15 to the scene, unless impractical in the circumstances.

16           102. The supervisor will determine if the use of force is appropriately classified as a  
17 Type I incident. If the supervisor is unable to make that determination, the supervisor will  
18 consult with FIT or his/her direct supervisor to assist in the determination. The supervisor will  
19 also evaluate the incident for any other concerns (tactical, threat assessment, etc.). The  
20 supervisor will address any concerns with the officer involved. If it appears that misconduct may  
21 have been involved in the use of force, the supervisor will ensure that OPA is contacted and  
22 consult the FIT team regarding reclassification of the incident as Type II or III.

1                   **b. Type II and III Reporting Requirements**

2           103. For Type II and Type III uses of force, all involved officers will complete an  
3 officer statement using descriptive language. The statement will include: 1) the reason for the  
4 initial police presence; 2) a detailed description of the incident circumstances, including the  
5 words, actions, and/or threat posed by the suspect warranting the need for force; 3) a detailed  
6 description of the force used by the officer giving the statement; 4) a detailed description of the  
7 force used by other officers if clearly observed; 5) a detailed description of any apparent injury to  
8 the suspect, any complaint of injury, or the lack of injury, including information regarding any  
9 medical aid or medical evaluation provided.

10                   **c. Supervisory Investigations of Type II Uses of Force**

11           104. Upon notification of a Type II use of force, a supervisor will respond to the scene  
12 and thoroughly investigate all Type II events unless officer or public safety will be compromised  
13 as a result. No supervisor who participated in, or ordered the force, will conduct or be involved  
14 in conducting the investigation of the incident. In thoroughly investigating all Type II events,  
15 the investigating supervisor at a use of force incident will:

- 16                   a) Respond to the scene, examine the subject of the force for injury,  
17 interview the subject for complaints of injury, and where necessary,  
18 summon medical aid via SPD Communications.
- 19                   b) If the subject does not require medical attention, and probable cause exists  
20 for his/her arrest, the supervisor may arrange for transport to a police  
21 holding facility or directly to jail.
- 22                   c) The supervisor will obtain sufficient basic information to determine if a  
23 FIT response is required. Whether required or not, a supervisor retains the

1 discretion to refer any use of force to FIT for FIT's determination of  
2 whether to take investigatory responsibility over the matter.

3 d) Whenever there is an indication of possible criminal conduct by an officer,  
4 the officer will not be compelled to provide a statement.

5 e) If a FIT response is not appropriate, the supervisor will conduct the  
6 investigation, as an impartial fact-finder and will not be responsible for  
7 determining the ultimate disposition of the incident. The supervisor will:

8 (1) Identify and secure evidence to enable the supervisor to describe in  
9 detail the use of force and the facts and circumstances surrounding  
10 it.

11 (2) Ensure collection of evidence sufficient to establish material facts  
12 related to the use of force, where reasonably available, including  
13 physical evidence, audio and video recordings, photographs, and  
14 other documentation of injuries or the absence of injuries.

15 (3) Make reasonable attempts to locate relevant civilian witnesses  
16 including the subject and third parties, and arrange for witnesses to  
17 be interviewed. Supervisors should use interview techniques  
18 taught in use of force investigation courses, including avoiding  
19 leading questions.

20 (4) Where practicable and warranted in the circumstances, ensure that  
21 all interviews with civilian witnesses are recorded. Interviews of  
22 the subject, or the subject's refusal to be interviewed, will be audio  
23 or ICV recorded, if possible.

- 1 (5) As with civilian witnesses, conduct separate interviews of officers  
2 involved in a use of force incident, unless unreasonable under the  
3 circumstances.
- 4 (6) Require each officer at the scene to complete either a witness  
5 statement (if they did not use Type II use of force) or a Use of  
6 Force Statement (if they did use Type II use of force). Each officer  
7 will describe what he/she did and saw as comprehensively and  
8 descriptively as possible and in the context of the use of force by  
9 other officers, identifying all other officers involved in the incident  
10 when possible. The supervisor will assure such statements comply  
11 with SPD guidelines.
- 12 (7) Review any ICV or holding cell video related to the incident, and  
13 red flag for retention ICV that documents contact with the subject.
- 14 (8) Canvass the area for privately-owned video that may have captured  
15 the contact, and attempt to obtain copies voluntarily. If owner  
16 refuses, document the location and/or owner of the video. If no  
17 privately-owned video is discovered, document that none was  
18 found.
- 19 (9) Photograph the location where the incident occurred, to determine  
20 damage, and ensure that relevant evidence is collected.  
21 Photograph any officer injuries or areas of complained injury, and  
22 any damaged government or private property.
- 23  
24



1 (10) Respond to the subject's location, and photograph the subject for  
2 identification purposes, and any visible injuries or places where the  
3 subject complains of injury.

4 (11) Consider all relevant evidence, including circumstantial, direct,  
5 and physical evidence and make credibility determinations and  
6 resolve material inconsistencies in statements, if feasible. When  
7 possible, assess the subject's injuries and determine whether the  
8 subject's injuries are consistent with the force reported used by the  
9 officer(s).

10 (12) When a supervisor concludes that there may have been  
11 misconduct, the supervisor will consult with an on-duty  
12 commander of the permanent rank of lieutenant or above and  
13 ensure that OPA is notified.

14 d. **Supervisor's Force Investigation Report for Type II Uses of Force**

15 105. An email or other form of notification of a reportable use of force will be  
16 forwarded to the supervisor's commanding officer by the end of the shift during which the force  
17 occurred. The notification will contain basic information concerning the incident.

18 106. Each supervisor will complete and document a use of force supervisory  
19 investigation using a Supervisor's Force Investigation Report (a revised form 1.40b) within  
20 72 hours of learning of the use of force, unless an extension is approved by the supervisor's  
21 commanding officer. The Supervisor's Report will include the following:

22 a) The supervisor's narrative description of the incident. A supervisor's  
23 narrative will summarize the force used by the officers and the subject,

1 injuries sustained by the subject and the officer, and will describe the  
2 sequence of events. Additionally, it will document the supervisor's  
3 actions in reviewing or screening the incident. The summary should  
4 provide a commander reviewing the supervisor's summary a complete  
5 understanding of the incident from beginning to end, including, crucially,  
6 when each officer used force, why the force was necessary at each point in  
7 time, and how each injury, if any, occurred.

8 b) The report will be accompanied by the use of force packet which contains  
9 documentation of all evidence that was gathered, including physical  
10 evidence; photographs; and names, phone numbers, addresses, and  
11 summaries of statements by all civilian witnesses to the incident. In  
12 situations in which there are no known witnesses, the report will  
13 specifically state this fact. In situations in which witnesses were present  
14 but the author of the report did not determine the identification, phone  
15 number, or address of those witnesses, the report will state the reasons  
16 why.

17 c) The names of all other SPD employees witnessing the use of force and  
18 summaries of their statements.

19 d) The supervisor's evaluation of the evidence, including any material  
20 inconsistencies in the evidence or statements.

21 e. **Type II Report Review by Chain of Command**

22 107. SPD Policy 6.240.XII.B.11 already establishes a process by which the use of  
23 force packet is forwarded through the chain of command to the involved officer's bureau

1 commander. SPD will revise and clarify the process for review of a use of force report to  
2 incorporate the process detailed in this section of this Agreement.

3 108. Upon completion of the supervisor's use of force investigation report and packet,  
4 the investigating supervisor will forward the packet through the chain of command. The  
5 reviewing lieutenant will review the report packet to ensure it is complete and the investigation  
6 was thorough and reach findings as to whether the use of force was lawful and consistent with  
7 policy. Each higher level supervisor in the chain will review the packet to ensure that it is  
8 complete, the investigation was thorough, and that the findings are supported by a preponderance  
9 of the evidence.

10 109. When it appears to a supervisor that there is additional relevant and material  
11 evidence that may assist in resolving inconsistencies or improve the reliability or credibility of  
12 the findings, that supervisor should ensure that additional investigation is completed. When it  
13 appears to a supervisor that the findings are not supported by a preponderance of the evidence,  
14 that supervisor will modify the findings after consultation with the investigating supervisor and  
15 previous reviewers, and document the reasons for this modification, including the specific  
16 evidence or analysis supporting the modification. Any supervisor in the chain of command may  
17 discuss the modification with the investigating supervisor and/or reviewers. If any investigative  
18 deficiencies exist, the reviewer will initiate corrective action where appropriate. Every  
19 supervisor in the chain of command is responsible to assure the accuracy and completeness of  
20 the Investigation Reports completed by supervisors.

21 110. When the precinct commander finds that the investigation is complete and the  
22 findings are supported by the evidence, the investigation file will be forwarded to the Use of  
23 Force Committee.

1           111. At the discretion of the officer’s chain of command, or OPA in the case of  
 2 potential misconduct, a use of force investigation may be assigned or re-assigned for  
 3 investigation to FIT or to another supervisor, whether within or outside of the precinct in which  
 4 the incident occurred, or may be returned to the Unit for further investigation or analysis.  
 5 Where, after investigation, a use of force is found to be out of policy, or the investigation of the  
 6 incident is lacking, the Chief or designee will direct and ensure appropriate corrective action, if  
 7 warranted. When the use of force indicates policy, training, tactical, or equipment concerns, the  
 8 Chief or designee will ensure also that necessary training is delivered and that policy, tactical, or  
 9 equipment concerns are resolved.

10           **f. Force Investigation Team (FIT) Investigations of Type III Uses of**  
 11           **Force**

12           112. FIT will conduct investigations of (1) all Type III uses of force except for  
 13 firearms discharges (which will continue to be investigated by the Homicide Unit and reviewed  
 14 by the FRB); (2) any use of force that result in broken bones, loss of consciousness, or an  
 15 admission to the hospital for treatment; the application of a neck hold (LVNR or Lateral  
 16 Vascular Neck Restraint); hard strike to the head or neck with an impact weapon (flashlight,  
 17 baton, or other object); (3) uses of force that potentially involve criminal conduct or misconduct  
 18 on the part of the officer; and (4) uses of force referred to FIT by any SPD supervisor (and  
 19 approved by the FIT commander), the Chief, his/her designee, or OPA. Response by FIT to a  
 20 scene does not assume a criminal or administrative violation has occurred.

21           113. Type III uses of force will be investigated and documented by FIT, with  
 22 assistance from the on-scene sergeant. The FIT response will be tailored to the circumstances  
 23 but will normally include one to three FIT detectives, the FIT sergeant, a Homicide Unit  
 24 command level officer, and a Training Section representative. The Training representative will

1 not have investigative roles at the scene of a use of force, but will attempt to identify any policy  
2 or training issues. At least one member of FIT or a homicide supervisor will be available at all  
3 times to evaluate potential referrals from SPD supervisors.

4 114. If a FIT investigation, at any point, reveals officer misconduct, a FIT supervisor  
5 will contact OPA.

6 115. SPD will create a FIT training curriculum and procedural manual.

7 116. FIT should be staffed with individuals with appropriate expertise and  
8 investigative skills to ensure that uses of force that are contrary to law or policy are identified  
9 and appropriately resolved; and that its investigations allow the Use of Force Committee to  
10 identify trends or patterns of policy, training, equipment, or tactical deficiencies, or positive  
11 lessons related to the use of force.

12 117. The supervisor will have the following responsibilities in responding to a Type III  
13 use of force:

- 14 a) A sworn supervisor will respond to the scene, and will ensure that  
15 appropriate medical aid is summoned for any injured party, either subject  
16 or officer. If the subject is transported to a hospital, the supervisor will  
17 arrange for a hospital guard for the subject, if appropriate.
- 18 b) The supervisor will obtain sufficient basic information to determine  
19 whether a FIT response is appropriate and contact the FIT sergeant to  
20 screen a response.
- 21 c) Whenever there is an indication of possible criminal conduct involving an  
22 officer, the officer will not be compelled to provide a statement.
- 23

1 d) The supervisor will ensure the scene is contained and will turn the scene  
2 over to the arriving FIT personnel. The scene will be left intact and will  
3 be processed by FIT personnel.

4 e) The supervisor will make reasonable attempts to locate civilian witnesses  
5 to the event, and identify and request that the witnesses standby for the  
6 FIT personnel's arrival.

7 118. FIT will have the following responsibilities in responding to a Type III use of  
8 force:

9 a) FIT personnel will take control of the use of force investigation upon their  
10 arrival.

11 b) Where possible, FIT detectives will ensure that all interviews with civilian  
12 witnesses are recorded.

13 c) FIT personnel will arrange for a canvass for any privately-owned video  
14 that may have captured the contact, and attempt to obtain copies  
15 voluntarily. If the owner refuses, they will document the location and/or  
16 owner of the video. If no privately-owned video is discovered, they will  
17 document that none was found.

18 d) The FIT supervisor will arrange for photographing and processing of the  
19 scene.

20 e) FIT detectives will respond to the subject's location, and request a medical  
21 release if relevant, as well as an audio-recorded interview. They will also  
22 photograph areas of injury or complaint of injury.

- 1 f) The FIT supervisor or commander will respond to the FIT office and  
2 arrange for ICV downloads as well as witness statements from all witness  
3 officers prior to the end of their shift(s) unless impracticable.
- 4 g) When available, the FIT detectives will conduct in-person interviews of  
5 the involved officers.
- 6 h) The FIT supervisor or commander will arrange for the involved officers to  
7 submit a use of force written statement as soon as practicable.
- 8 i) The FIT sergeant or commander will be responsible for ensuring  
9 notification of a FIT investigated use of force, which will be forwarded to  
10 the involved officer's chain of command up to the Chief, as well as the  
11 Investigation Bureau Commander, no later than 12 hours after learning of  
12 the use of force, unless impractical. This notification will contain basic  
13 information about the incident.
- 14 j) Within 30 days or as soon as possible thereafter, the FIT commander will  
15 present the completed investigation to the commander of the Investigation  
16 Bureau for review as to completeness of investigation. This review will  
17 normally be completed within three business days. The investigation will  
18 then be forwarded to the involved officer's chain of command. After this  
19 review has been completed, the FIT commander will be responsible for  
20 presenting the investigation to the Use of Force Committee (UFC).  
21 Consistent with current officer-involved shooting protocols, any  
22 presentations to the command staff will also be the responsibility of the  
23 FIT commander.



1 k) If at any time during the investigation, information is obtained that  
2 suggests either criminal liability on the part of any officer, or misconduct  
3 (as defined previously) on the part of any officer, the FIT commander will  
4 be responsible for notifying the command staff, and taking one of the two  
5 following actions:

6 (1) Criminal Liability – If at any time information is obtained that  
7 suggests that an officer may have committed a crime during the  
8 use of force incident, the investigation will immediately be referred  
9 to the OPA. If OPA agrees that a criminal investigation is  
10 appropriate, they will refer the investigation back to the Homicide  
11 Unit commander or another investigative body per current practice,  
12 for assignment to an uninvolved Homicide sergeant for bifurcated  
13 criminal and administrative investigations using a “Clean Team”  
14 and “Exposed Team” approach. All information gathered during  
15 the administrative investigation to date will be screened through a  
16 Case Master, who will ensure no information that would  
17 compromise the criminal investigation is passed on to the  
18 Homicide sergeant doing the criminal case. Additionally, any  
19 compelled interview of the subject officer(s) will be delayed until  
20 the end of the investigation. A representative of the King County  
21 Prosecutor’s Office or the City Attorney’s Office will be consulted  
22 when necessary during the course of the criminal investigation.  
23  
24

1 While the administrative investigation will continue, the criminal  
2 investigation will have priority over witnesses and evidence.

- 3 (2) Misconduct (as defined in Section II) – If at any time information  
4 is obtained that an officer may have committed misconduct during  
5 the use of force incident, the OPA Director will be advised and the  
6 misconduct investigation referred to their office. The assigned FIT  
7 investigator will continue to complete the use of force  
8 investigation.

9 **g. Use of Force Committee (“UFC” or “Committee”)**

10 119. SPD has established a use of force committee. For purposes of this Agreement,  
11 this committee is referred to as the Use of Force Committee (“UFC”). SPD may rename the  
12 committee. This committee will conduct timely, comprehensive, and reliable reviews of all  
13 Type II and Type III uses of force.

14 120. Committee Membership: The UFC will consist of: an Assistant Chief or his  
15 designee (who will chair the Committee); supervisors from the Training Section; one  
16 representative from each involved precinct, selected by each precinct captain; and a  
17 representative from the PSS. The Chair may include any subject matter experts the Chair feels  
18 would be helpful in reviewing particular incidents.

19 121. Training: Each member will receive a minimum of eight hours of training on an  
20 annual basis, including legal updates regarding use of force and curriculum utilized by the  
21 Training Section regarding use of force.

22 122. The UFC may consult with other advisors as necessary.

1           123.   Review: The UFC will review each use of force packet to determine whether the  
2 findings from the chain of command regarding whether the force used is consistent with law and  
3 policy and supported by a preponderance of the evidence, whether the investigation is thorough  
4 and complete, and whether there are tactical, equipment, or policy considerations that need to be  
5 addressed.

6           124.   Review of FIT Investigations: The review of FIT investigations is the same as for  
7 Type II investigations, except the FIT investigation review will be chaired by a Deputy Chief.  
8 The Monitor and SPD will explore ways to include others in the review of FIT investigations,  
9 including civilian observers. Consistent with current practice and the provisions above, the UFC  
10 will document its findings and recommendations for FIT investigations. Unless an extension is  
11 granted by the Chair, the review should be conducted within seven days of the FIT presentation  
12 to the UFC.

13           125.   Corrective Action: The UFC will not make recommendations concerning  
14 discipline; however, the Chair of the UFC is obligated to ensure a referral to OPA is made if  
15 potential misconduct is discovered in the review process. Should policy, equipment, or training  
16 deficiencies be noted in the review process, the UFC Chair will ensure that they are brought to  
17 the attention of the relevant commanding officer for appropriate action. The Bureau Commander  
18 of the officer involved with the use of force will have the final responsibility regarding retraining  
19 or recommending discipline to the Chief.

20                   **h.    Use of Force Reports**

21           126.   Within 90 days of the Effective Date, the City and the United States will confer  
22 and agree on a process to determine what, if any, new policies or procedures regarding *Garrity*  
23 are necessary based on the DOJ's technical assistance letter that have not already been addressed

1 in the Settlement Agreement. This process may include convening a appropriate police, legal,  
2 and other experts to examine best practices in providing *Garrity* warnings. At the conclusion of  
3 that process, the Parties will meet and confer regarding what, if any, additional policies and  
4 procedures should be implemented.

5 **4. Use of Force Training**

6 127. SPD currently provides all SPD officers with use of force training based upon  
7 applicable law and SPD policy. SPD will review all use of force policies and training to ensure  
8 they incorporate, and are consistent with, the Constitution and all provisions of this Agreement.  
9 The required use of force training topics identified below will be included, where possible, in  
10 SPD's current annual in-service training requirements.

11 128. SPD's use of force training for all patrol and other relevant officers will address  
12 the following use of force topics:

- 13 a) SPD's use of force policy, use of force reporting requirements, and the  
14 mechanics of efficiently writing an informative use of force report;
- 15 b) proper use of force decision-making;
- 16 c) the Fourth Amendment and related law;
- 17 d) role-playing scenarios and interactive exercises that illustrate proper use of  
18 force decision-making; and
- 19 e) the appropriate use of de-escalation techniques.

20 129. In addition to the topics above, sworn and other relevant SPD supervisors will  
21 receive training on the following topics:

- 22 a) Use of force
  - 23 (1) SPD's use of force policy and use of force reporting requirements;

- (2) conducting use of force investigations, including the supervisory investigatory responsibilities identified in this Agreement;
- (3) evaluation of written reports;
- (4) burdens of proof; interview techniques; and the factors to consider when evaluating officer, complainant, or witness credibility, to ensure that investigative findings, conclusions, and recommendations are unbiased, uniform, and legally sound; and
- (5) LEED leadership training or other similar training, and techniques for de-escalating conflict, including peer intervention when necessary.

b) Use and analysis of SPD data systems that track officer activity

- (1) EIS;
- (2) ICV; and
- (3) Street Check database.

c) OPA

- (1) How and when to forward complaints received at precincts to OPA;
- (2) How and when to refer complaints to OPA; and
- (3) Responding to and investigating allegations of officer misconduct not otherwise handled by OPA.

d) Use of performance impact system in officer evaluations.



# FBI Law Enforcement

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Robert S. Mueller III  
Director

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## Features

### Physical Fitness in Law Enforcement

By Patti Ebling

1

*Physical fitness can help law enforcement officers in their daily duties and provide a sense of personal accomplishment.*

### Safety Awareness for Public-Contact Employees

By Jacqueline B. Wheeler and Christopher M. Lando

8

*Public safety employees without enforcement powers can face dangers similar to those encountered by sworn law enforcement officers.*

### Use-of-Force Policies and Training

By Thomas D. Petrowski

25

*The constitutional constraints on the use of force by law enforcement require reasonableness.*

## Departments

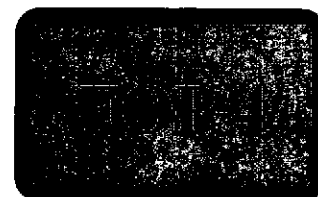
**6 Focus on School Violence**  
Bomb Threat Assessments

**17 Crime Data**  
Violent Crimes Remained Relatively Unchanged

**13 Bulletin Reports**  
Law Enforcement  
Drugs and Crime

**18 Research Forum**  
Officer-Involved Shootings

**14 Perspective**  
Bulletproof Dogs





## Research Forum

### **Perceptual and Memory Distortion During Officer-Involved Shootings**

By Alexis Artwohl, Ph.D.

**“I**f it hadn't been for the recoil, I wouldn't have known my gun was working. Not only didn't I hear the shots but afterward my ears weren't even ringing.”

“I saw the suspect suddenly point his gun at my partner. As I shot him, I saw my partner go down in a spray of blood. I ran over to help my partner, and he was standing there unharmed. The suspect never even got off a shot.”

“When I got home after the shooting, my wife told me that I had called her on my cell phone during the pursuit of the violent suspect just prior to the shooting. I have no memory of making that phone call.”

“I told the SWAT team that the suspect was firing at me from down a long dark hallway about 40 feet long. When I went back to the scene the next day, I was shocked to discover that he had actually been only about 5 feet in front of me in an open room. There was no dark hallway.”

“During a violent shoot-out I looked over, drawn to the sudden mayhem, and was puzzled to see beer cans slowly floating through the air past my face. What was even more puzzling was that they had the word *Federal* printed on the bottom. They turned out to be the shell casings ejected by the officer who was firing next to me.”

These representative samples, taken from actual officer-involved shootings, exemplify the quirky nature of perception and memory. Law enforcement officers fully realize that their superiors, legal authorities, and the public they serve will hold them completely accountable for their every action during an officer-involved shooting. These same individuals also will scrutinize the accuracy and truthfulness of statements made by officers taking part in such incidents. Therefore, it becomes important to understand that expecting officers to have perfect recall of

any event is not realistic. Indeed, the body of research on perception and memory supports the fact that people rarely are capable of total and perfect recall of events.

Although the underlying physical processes of perception and memory continue as a matter of research and debate, empirical observation of human behavior can shed some light on the behavioral consequences of these processes. To this end, the author focused her research on the self-reported perceptual and memory distortions experienced by officers involved in shootings.<sup>1</sup>

#### **BACKGROUND**

Germane to this topic is how trauma and other highly emotional experiences can impact perception and memory. A noted researcher in the area of stress and fear conducted a comprehensive review of this topic.<sup>2</sup> He came to the conclusion that people have two distinctly different modes of processing information. One, the rational-thinking mode, happens during low emotional arousal states, whereas the second, the experiential-thinking mode, occurs during states of high stress and emotional arousal, such as would occur during an officer-involved shooting.

He pointed out that when people are not under high levels of stress, they have the ability to calmly engage in the conscious, deliberative, and analytical cognitive processing that characterizes rational thinking. However, when a perceived emergency requires quick action, they cannot afford this luxury. Instead, their cognitive processing system automatically switches over to experiential thinking. He stated that “people are angry, sad, or frightened not as a direct result of what objectively occurs but because of how they interpret what happens. The automatic, preconscious construals that are the effective instigators of such emotions are made so automatically and rapidly as to preclude the deliberative, sequential, analytical thinking that is characteristic of the rational system.”<sup>3</sup>

He delineated the differences in rational and experiential thinking, including the concept that experiential thinking represents a system that “automatically, rapidly, effortlessly, and efficiently processes information,”<sup>4</sup> an obvious advantage in a

life-threatening situation demanding an immediate response. Along with facilitating automatic, rapid responses, he pointed out that experiential thinking is more likely than rational to have such characteristics as—

- fragmented memory instead of an integrated narrative;
- based on past experiences instead of a conscious appraisal of events;
- intuitive and holistic instead of analytic and logical;
- oriented toward immediate action instead of reflection and delayed action;
- highly efficient and rapid cognitive processing instead of slow, deliberative thinking;
- “seized by emotions” instead of “in control of our thoughts”; or
- “experiencing is believing” instead of requiring justification via logic and evidence.

He continued with, “In most situations, the automatic processing of the experiential system is dominant over the rational system because it is less effortful and more efficient and, accordingly, is the default option.”<sup>5</sup> He noted that people frequently engage in experiential thinking during everyday events simply because it is more efficient, but “emotional arousal and relevant experience are considered to shift the balance of influence in the direction of the experiential system.”<sup>6</sup> This clearly applies to officers involved in shootings and other high-stress situations.

### PREVIOUS RESEARCH

To understand this connection more thoroughly, the author reviewed previous research relative to officer-involved shootings. In the process, she concentrated on three main studies.

In 1986, two researchers were among the first to publish data specific to officer-involved shootings.<sup>7</sup> In their study of 86 officers involved in shootings, they

found that 67 percent of the officers saw the incident in slow motion, while 15 percent observed it as faster than normal. Fifty-one percent heard sounds during the event in a diminished manner, whereas 18 percent of the officers said that the sounds were intensified. Thirty-seven percent had tunnel vision, while 18 percent experienced greater visual detail.

In 1998, two other researchers studied a variety of reactions in 348 officers involved in shootings.<sup>8</sup> They administered their surveys within 3 to 5 days after the incident, just prior to each officer’s participation in a mandatory debriefing. They found that 41 percent of the officers thought that time slowed down, while 20 percent perceived that it sped up. Fifty-one percent said that sounds seemed quieter, whereas 23 percent reported sounds as being louder. Forty-five percent of the officers had tunnel vision, while 41 percent experienced an increased attention to detail. In addition, 22 percent of the officers reported memory loss for part of the incident.

A recent researcher did a comprehensive survey of officer-involved shootings that consisted of detailed interviews with 80 municipal and county law enforcement officers who reported on 113

separate cases where they shot citizens during their careers in law enforcement.<sup>9</sup> While his report contained a wealth of information, it also set out specific data relative to perceptual and memory distortions. He found that 56 percent of the officers saw the incident in slow motion, while 23 percent thought that it happened quicker than normal. Eighty-two percent reported that sounds diminished, whereas 20 percent thought sounds intensified. Fifty-six percent experienced heightened visual detail, while 51 percent had tunnel vision. In addition, 13 percent of the officers reported other types of distortion during the event.

### PRESENT RESEARCH

From 1994 to 1999, the author supplied a written survey to 157 officers involved in shootings from multiple agencies. Although approximately two-thirds

“  
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memory and perceptual  
distortions, in fact, did  
occur to some degree in  
officer-involved  
shootings.”



of the officers received the survey during their individual mandatory debriefing within 1 week after the shooting, the author told them not to fill out the survey until they had attended a group debriefing (which typically occurs 2 to 4 weeks after the incident, allowing time for agencies to complete their investigations). The author did this because she discovered, in the course of conducting numerous group debriefings, that many officers do not fully realize the extent of their own memory and perceptual gaps and distortions until confronted with evidence to the contrary. During a group debriefing, as officers tell their versions of what happened, the complete picture begins to emerge. Participating officers enjoy the benefit of finding out what really happened overall and how their own version might differ. Even for officers who were the only officer present, their later perusal of investigation reports, including physical evidence and eyewitness statements, can educate them as to the lack of completeness and total accuracy of their memories of the event.

By contrast, the author collected the remaining one-third of the surveys from mental health or law enforcement professionals who gave the surveys to officers who they knew had been involved in shootings. With these surveys, the length of time that had passed since the shooting occurred varied more than those collected after group debriefings.

In addition, the sample did not represent a "clinical" population; these officers were not seeking treatment for post-traumatic stress disorder (PTSD), although some may have been experiencing a certain degree of PTSD. The majority of the officers who completed the surveys collected by the author were doing well emotionally by the time their group debriefing occurred. The officers voluntarily filled out the surveys, and the great majority of the officers returned them to the author.

Overall, the author's research revealed that 62 percent of the officers viewed the incident in slow motion, while 17 percent said that time appeared to

speed up. Eighty-four percent of the officers noted that sounds seemed diminished, whereas 16 percent thought that sounds were intensified. Seventy-nine percent had tunnel vision, while 71 percent experienced heightened visual clarity. In addition, 74 percent of the officers stated that they responded on "automatic pilot," with little or no conscious thought. Fifty-two percent reported memory loss for part of the event, and 46 percent noted memory loss for some of their own behavior. Thirty-nine percent recalled experiencing dissociation (i.e., the sense of detachment or unreality); 26 percent had intrusive distracting thoughts; 21 percent noted memory distortion (i.e., saw, heard, or experienced something that did not really happen or it happened very differently than they remembered); and 7 percent reported having temporary paralysis.

## DISCUSSION

### Past and Present Survey Results

*Diminished sound* refers to the inability to hear very loud sounds that a person ordinarily obviously would hear, such as gunshots. It ranges from not hearing these sounds at all to hearing them in an

odd muffled, distant manner. This may contribute to the findings of previous researchers, as well as the author, indicating that officers often do not know exactly how many rounds they fired, especially as the number of shots increases.

*Tunnel vision* denotes the loss of peripheral vision. This, combined with *heightened visual clarity*, can result in the odd combination of officers seeing with unusual detail some stimuli within their narrowed field of vision, but remaining visually oblivious to the surroundings that they ordinarily would see with their peripheral vision.

Although 7 percent of the officers reported *temporary paralysis*, such a reaction is unlikely to represent "freezing" to the point of dysfunction during the event. In cases where the author debriefed officers who were angry at themselves for "freezing,"

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...memory is not a flawless "videotape" that can play back exactly the same way each time a person tries to remember a past event.

”

she found that, in fact, this was simply the normal "action-reaction" gap that occurs because the officers can shoot only after the suspect has engaged in behavior that represents a threat.<sup>10</sup> Although this gap occurs in a very brief span of time, because of the common perceptual distortion of slow-motion time, it can seem to the officers as if they stood there forever after perceiving the threat and before responding. While it remains possible that some of the respondents did, in fact, totally "freeze," it is unlikely that as many as 7 percent did. Perhaps, none did.

*Intrusive distracting thoughts* are those not immediately relevant to the tactical situation, often including thoughts about loved ones or other personal matters. In addition, memory gaps and perceptual distortions can result in "flash-bulb" memories, where the individual has a series of vivid images burned into memory, with the rest of the event somewhat fuzzy, a bit out of order, or even missing.

The author found one notable aspect about all of the studies. None quantified other perceptual distortions that can occur, such as distance distortion, color distortion, face recognition distortion, or lighting distortions.

Overall, although some of the studies found similar results on various items, inconsistencies also occurred in several items from study to study. Regardless of the methodological differences that might have contributed to these deviations, the most important finding remained the same for all. That is, independent studies using different methodologies found that memory and perceptual distortions, in fact, did occur to some degree in officer-involved shootings. Therefore, those who analyze the actions and statements of officers involved in shootings must take these findings into account. Two researchers stated this clearly after finding that 22 percent of officers in their survey experienced memory loss.

While other studies have reported even higher numbers, 22 percent remains a highly significant amount given that the officers will be expected to

testify regarding their actions sometime in the future. What appears to be a relatively common perceptual disturbance following involvement in a critical incident has the potential of opening up the officers to accusations of either outright lying or withholding the truth. This is particularly relevant should subsequent interviews result in additional observations or clarifications, as is often the case.<sup>11</sup>

### Implications for Investigators

These researchers accurately pointed out that memory is not a flawless "videotape" that can play back exactly the same way each time a person tries to remember a past event. Rather, memory is a creative and not entirely understood process. If an officer's recollection of an event is not a totally accurate representation of reality, it does not necessarily mean that the officer is lying or trying to engage in a cover-up. Likewise, it is normal for memories to change somewhat over time, and the changed or new memories may or may not represent reality more accurately. The same concept applies to other eyewitnesses and the suspects as well. No one should accuse an individual of lying simply due to inaccurate, inconsistent, or missing memories. While some individuals will choose to be



untruthful, investigators should reserve this accusation for those cases where additional evidence exists to indicate that the person deliberately lied.

The author found that 21 percent of the officers "saw, heard, or experienced something during the event that I later found out had not really happened or happened very differently than how I remembered it." All participants in an event, including the suspect, eyewitnesses, and officers, have the potential to see, hear, feel, or experience things that did not actually happen. A wide variety of factors, including perceptual distortions, biases, beliefs, expectations, and prior experiences, influence people's perceptions. An interesting aspect to these memory distortions that the author repeatedly has observed is that they can "feel"



more real to the witness than what actually happened. This remains consistent with the observation that experiential thinking is “self-evidently valid: ‘seeing is believing,’” as opposed to rational thinking, which “requires justification via logic and evidence.”<sup>12</sup>

When confronted with a videotape that conclusively proved that he saw things that did not happen, a veteran SWAT officer told the author, “Doc, I now intellectually know that what I thought I saw didn’t really happen, but it still *feels* more real to me than what I saw on the tape.” Some witnesses sincerely and vehemently will insist that their perceptions and memories are accurate when, in fact, they may not be accurate at all.

The differences between rational and experiential modes of thinking also have implications in the postshooting aftermath. Clearly, officers need to be held accountable for all of their on-duty behavior, especially if they must use deadly force. However, those who conduct postshooting analyses should keep two things in mind. First, while officers usually have only seconds (or less) to decide about using force, all of those doing postshooting analyses will have hours, weeks, months, or even years to contemplate all of the evidence and decide what the officers really should have done.

Although postincident analysis can prove very helpful as a learning exercise, it was not an option available to the involved officers at the time of the shooting. Second, research indicates that officers will be in the experiential-thinking mode because it is the default option, especially in emotionally laden situations. On the other hand, all of those engaged in postshooting analyses have the ability to analyze the officers’ behaviors in rational-mode thinking, a different cognitive process altogether and a luxury that the officers did not have during the shootings. This does not suggest that officers be given carte blanche to behave in any way they want during a high-stress situation. It does imply, however, that the law enforcement profession must remain rigorous in

its training, realistic in its expectations, and cognizant of the demands of emergency situations.

Another research review found that “traumatic situations will inevitably result in memory impairment.”<sup>13</sup> These researchers pointed out, and the author agrees, that officers may make more thorough and accurate statements if they wait at least 24 hours, during which time they should get some sleep, before participating in their formal interview with investigators. Research evidence suggests that REM (rapid eye movement) sleep, in particular, helps integrate memories and facilitate learning and memory retrieval. Some officers might appear unusually calm shortly after an incident and may prefer to give an immediate full statement. Often, however, it is best for officers to sleep first and give their statements

later. This does not preclude their providing enough brief information during an immediate on-scene “walk-through” to get the investigation started. But, investigators must conduct these initial sessions in a sensitive manner that does not compromise the officers’ legal rights.

Given that perceptual and memory distortions are an integral part of traumatic events, investigators may find research on the cognitive interview technique helpful.<sup>14</sup> The developers of this method found that how investiga-

tors interview individuals can significantly impact the ability of the witnesses to remember and report the details of an event. Their research indicated the cognitive interview as the most effective technique for facilitating memory retrieval with cooperative witnesses. Using proper interview techniques is particularly important for high-stress situations because during experiential thinking, the individual is more likely to be dissociative and “encodes reality in concrete images, metaphors, and narratives,” whereas, in rational thinking, the individual is more logical and “encodes reality in abstract symbols, words, and numbers.”<sup>15</sup> This means that the survivors of traumatic experiences will find it challenging to

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...it is normal for memories to change somewhat over time, and the changed or new memories may or may not represent reality more accurately.

”

translate the dissociated concrete images and metaphors they experienced during the high-stress event into the sequential, verbal, abstract, and logical narrative required by an investigative interview and courtroom testimony. Skilled investigators can help witnesses with this difficult task.

### Implications for Training

Seventy-four percent of the officers that the author surveyed reported, "I responded automatically to the perceived threat giving little or no conscious thought to my actions." This finding coincides with the experiential-thinking mode, described as an "automatic, intuitive mode of information processing that operates by different rules from that of the rational mode" that "occurs automatically and effortlessly outside of awareness because that is its natural mode of operation, a mode that is far more efficient than conscious, deliberative thinking."<sup>16</sup> This has profound implications for training because experiential thinking is based on *past experiences*. Therefore, under sudden, life-threatening stress, individuals likely will exhibit behavior based on past experiences that they automatically will produce without conscious thought. This means not only training officers in appropriate tactics but also providing sufficient repetition *under stress* so that the new behaviors *automatically* will take precedent over any previously learned, potentially inappropriate, behaviors that they possessed before becoming an officer.<sup>17</sup>

Another implication of the author's study, as well as other research, is that it supports the concept of reality-based training that all tactically minded officers and trainers know represents the foundation for reliable performance in high-stress situations. "Information obtained from textbooks and lectures is of a different quality from information acquired from experience. Experientially derived knowledge often is more compelling and more likely to influence behavior than is abstract knowledge."<sup>18</sup>

This is especially critical in sudden, high-stress situations requiring instant physical performance. Abstract knowledge obtained in lectures and books can be very useful in rational-thinking mode situations, such as formulating policies and analyzing situations. However, when officers face sudden, life-threatening incidents, their reality-based training *experiences* most likely surface.

Reality-based instruction that subjects the participants to high levels of stress during training also will help officers develop coping mechanisms to compensate for perceptual and memory distortions. For instance, to compensate for tunnel vision, many officers have learned to practice visually scanning the tactical environment during high-stress situations, such as pursuits and high-risk entries. Training under stress also will help officers learn to control their arousal level. As their physiological agitation escalates, so might their susceptibility to perceptual and memory distortions. Thus, learning to control arousal level can help reduce distortions. Therefore,

officers should receive training in and regularly practice ways to control arousal levels in high-stress situations. One process, the combat breathing technique, has proven highly effective in this area.<sup>19</sup>

Officers and their family members also should receive training on what reactions they can expect during and after high-stress situations, such as shootings. Providing officers and their family members with information on what to expect can help them cope better with highly stressful events.<sup>20</sup>

Finally, those who analyze or participate in the aftermath of officer-involved shootings should receive training as well. Such individuals could include attorneys, association representatives, peers, juries, journalists, command staff and supervisors, mental health professionals, employee assistance personnel, worker compensation employees, and any others who have a vested interest in these events. This will better enable them to make informed, reasonable

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judgements about the officers' behaviors and advocate for the type of training and postincident care that the officers will need to best serve and protect their communities.

## CONCLUSION

The observations of the officers at the beginning of this article effectively portray how perception and memory can influence an individual's understanding of a particular incident. One officer did not hear the sound of his gun discharging. Another did not remember calling his wife just prior to being involved in a shooting. Three others observed things happening in ways that did not actually occur. All of the officers were involved in the highly stressful and emotionally laden process of using deadly force and, therefore, subject to later scrutiny by their agencies and the citizens they serve for their actions.

Although highly trained in accurately describing events and uncovering facts pertinent to criminal investigations, law enforcement officers face the same difficulties that all people do when trying to recall what happened in high-stress situations. Research has revealed that people rarely can remember such events with total accuracy. The author's study, along with other research she examined, demonstrated that this finding holds true for officers involved in shootings. With this in mind, the law enforcement profession must realize the implications this has for officers and those who analyze their actions. Because critical incidents demand split-second decisions, officers must receive the best training that will help them react appropriately in high-stress situations. Likewise, those who analyze these events must understand the demands placed on officers during such incidents and maintain realistic expectations concerning what officers perceived during the events and what they can recall accurately afterwards. In the end, recognizing the perceptual and memory distortions that officers can

have during a shooting can go a long way toward helping officers deal with such difficult situations and, perhaps, reduce their occurrence. ♦

## Endnotes

<sup>1</sup> Officers can contact Dr. Artwohl, coauthor of *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Win a Gunfight* (Boulder, CO: Paladin Press, 1997), at [artwohl@cs.com](mailto:artwohl@cs.com) or access her Web site at <http://www.alexisartwohl.com>.

<sup>2</sup> Seymour Epstein, "The Integration of the Cognitive and Psychodynamic Unconscious," *American Psychologist* 49 (1994): 709-723.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> R.M. Solomon and J.M. Horn, "Post-Shooting Traumatic Reactions: A Pilot Study," in *Psychological Services for Law Enforcement*, eds. J.T. Reese and H.A. Goldstein (Washington, DC: U.S. Government Printing Office, 1986).

<sup>8</sup> A.L. Hoenig and J.E. Roland, "Shots Fired: Officer Involved," *Police Chief*, October 1998.

<sup>9</sup> David Klinger, U.S. Department of Justice, National Institute of Justice, *Police Responses to Officer-Involved Shootings*, NCJ 192285 (Washington, DC, October 2001).

<sup>10</sup> Bill Lewinski, "Why Is the Suspect Shot in the Back?" *The Police Marksman*,

November/December 2000.

<sup>11</sup> *Supra* note 8.

<sup>12</sup> *Supra* note 2.

<sup>13</sup> D. Grossman and B.K. Siddle, *Critical Incident Amnesia: The Physiological Basis and Implications of Memory Loss During Extreme Survival Stress Situations* (Millstadt, IL: PPCT Management Systems, Inc., 1998).

<sup>14</sup> R.P. Fisher and R.E. Geiselman, *Memory Enhancing Techniques for Investigative Interviewing* (Springfield, IL: Charles C. Thomas, 1992).

<sup>15</sup> *Supra* note 2.

<sup>16</sup> *Supra* note 2.

<sup>17</sup> Charles Humes, "The Flashlight Dilemma," *Tactical Edge*, 1992.

<sup>18</sup> *Supra* note 2.

<sup>19</sup> Charles Humes, "Lowering Pursuit Stress," *Police*, June 2001.

<sup>20</sup> D. Meichenbaum, *Stress Inoculation Training* (Boston, MA: Allyn & Bacon, 1985).

“  
 ...the law enforcement profession must remain rigorous in its training, realistic in its expectations, and cognizant of the demands of emergency situations.  
 ”

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U.S. Department of Justice  
Federal Bureau of Investigation

May 2012

# FBI Law Enforcement Bulletin

## Officer-Involved Shootings

Memory, Stress,  
and Time





# FBI Law Enforcement Bulletin

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Director

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## Features

### Working Toward the Truth in Officer-Involved Shootings

By Geoffrey P. Alpert, John Rivera, and Leon Lott

1

*Agencies must recognize and address the many factors that influence officers' memories after involvement in a shooting.*

### Synthetic Marijuana

By Roland Macher, Tod W. Burke, and Stephen S. Owen

17

*Law enforcement officers must be aware of these dangerous new chemicals.*

### Indian Country and the Tribal Law and Order Act of 2010

By Michael J. Bulzomi

24

*Legislative changes have provided Indian country with needed improvements in jurisdiction and the criminal justice system.*

## Departments

**8 Leadership Spotlight**  
Determined Leadership

**16 VICAP Alert**  
Missing Person

**10 Perspective**  
Leading Through Difficulty and Loss

**23 Bulletin Honors**  
Huron, South Dakota Police Memorial



# Working Toward the Truth in Officer-Involved Shootings

## Memory, Stress, and Time

By GEOFFREY P. ALPERT, Ph.D., JOHN RIVERA, and LEON LOTT

**A**n important area of psychological research examines “how trauma and other highly emotional experiences can impact perception and memory.”<sup>1</sup> Studies indicate that individuals display two distinct ways of processing information into memory: the “rational-thinking mode” during low-emotional states and the “experiential-thinking mode” in a high-stress situation, such as an officer-involved shooting (OIS).<sup>2</sup> This distinction illustrates that the trauma caused by an OIS likely will impact the memories and perceptions of the officers involved.

However, not enough research has been done to determine exactly how these effects distort memories of stressful events. Many studies relate only to routine memory and eyewitness identification, rather than the use of deadly force.<sup>3</sup> Further research must focus on determining how other variables may cause officers’ memories of such incidents to vary from reality. Investigators who interview officers following an OIS should remain cautious because their subjects’ memories may have been impacted by their experience in numerous and, at times, unpredictable ways.<sup>4</sup> Law enforcement agencies should acknowledge these difficulties when determining protocol for when and how to interview involved officers following an OIS.<sup>5</sup>





## Prior Research

While much study has been conducted on memory and stress, only limited research has focused specifically on how this relates to OIS.<sup>6</sup> These gaps led one researcher to study how memories function differently during traumatic events. To investigate this issue, she surveyed officers over a 6-year period after they had been involved in shooting incidents. Her research found that officers exhibited a variety of reactions and responses to an OIS. For example, more than 60 percent of the officers felt that the incident transpired in slow motion, while 17 percent recalled time speeding up. Over 80

percent of the officers reported auditory lockout, while 16 percent heard intensified sounds. Similarly, more than 70 percent claimed that they experienced heightened clarity of vision and that they responded to the threat not with “conscious thought,” but, rather, on “autopilot.” Interestingly, almost 40 percent reported disassociation, while 46 percent reported memory loss. Her findings are both important and consistent with other research indicating that officers experience perceptual and memory distortions during a critical incident, such as an OIS.<sup>7</sup>

Another study also deserves attention. Researchers surveyed 265 police officers from the

Midwest who were exposed to three stressful conditions: a live-fire simulation, a video of the training that included the shooting, and a video of the simulation scene without sound or a shooting. Most of the officers were not questioned about their experiences until 12 weeks later, but a sample of the officers participated in a “rehearsal” interview—they answered the questions immediately after the exposure and then again 12 weeks later.

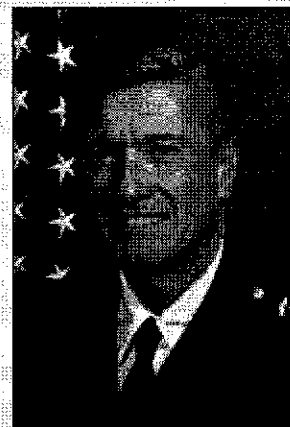
The researchers concluded that, overall, stress was positively related to memories of armed people, unrelated to memories of unarmed people, and negatively related to objects.<sup>8</sup> Their findings echoed



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other research that suggested eyewitnesses focus on the source of the threat or stress (e.g., the shooter) more intensely than the peripheral information about a scene or incident (e.g., the furniture in the room where the shooting occurred).<sup>9</sup> Interestingly, the study also found that the officers subjected to the immediate rehearsal questioning recalled clearer memories in their second interview 12 weeks later compared with the officers interviewed only once.

This study is important for several reasons. First, it showed that during high-stress events, officers more likely will focus on a threat, rather than peripheral objects or people. If an officer vividly remembers a person with a weapon but has only a blurred vision of an unarmed individual or an object in the room or area, this does not necessarily indicate that the officer's testimony is a conscious deception, planned response, or otherwise illegitimate. Instead, these distortions may be caused by stress—the research indicated that officers' memories after a traumatic event can play tricks on them or vary from reality. This might result from pressure or anxiety caused by the incident, officers' exhaustion during the event, or other factors that influence memory.<sup>10</sup>

Second, the study supported the argument that it remains unclear as to when officers should

be interviewed concerning their observations, actions, and reactions after an OIS. Many ambiguities exist regarding this issue, and, thus, no proven best practices exist for collecting information from officers involved in an OIS. However, most agencies follow the intuition that exhausted, injured, or otherwise impaired officers should not be questioned immediately after a traumatic event.

**“**

***...the trauma caused by an OIS likely will impact the memories and perceptions of the officers involved.***

**”**

Otherwise, not only does this pose serious risks to the officers' health and well-being but information gleaned from these interviews may sabotage an investigation. These case studies indicated that through no fault of their own, these officers' memories may suffer from distortions due to the stress caused by such traumatic incidents. As such, investigators must keep these factors in mind when determining the timing and structure of post-OIS interviews.

### **Authors' Study**

To look at this phenomenon more closely, the authors organized a pilot study in December 2010 to examine how officers recall high-stress events. They used the Richland County, South Carolina, Sheriff's Department as the subject of their study. The researchers surveyed officers' reactions to training that involved live-fire simulation and role play by interviewing the officers and analyzing their responses.<sup>11</sup>

The department periodically conducts training activities that involve these live-fire simulations. This instance involved a group of deputies learning to respond to active-shooter situations in schools. The training occurred in an abandoned school that realistically emulated a real world environment. Officers responded to one of two active-shooter scenarios: a school shooting or a terrorist attack. Each simulation involved similar reportable and measurable characteristics.

During the simulation, officers worked in teams to clear a building, assist victims or hostages, and secure suspects. Following the incident, each deputy attended a short debriefing. When the training concluded for the day, half of the officers (Group A) wrote a report detailing the event. Then, the researchers asked Group A to recount the event again



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3 days later. The other half of the officers (Group B) were required only to detail their recollections of the event after 3 days passed but were not asked to write a report immediately after the training.

By dividing the subjects into these two groups, the study aimed to determine whether officers' memories were sharper and more accurate in the time immediately following the shooting or sometime later. Also, Group A's rehearsal interview would help illustrate how their memories of a high-stress event changed over time.

Officers' memories were evaluated based on their ability to recall five elements of the event and the level of specificity that they provided. These five items were divided into two categories: threat variables and environmental variables. Each correct assessment of one of

these elements earned officers a certain amount of points.

For threat variables, officers received 0 to 3 points for their descriptions of the number, type, and descriptions of weapons. An additional category of threat variables included information on the suspects, including race, gender, and clothing, earning officers another 0 to 4 points. Conversely, for environmental variables, officers earned 0 to 3 points for reporting the location of the incident, including the type of room and surroundings; 0 to 2 points for remembering facts from dispatch, including the nature of the altercation in progress; and another 0 to 2 points for reporting the number and names of other officers on the team.

Each report was assessed based on how accurately the officers could remember the five threat and environmental

variables, and the deputies' scores in each category were summed to arrive at an overall score. Then, the total scores of all officers within the two groups were averaged.

### Findings

When officers in Group A detailed the event immediately after the simulation, their total score averaged 7.5 with a high score of 12 and a low score of 4 (out of 14 points possible). Three days later, when Group A's officers provided their recollections for the second time, their average score improved to 7.8 with a high score of 13 and a low score of 4. The total score for Group B's officers, who only provided their recollections 3 days after the simulation, averaged 6.4 with a high score of 10 and a low score of 2.

These results demonstrated that the deputies' memories remained sharper when asked to recount the incident immediately after it occurred, compared with the deputies who were not asked until a few days had passed. Additionally, the memories of individuals asked to share their recollections immediately after the incident improved slightly in their second report.

The researchers analyzed these results further by distinguishing officers' scores for threats versus environmental variables. A separate analysis of

these scores (with a maximum score of 7 for each category) showed that the deputies recalled threats more accurately than environmental variables. Group A received an average score of 4.4 for threat variables compared with 3.3 for environmental variables. Also, the results revealed that officers' recollections of threats weakened slightly over time as their score for threat variables decreased to 4.2. The subjects did not remember environmental variables as accurately in either condition. Group A showed an average score of 3.3 immediately after the event and 3.5 after 3 days passed. Group B averaged 3.3.

Although the differences were not drastic, they demonstrated that, overall, the deputies maintained stronger memories of threats (e.g., the people and weapons that could harm them), rather than the environment (i.e., the conditions under which the event occurred). Additionally, asking officers to recall facts immediately after an event may prove important for collecting accurate threat-related information because the officers' memories of threats weakened slightly after time passed.<sup>12</sup> This could suggest that for investigators to obtain the most precise information about an OIS, it might be best for them to ask officers about threat-related information as soon as possible.

Conversely, it may not be as urgent to interview witnesses about environmental variables right away.

Because this study involved a simulation, the subjects were not at risk for the same type of exhaustion, injury, or other impairments that can affect officers' memories after a real live-fire incident. But, the major lesson from this pilot study

**“**  
**...the research indicated that officers' memories after a traumatic event can play tricks on them or vary from reality.**  
**”**

remains that these deputies recalled the threat variables better than environmental factors, and they remembered them best immediately after the incident.

#### **Policy Implications**

Although a pilot study with significant limitations, this research presents important information for policy makers who determine whether an OIS investigation should involve immediate or delayed interviews of officers. Currently, no law enforcementwide best practice

or proven method exists for the timing of these interviews. However, several influential sources have suggested guidelines.

The Police Assessment Resource Center conducted a study of the Portland, Oregon, Bureau of Police and subsequently recommended that the department's internal affairs investigators interview officers who were involved in or witnessed an OIS no later than a few hours after the event.<sup>13</sup> Conversely, the International Association of Chiefs of Police stated in Police Psychological Services guidelines that investigators should give officers time to recover after the incident before they conduct any detailed interviewing, with this recovery time ranging from a few hours to overnight. Other experts echoed this recommendation; they suggested that officers may make more accurate and thorough statements if they are allowed to wait at least 24 hours before questioning, giving the officers time to rest and recuperate before they make a formal declaration.<sup>14</sup>

Many agencies embraced these suggestions and implemented policies requiring officers to wait before giving an interview or speaking to an investigator about an OIS. In this respect, these departments treat officers differently than they do suspects or civilian witnesses. If agencies think that



officers involved in a traumatic event provide better accounts after a waiting period, then why are witnesses and suspects interviewed as soon as possible after the incident? Prior research consistently determined that individuals' memories react strangely to stressful or traumatic events—officers and civilians alike experience perceptual and memory distortions after these incidents. What remains unknown, however, is what factors influence the distortions and how to minimize them.

To this end, it might be best for agency protocol to allow for case-by-case flexibility when determining the timing and structure of interviews following an OIS. Investigators must remain sensitive to personnel who have just experienced one of the most traumatic events in the life of a police officer but also strive to obtain the most accurate information possible about the incident. For example, if investigators need precise intelligence about the incident, then it may be important for them to give the officers and civilian witnesses an initial walk-through of the incident without providing details. This walk-through may function as the "rehearsal" interview that helps trigger better memory recall later on as demonstrated in the authors' study. Similarly, an expert highlighted the value of

this time delay in the interview process, stating that interviewers can consider "...providing enough brief information during an immediate on-scene 'walk-through' to get the investigation started."<sup>15</sup>

Also, investigators should remain sensitive to the fact that individual officers can react to an OIS differently. Some personnel handle the stress of a shooting better than others, and depending on the outcome



of the event, it may be necessary to delay some detailed interviews. For example, if the officers' or witnesses' friends or family suffered injuries, investigators may need to delay asking them to rehash the incident in great detail. Additionally, if individuals are exhausted, injured, or otherwise impaired,

they will not provide meaningful information for any type of fact-finding mission. The decision of when to conduct post-OIS interviews should balance the humanistic concerns for the witnesses with the investigators' need for information.

Even officers employed by the same department and who received the same training may react differently to an OIS; as such, they could display varying levels of detail and accuracy in their recollections of the event. Officers' ages, backgrounds, and life experiences can impact significantly how they will respond to an OIS. Far too often, officers who suffer postshooting trauma feel further pressure from department administrators anxious for information. This practice could be counterproductive because anything that causes the witness additional stress may hamper memory or recall. Putting pressure on officers by forcing them to recount a traumatic event too soon may result in incomplete and inaccurate information, possibly leading to grave errors in an investigation.

### Conclusion

Clearly, more rigorous and precise research must focus on the factors that influence memory distortions and how to minimize them. Researchers have not reached a consensus

on how to trigger more accurate memories of stressful events. Additionally, most investigators fail to anticipate the natural distortions, which likely occur due to expected variance rather than deception, that likely will appear in officers' memories. Until a greater understanding of these issues is reached, inconsistencies and inaccuracies in eyewitness testimonies will continue to hamper OIS investigations. Department leaders and personnel alike must acknowledge the many unpredictable factors that influence the memories of the involved officers after an OIS to ensure a successful investigation. ♦

#### Endnotes

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<sup>4</sup> David Hatch and Randy Dickson, *Officer-Involved Shootings and Use of Force: Practical Investigative Techniques* (Boca Raton, FL: CRC Press, 2007).

<sup>5</sup> Nelson Cowan and Angela M. AuBuchon, "Short-Term Memory Loss

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<sup>6</sup> Matthew Sharpes, *Processing Under Pressure: Stress, Memory and Decision-Making in Law Enforcement* (Flushing, NY: Looseleaf Law Publications, 2009); *AELE Monthly Law Journal*, "Administrative Investigations of Police Shootings and Other Critical Incidents: Officer Statements and Use-of-Force Reports Part Two: The Basics," <http://www.aele.org/law/2008FPAUG/2008-8MLJ201.pdf> (accessed May 3, 2011).

<sup>7</sup> Charles A. Morgan III, Gary Hazlett, Anthony Doran, Stephan Garrett, Gary Hoyt, Paul Thomas, Madelon Baranoski, and Steven M. Southwick, "Accuracy of Eyewitness Memory for Persons Encountered During Exposure to Highly Intense Stress," *International Journal of Law and Psychiatry* 27 (2004): 265-279; Alexis A. Artwohl and Loren W. Christensen, *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight* (Boulder, CO: Paladin Press, 1997); R.M. Solomon, "I Know I Must Have Shot, But I Can't Remember," *The Police Marksman*, July/August 1997, 48-51; R.M. Solomon and J.M. Horn, "Post-Shooting Traumatic Reactions: A Pilot Study" in *Psychological Services for Law Enforcement*, ed. J. T. Reese and H.A. Goldstein (Washington, D.C.: U.S. Government Printing Office, 1986), 383-394; D. Grossman and B.K. Siddle, *Critical Incident Amnesia: The Physiological Basis and the Implications of Memory Loss During Extreme Survival Situations* (Millstadt, IL: PPCT Management Systems, 1998); David Klinger, *Into the Kill Zone: A Cop's Eye View of Deadly Force* (San Francisco, CA: Jossey-Bass, 2004); A.L. Honig and J. E. Roland, "Shots Fired: Officer Involved," *The Police Chief*, October 1998, 116-119; and Geoffrey Alpert, Dallas Police Department, *Review of Deadly Force Training and*

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<sup>8</sup> Terry Beehr, Lana Ivanitskaya, Katherine Glaser, Dmitry Erofeev, and Kris Canali, "Working in a Violent Environment: The Accuracy of Police Officers' Reports About Shooting Incidents," *Journal of Occupational and Organizational Psychology* 77 (2004): 228.

<sup>9</sup> Cowan and AuBuchon, 230-235; David Frank Ross, J. Don Read, and Michael Togli, ed., *Adult Eyewitness Testimony: Current Trends and Developments* (New York: Cambridge University Press, 1994); and Patricia Yuille and John Tollstrup, "A Model for the Diverse Effects of Emotion on Eye Witness Memory," in *The Handbook of Emotion and Memory: Research and Theory*, ed. S. A. Christianson (New Jersey: Lawrence Erlbaum Associates, 1992), 201-215.

<sup>10</sup> Marian Joëls and Tallie Z. Baram, "The Neuro-Symphony of Stress," *Nature Reviews Neuroscience* 10 (2009): 459-466.

<sup>11</sup> Deputies from numerous divisions in the department attended this training, and, as such, the researchers made no attempt to randomize the subjects or create a sample based on any factors. Additionally, no individual data were collected on the deputies' background or characteristics.

<sup>12</sup> No statistical significance tests were conducted because the purpose of this exercise was to examine the issues, rather than test for significant differences.

<sup>13</sup> Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths* (Los Angeles, CA, 2003).

<sup>14</sup> Grossman and Siddle, *Critical Incident Amnesia: The Physiological Basis and the Implications of Memory Loss During Extreme Survival Situations*.

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## **Officer-Involved Shooting Guidelines**

Ratified by the IACP Police Psychological Services Section  
Denver, Colorado, 2009

### **1. Purpose**

- 1.1 These guidelines were developed to provide information and recommendations to public safety agencies and mental health providers for the purpose of constructively supporting officers involved in shootings and other use-of-force incidents that may trigger the investigative process. Many of these recommendations can also be applied to other potentially distressing critical incidents. The field experience of members of the IACP Police Psychological Services Section, along with scientific research, suggests that following these guidelines can reduce the probability of long-lasting psychological problems resulting from such incidents. These guidelines are not meant to be a rigid protocol and may be adapted according to agency size and funding, as well as applicable state and local laws.

### **2. Pre-Incident Preparation**

- 2.1. Officers and administrations should be made aware of the emotional, psychological, and behavioral residuals often associated with officer-involved shootings. Agencies are encouraged to train all agency personnel in posttraumatic reactions and appropriate ways to respond to employees who have been involved in a potentially traumatic incident. Trainings should include what to expect personally, departmentally, and legally after a shooting or other significant use-of-force incident.
- 2.2. Prior to any shooting incident, it is strongly recommended that the agency establish a working relationship with one or more trained, qualified, licensed mental health professionals experienced in the law enforcement culture as well as in providing post-shooting intervention. The department should notify this mental health resource as soon as possible following an officer-involved shooting, so that a post-shooting intervention can be facilitated.
- 2.3. All officers should be asked to complete a form indicating the names and contact numbers of family members and significant others whom they would like to be notified in the event that they are injured on duty and are unable to contact them personally. Officers should also identify two or three fellow officers, in order of preference, whom they have chosen to contact their family and significant others. This information should be routinely reviewed by all officers on an annual basis. Officers should be assured that the information they place on the document is safe from review by unauthorized personnel, and is readily available at the time of an incident.

### **3. At the Scene and Immediately Following**

- 3.1. Immediately after an incident, provide physical first aid and communicate emotional support and reassurance to involved officers and other personnel. This support should be focused on calming physical and emotional stress and supporting the officers' sense of safety.
- 3.2. Involved officers should be encouraged to step immediately away from the scene and any media attention and be sensitively transitioned to a safe and supportive environment. Instead of driving themselves, they should be provided with transportation. If returning immediately to the department is not practical, they should be allowed to choose another appropriately private and safe remote location. Above all, officers should not be isolated. Instead, they should be accompanied by supportive peers and supervisors who can assist them in following agency policies regarding talking about the incident before the initial investigative interviews. If officers themselves have an immediate need to talk about the incident, they should be encouraged to do so solely with individuals with whom they have legally privileged confidentiality. Consider both the officers' preferences and the integrity of the investigation when deciding if and when the officers are to return to the scene.
- 3.3. Following a shooting incident, officers may feel vulnerable if unarmed, especially when they are in uniform. If an officer's firearm has been taken as evidence, a replacement weapon should be immediately provided as a sign of support, confidence, and trust unless there is an objective basis for questioning the officer's fitness for duty. In addition to replacing the officer's weapon, it is recommended that a peer (ideally trained in peer support; see *IACP PPSS Peer Support Guidelines*, or has previously gone through an officer-involved shooting while employed with the agency) be assigned to the officer immediately following the incident to provide support and security. Officers should be kept informed of when their weapon is likely to be returned.
- 3.4. Officers should be provided with the opportunity to contact their family members as soon as possible. It is best for the officers themselves to contact their families. It is therefore prudent that no contact be made with family members before the officers have had this opportunity. If this opportunity is significantly delayed, or officers are injured and unable to call themselves, then individuals who preferably know the families and have been previously chosen by the officers should call as soon as possible. Offers to call other support people such as friends, family members, chaplains, and so on, should be made to ensure that the family members have their support system mobilized. Family members who wish to be with injured officers should be offered transportation in lieu of driving themselves.



- 3.4.1. Officers not involved in the incident, but on duty, should attempt to contact their families and advise them that a shooting incident has occurred, but that they were not involved.
- 3.5. The investigative process and concerns over legal and administrative consequences are often the most stressful parts of an officer-involved shooting for involved personnel. During the first few hours, a designated peer, union representative and/or supervisor should explain to officers what is likely to happen administratively and the reasons behind the required administrative actions. A written summary of administrative and investigative procedures should be provided to all officers during their initial training and again within the first few hours after a shooting incident. During this potentially emotional and confusing time, officers may also wish to consult legal advisers of their choice for further education. Within the initial two days, educate involved officers on the protocol of the investigation as well as any potential actions by the media, grand jury, or review board. It is preferable that these steps be taken prior to any formal investigative interviews. It is equally important that, over time, officers be made aware of the progress of the investigation.
- 3.6. It would be helpful to provide officers and their significant others with written information that reviews physical and psychological reactions to shooting incidents. Topics covered should include what to expect, how to support each other, coping strategies, and whom to contact for further assistance. These may be the same handouts provided to newly hired officers (see 2.1).

#### **4. Investigative Period**

- 4.1. Shootings and other use-of-force incidents can result in heightened physical and emotional reactions for the participants. It is recommended that officers involved in such incidents be given a minimum three days leave, either administrative or through regular days off, in order to marshal their natural coping skills to manage the emotional impact of the incident prior to return to duty or the preparation of a use-of-force or incident report. Those who were present at the scene but did not discharge their weapons may also be emotionally impacted by the incident and may benefit from a period of administrative leave. It is important that officers and the public understand that administrative leave is a routine procedure and not a disciplinary suspension.
- 4.2. While officers may be asked to provide pertinent information soon after a shooting to aid the initial investigative process, it is suggested that they have some recovery time before providing a full formal statement. Depending on the nature of the incident and the emotional status of the officers, this can range from a few hours to several days. Officers will often benefit from at least one night's sleep prior to being interviewed. Officers who have been afforded these opportunities are likely to provide more coherent and accurate statements. Providing a secure

setting, insulated from the press and curious coworkers, is important during the interview process.

- 4.3. During the course of a post-shooting investigation, potential legal and emotional difficulties may arise for officers involved in subsequent critical incidents. When appropriate, it is recommended that officers and agencies work together in considering temporary duty assignments, if available, that will lessen the likelihood that officers will be involved in subsequent use-of-force incidents during on-going investigations.
- 4.4. If officers have published home telephone numbers, it may be advisable to have friends or voicemail screen telephone calls to prevent any harassing or threatening calls from reaching officers or family members.
- 4.5. Talking with peers who have had similar experiences can be quite helpful for officers involved in significant use-of-force incidents. Often these personnel respond immediately on scene to provide support and psychological first aid. Peer support personnel may also be an asset by participating in group interventions in conjunction with a mental health professional and in providing follow-up support. Family members of officers involved in shootings may also benefit from peer support particularly from the family members of those who have previously been involved in shootings or other life-threatening events. The formation and administrative backing of peer support and outreach teams for officers and family members may prove to be a wise investment prior to an officer-involved shooting. Peer support should only be ancillary to intervention by a mental health professional and should never take its place. (Please see *IACP PPSS Peer Support Guidelines* for information concerning the development and use of peer support teams.)
- 4.6. Personal concern and support for officers involved in significant use-of-force incidents, communicated from high-ranking administrators, can provide an extra measure of reassurance and comfort. The administrator does not have to comment on the situation, or make further statements regarding legal or departmental resolution, but can show concern and empathy for the officers during this stressful experience. These contacts, whether in person or via telephone, should be made as soon as possible after the incident.
- 4.7. As soon as is practical, a designated and informed person should brief the officers' supervisors and team, followed by the agency as a whole, about the shooting. Efforts should be taken to make sure distributed information is accurate. This practice will reduce the number of questions asked and criticisms of those involved, and will also help to quell any rumors that may have arisen. Further, agencies should make every effort to expedite the completion of administrative and criminal investigations, keep the officers informed, and notify them of the outcomes as soon as possible.

- 4.8. Significant use-of-force investigations are complex events involving an array of law enforcement and other government agencies. Continued communication between all parties throughout the course of an investigation protects involved officers by mitigating misunderstandings and conflict among the many different interests.
- 4.9. Members of the community, including the media, may benefit from education regarding procedures and protocols related to police use of force. It is recommended that police agencies assist the community in these efforts by providing information about factors involved in police use of force such as officer safety issues and pertinent laws.
- 4.10. Lengthy investigations can cause distress to officers. Agencies should make every effort to expedite the completion of administrative and criminal investigations. While investigations are pending, supervisors should maintain regular contact with officers and keep them apprised of any pertinent developments.

## **5. Post-Shooting Interventions**

- 5.1. Post-shooting interventions should be conducted only by licensed mental health professionals trained and experienced in working with law enforcement personnel. Care should be taken in selecting a mental health professional to ensure that he or she is well versed in the law enforcement culture and has knowledge and experience in the treatment of traumatized individuals.
- 5.2. Some officers would choose not to participate in the post-shooting interventions provided by qualified mental health professionals, yet when required to attend, they often find it helpful. In addition, some may be unaware of the potential impact of the incident and choose not to attend. For these reasons, it is recommended that officers be required to attend one individual post-shooting intervention so they can, at a minimum, be provided with basic education and coping skills to better manage their reactions. While officers may be required to attend at least one mandatory session, this does not mean that it should be mandatory for them to discuss the event or how they feel with the mental health professional. Any participation beyond attendance should be voluntary on the part of the officers.
- 5.3. After a life-threatening incident, officers frequently are most concerned about how they reacted physiologically and emotionally, and whether these reactions were "normal." Post-shooting interventions should be primarily educative as this reassurance reduces worry, anxiety, and negative self-assessment. Much of the time the normalization and education provided during the post-shooting intervention affords sufficient support to facilitate individual coping mechanisms. If not adequately addressed, however, these reactions may lead to more severe and chronic problems requiring treatment services.

- 5.4. The initial post-shooting intervention should occur within one week after the shooting incident. The initial goal should be to reduce stress, assess and “normalize” any problematic post-incident reactions and provide education regarding stress reduction and self-care. Particular attention should be paid to maintaining sleep functioning, accessing social support, and minimizing or abstaining from alcohol use.
- 5.5. It is recommended that officers not be required to return to work immediately following a post-shooting intervention session.
- 5.6. A single contact with a mental health professional may prove to be inadequate for officers who have been severely affected by an event. Also, a subset of officers may experience delayed onset of problems. The mental health professional should informally assess, for the sole purpose of voluntary referral, which officers may need additional or alternative types of support to further their recovery process. Follow-up sessions should be made available to every involved officer and, if appropriate, referrals may be offered for further treatment and/or to peer support or chaplaincy programs.
- 5.7. Because delayed reactions may occur, all officers receiving an initial post-shooting intervention should receive follow-up contact by the mental health professional either via phone or e-mail sometime within the first four months post-incident. In addition, contact should be made prior to the first anniversary of the incident.
- 5.8. It should be made clear that the individual post-shooting intervention is a confidential and legally privileged communication between the mental health professional and the officers involved. No information about the content of these sessions should be released without the officer’s written authorization.
- 5.9. Life-threatening use-of-force incidents also have the potential to emotionally impact an officer’s significant others, who often can provide valuable support to officers following these incidents. Therefore, it can be beneficial for all concerned to include significant others in the psychological debriefing process. It is recommended that consideration be given to inviting significant others to accompany officers to individual post-shooting interventions. If significant others are invited, officers may have specific preferences about individual versus joint sessions, and mental health providers should give serious consideration to such preferences. The decision to conduct individual debriefings followed by joint debriefings, or joint debriefings alone, should be decided by the officer and mental health provider.
- 5.10. It should be made clear to all involved personnel, supervisors, and the community at large that officers’ fitness-for-duty should not be brought into question by virtue of their involvement in shooting incidents. Post-shooting psychological interventions are separate and distinct from any fitness-for-duty assessments or

administrative or investigative procedures that may follow. This does not preclude a supervisor from requesting a formal fitness-for-duty evaluation based upon objective concerns about an officer's ability to perform his or her duties. However, the mere fact of being involved in a shooting does not necessitate such an evaluation prior to return to duty. (Please see *IACP PPSS Psychological Fitness-for-Duty Evaluation Guidelines* for information concerning the criteria and procedures for these evaluations.)

- 5.11. If a fitness-for-duty evaluation is requested, it should not be conducted by the mental health professional who provided the post-shooting intervention. However, as part of the post-shooting intervention, the mental health professional can assist officers in making decisions concerning returning to duty. Officers maintain the right to privilege and confidentiality regarding such communications unless otherwise waived (e.g., in the context of a workers' compensation claim).
- 5.12. Group psychological interventions may be beneficial following incidents involving multiple personnel. All officers directly involved in the shooting incident should receive an initial individual intervention prior to the group session. Participants should be limited to persons who were involved in the event and attendance should be strictly voluntary. Additional individual counseling referrals should be available for those needing or wanting further assistance.
- 5.13. Group sessions should be jointly facilitated by one or more mental health professionals experienced in working with law enforcement and trained peer support personnel. The confidentiality of group sessions should be respected and some states provide a degree of legal privilege to sanctioned peer support groups. Regardless of local laws, when information is processed in group settings, the risk of a breach of confidentiality is greater than in individual sessions conducted by licensed mental health professionals with whom officers have legal privilege. Although it is recommended that attendance at group sessions be voluntary, if attendance is mandated, any participation should be at the discretion of each officer (see 5.2).
- 5.14. Agencies should consider the impact of use-of-force incidents on all other involved emergency service personnel (including dispatchers) and provide appropriate interventions consistent with these guidelines.

sh-sh-sh!



OFFICE OF THE MAYOR  
MEMORANDUM

To: Mitchell J. Landrieu, Mayor  
Cc: Andrew Kopplin, Judy Reese-Morse, Michelle Thomas, Emily Arata, Richard Cortizas, Allen Square, Ryan Berni  
From: Alexandra Norton  
Date: August 15, 2012  
Re: Civil Service & Human Resources Transformation Initiative

Overview

The current City Civil Service system is too complex, cumbersome, and slow to meet the challenges of hiring and retaining an effective government workforce. A high performing, effective workforce is the foundation for achieving the City's stated goals. Under the leadership of Chairman Fr. Kevin Wildes and the Civil Service Commission and First Deputy Mayor and CAO Andy Kopplin, we are working to develop a package of Civil Service Rule Reforms and a reorganized Civil Service Department and Human Resources departments that will significantly improve recruitment, hiring, evaluation, development, promotion, and discipline. Our goal is to present the reform package will need to be presented to the Civil Service Commission on October 15<sup>th</sup>.

Formatted: Justified

The purpose of this memo is to request your involvement in October and November and to obtain your feedback on the strategy in order to ensure that we are successful in making these extraordinary improvements, as well as your involvement in generating support for it in October and November

Work Plan

We are working closely with the Civil Service Commission, Civil Service Department staff, Human Resources Staff, and Department Managers to ensure that our rule changes and reformed procedures are well-conceived and ready to implement in 2013.

In order to implement a new Civil Service and Human Resources system in 2013, we need to submit a package of Civil Service rule changes to the Civil Service Commission at their meeting on the afternoon of October 15, 2012 and target approval of the rule changes November 19, 2012.

In advance of and during this time period, we ~~need to~~ will conduct a thoughtful and proactive communications strategy with employees, the Commissioners, and external stakeholders that helps assure our success. Below is a timeline of activities, and I have noted in bold the activities that would require your significant participation.



Timeline

September 4 Release survey results to employees, statement from CAO

September 5 Release survey results to public, statement from CAO

September 4 - 19 Pre-brief City Council on need for reform, ideas for reform

October 1-12 Hold an employee "town hall" meeting and provide information on the reform initiative. Led by the Mayor; Agenda to include: 1) real experiences with the current Civil Service system from employees and managers 2) brief outline of proposed reforms 3) potentially Q&A

October 10-12 Meeting: Prep Mayor for presentation to Commission

October 15 Mayor to introduce Civil Service Rule changes to the Commission

Oct 15-Nov 19 Issue press releases, press interviews with the Mayor on reform initiative

November 19 Attend meeting for Civil Service Commission approval of Rule changes

January 2013 Adhere to new rules and procedures

Meeting Request

PSG will be in New Orleans August 21-24. We request a 1.5 to 2 hour meeting with you, Deputy Mayor Kopplin, Deputy Mayor Arata, and Ryan Berni in order to discuss the following:

1. Brief discussion of the proposed new Civil Service rules and reorganization of the Civil Service Department and CAO Human Resources Office in order to accomplish the following:

- Fast hiring
- Increased manager hiring and promotional authority
- Better management practices to reduce Civil Service disciplinary actions and hearings
- Effective citywide employee performance evaluation system
- Pay incentives for outstanding employee performance
- Citywide training plan
- A stronger and audit/investigation focused Civil Service Department
- A high-skilled, service-oriented CAO Human Resources Office

2. Outline and schedule the communications activities.

3. Confirm the rule change presentation and vote.

On August 17<sup>th</sup>, prior to the meeting, I will provide you with a short report explaining the proposed reform package.

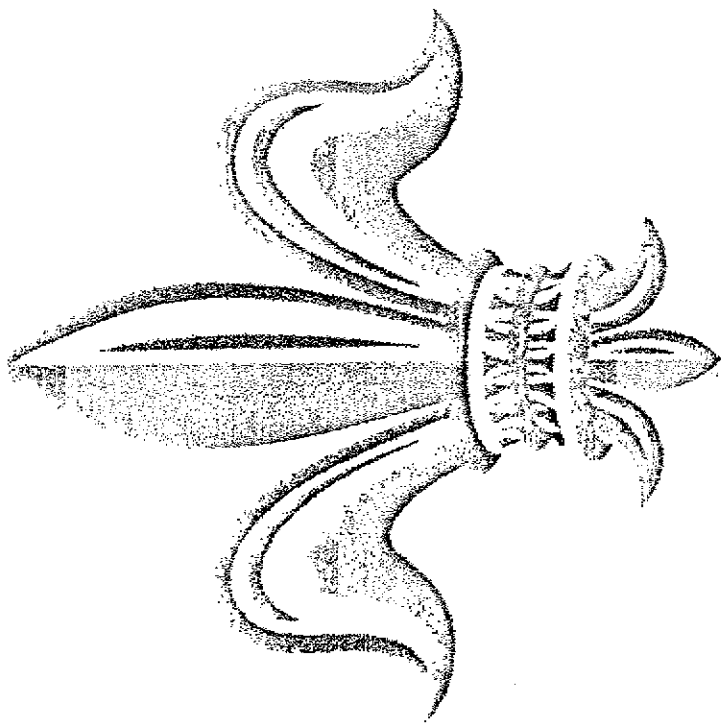
Action Items

Your feedback and approval are appreciated.

Schedule meeting August 21-24 with: Mayor, Deputy Mayor Kopplin, Deputy Mayor Arata, Ryan Berni, Alexandra Norton, David Osborne (PSG), and Tharon Greene (PSG).

sh-sh-sh!





**CITY OF NEW ORLEANS**  
**Civil Service and HR Transformation Initiative**  
***Preliminary Report***

***August 21, 2012***







# Outline

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- 1. Review of CS/HR Transformation Initiative Goals**
- 2. Review of 4 Reform Area Issues & Recommendations**
- 3. Proposed 2012 Implementation Timeline**



## Goals

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1. Transform Civil Service into an efficient and highly effective oversight body that supports the city's effective hiring and HR practices and serves an appropriate judicial function.
2. Transform Human Resources unit into a highly effective office that improves employee recruitment, selection, training, development, evaluation, promotion, and discipline.

# **DRAFT** **Feedback from the Civil Service Commissioners**

## **Outcome Goals**

1. The current Civil Service system is too complex, cumbersome, and slow to meet the challenges of hiring and retaining an effective government workforce
2. Leadership needs to provide benefits and better opportunities for employees
3. We must overhaul the system to give more hiring, promotion, and termination flexibility to departments
4. We must re-examine Civil Service's role: Civil Service should delegate the authority for hiring, promotion, and termination transactions but maintain Civil Service's oversight and judicial role to protect merit-based employment

## **Implementation & Success**

1. Run this effort thoughtfully
2. Ensure civil servant employees come out in support
3. Ensure the City administration leadership is involved and leading the public dialogue
4. Introduce all reforms as a package



# Outline

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1. Review of CS/HR Transformation Initiative Goals
2. Review of 4 Reform Area Issues & Recommendations
3. Proposed 2012 Implementation Timeline

# 1. Area Focus:

## Hiring, Promotions, Salary Setting



### Issues

1. Too many classifications, too complicated to hire into the correct positions for the correct pay
2. Hiring takes too long, managers have very limited role in hiring
3. Managers have very limited say in setting salaries which makes it difficult to hire the best candidates for the job
4. Managers have no ability to give promotions based on high performance; promotions only given based on longevity, CS tests, and CS training. Employees believe promotions do not occur frequently enough

### Recommendations

1. Create a central CAO HR office who is responsible for all hiring, starting salary setting, on-boarding, and testing – only when desired by the dept manager who is hiring (and all other traditional HR functions such as development, overseeing the evaluation system, etc.)
2. HR office is service-oriented but must ensure all parties adhere to the merit-based system of hiring and pay. HR engages hiring manager at all decision points, but does not direct final hiring choice.
3. Use NeoGov online job posting, applications, and register development
4. 1 & 3 above allow a streamlined Civil Service Department to focus on real-time auditing of hiring and starting salary decisions. CS empowered to remove job postings, investigation managers for abuses and errors
5. Dept managers determine whether promotional positions are open internally or both internally and externally, and the hiring process is the same as above

# 1. Area Focus:

## Hiring, Promotions, Salary Setting



### Implementation Details

1. Changes to job qualifications / classification system changes:
  - Allow manager to write the specific job qualifications for positions
  - Allow manager to decide whether to recruit from inside or externally or both
  - Use more flexible wording in job qualifications (experience, skills, education can all substitute for one another, at the discretion of the HR office working with the manager)
  - Allow central HR office to allocate the position to an existing Civil Service classification and pay range
  - Allow the central HR office to screen applicants to the job qualifications
  
2. Changes to certification of candidates / the development of registers:
  - Central HR office should review candidate resumes (not work history forms) and send registers for specific positions to managers within 3 days of position advertisement close
  - Use only the following bands: Veterans, Exceeds Qualifications, Meets Qualifications. Exclude those who do not meet qualifications. Manager decides how many applicants to interview from Veterans, Exceeds Qualification, and Meets Qualifications bands. Candidates are not further ranked within bands. Manager has to interview the people in the Veterans band, but if not satisfied can interview those in Band 1, and if not satisfied with those, can move to Band 2.

## 2. Area Focus: Appeals & Discipline

**DRAFT** 

### Issues

1. Appeals system appears to be the most effective aspect of the City's Civil Service system
2. Employees believe it protects their interests successfully
3. Managers rarely take corrective action for *performance issues* and primarily take disciplinary actions (letters of reprimand, suspensions, terminations) for *violations of policy or major abuses*
4. Appeals take too long for both managers and employees – 8 months to 2.5 years

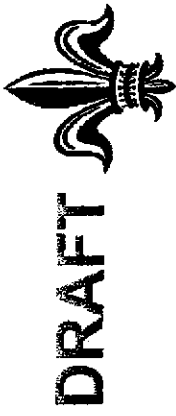
### Recommendations

1. Civil Service Department should continue to conduct the appeals process
2. Central HR office should train and advise managers on methods to:
  - a) Improve employee performance, using Performance Improvement Plans and verbal and written counselings.
  - b) Reduce the volume appeals, using negotiated departures, when possible don't use appealable discipline such as suspensions when you could use a meeting, letter to the file, etc.
  - c) Be better prepared for appeals from employees.
3. Ensure the Civil Service Commission adheres to the 120 day appeals decision timeframe already in the CS Rules.



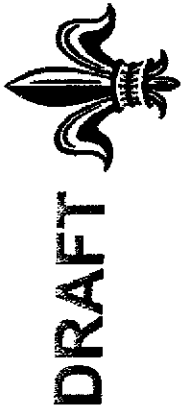
### 3. Area Focus:

## Incentive Pay – Bonuses and Salary Increases



Issues	Recommendations
<p>1. Employees rarely receive pay increases, and the City cannot currently afford substantial or uniform base salary pay increases</p>	<p>1. Provide an Incentive Pay System, which offers the following:</p>
<p>2. There is no method for managers to provide salary increases based on performance, a competing job offer, or the assumption of additional duties</p>	<p>a) One-time bonuses (2.5-7.5%) annually for exceeding objective, established performance goals</p> <p>b) Performance-based salary increases up to 10%, provided that they are budget neutral in subsequent years or approved by the CAO, in the best interest of the city and justified based on documentation</p>
<p>3. Pay increases are only provided through longevity (~ 2.5% every 5 years) or promotions to a different position, often through written exams or completion of CS training course</p>	<p>2. Allow for managers to provide salary increases based on a competing job offer (with documentation from competing employer and justification) or the assumption of additional duties (with increases for all other employees of the same class whose duties have increased)</p> <p>3. End the practice of promoting based on tests and CS training</p>

# 4. Area Focus: Full Service HR Office



## Issues

1. Employees have few opportunities for training and development
2. Managers receive little training in managing employee performance, setting goals, conducting effective evaluations
3. On-boarding and HR policies are confusing to employees

## Recommendations

1. Beginning in 2013, provide a variety of training and development opportunities through the central HR office, including:
  - a) A full-time training program manager who facilitates management development course series, peer to peer learning, City-specific courses (AFIN, Buyspeed, ECMS, BFO, AHRIS, etc) and when funding permits, consultant-provided training
  - b) Business and university guest lecturers and trainers
  - c) Promote and provide discounted external education and training opportunities

Funding provided through: \$140k from the Innovation Result Area, reallocation of \$80k for training bonus for CS courses, in-kind contributions.
2. Central HR office responsible for updating on-boarding procedure, coordinating with payroll outsourcing project, updating an Employee Handbook and updating HR policies as necessary in 2013



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# Outline

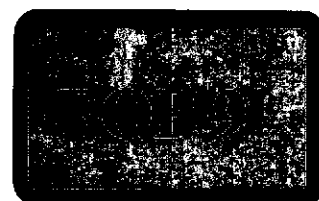
1. Review of CS/HR Transformation Initiative Goals
2. Review of 4 Reform Area Issues & Recommendations
3. Proposed 2012 Implementation Timeline

**CITY OF NEW ORLEANS**  
**Civil Service and Human Resources Transformation Initiative**  
**Preliminary Report of Recommendations**  
**August 22, 2012**

**DRAFT**

**DRAFT FOR DISCUSSION, NOT FOR CIRCULATION**

**Prepared from Public Strategies Group reports.**



## **A Mandate for Improvement**

The purpose of the New Orleans Civil Service System is to prevent politically motivated patronage and punishment and ensure merit based decisions in the hiring, promotion, pay and continued employment of individuals working or interested in working for the City government and participating entities. We believe that the current system is generally successful at preventing political patronage and punishment, but largely unsuccessful in maintaining a merit based personnel system.

City leadership has identified the need for a more responsive, flexible, and effective human resources model. Managers have said the current system is not fast or flexible enough to meet their needs and does not produce the best candidates for employment. Civil service systems across the country from the federal level down to local government, are being reformed, primarily because these systems have not kept pace with changes in the way work is carried out, the impact of technology on job design, and the need for "soft skills" in the workplace: creativity, problem-solving, and customer service. Often, the strategies embodied in civil service systems have little relationship to acquiring and retaining such talent.

### **I. Recruitment and Hiring**

The approach taken to hiring by the New Orleans system is a familiar, outdated one. Jobs are posted in a variety of ways and applications are initially evaluated and sorted primarily based on years of service in previous or current positions, education attained, and other credentials. Individuals who do not meet these minimal qualifications are eliminated from the hiring process. Testing is then done for some positions and applicants are scored numerically based on test scores (except for tests which are administered as pass/fail). Those determined to have passed their test or are otherwise determined qualified through other assessment methods are scored and ranked and placed within bands on registers, which are then made available to hiring managers. The manager must then hire off the register from a limited number of candidates in a prescribed order. Candidates he or she may think are better suited for the particular position may not be reachable on the register.

Once the manager selects someone, the employee must be paid at the beginning of the range, except in certain exceptional situations. New Orleans has not been able to keep its pay structure in line with the market, and the rigidity of the qualification, rating, testing, and referral system, combined with lack of pay flexibility, has resulted in managers settling for mediocre candidates, important jobs remaining unfilled, and the loss of talented employees. It has also had the effect of increasing requests for new job classifications, as a way to get pay increases for employees, and for new positions in the unclassified service, where there is greater flexibility.

#### **1. What Managers Say**

Managers who work within the system to fill their vacancies say the system creates a number of barriers to acquiring and retaining the talent they need to accomplish their missions in a timely fashion. Here are the most common complaints:

- Some job descriptions and qualifications are out-of-date and irrelevant, and the way they are interpreted for purposes of ranking applicants on registers doesn't produce the best candidates. Managers can't get the people they need.

- Some registers are outdated, full of people no longer interested in the job, and the "rule of 3," which often requires them to hire from Band 1 or 2, means managers cannot always get the best suited candidate.
- The system begins to break down as jobs become more specialized and need more specialized qualifications and candidate evaluations. (For instance, when hiring an analyst—a broad job classification—the Public Works Department has to weed through many candidates who have HR expertise rather than the expertise Public Works is looking for.)
- When departments get a register, they don't always get the applications; all they receive are names and addresses, and they have to mail the applicants. Because Civil Service has lost funding for its online application program, everything is done on paper, and staffing limits mean paper applications are not always forwarded to the hiring manager.
- Much of the testing is irrelevant to the jobs managers are filling; it may produce the best test-takers on registers, but not the best candidates with the specific skills sought. In addition, testing slows down the development of registers.
- Low pay overall, lack of flexibility to manage pay, and requirements that they hire people at the minimum of their range exacerbate the difficulties they already have in attracting good people to the city and retaining them.
- In some job classifications, such as those for clerical work, departments are not allowed to hire into any job classification they prefer, but only the lowest of the job series.
- The hiring process takes too long, particularly for professional positions. Sign-off on new hires is required from the Civil Service office, the CAO's office, and the budget office, which creates delays.

## **2. Recommendations**

We recommend investing in fast, accessible, low-cost processes at the front end, allowing more people with a wider range of qualifications in at the beginning, discontinuing testing at this stage unless the hiring manager requests it, investing in screening processes that are more closely related to future job success<sup>1</sup> (such as work sample tests and structured interviews) at the middle or end of the process, and applying these to fewer candidates who emerge as finalists. This would give managers a larger pool to select from, much faster referral of candidates, and the opportunity to hire candidates who are better suited to their needs. It would also create a different and more professional role for recruiting staff, which involves the use of more professional judgment, analysis of applicant strengths and weaknesses, partnership with operating managers, use of up-to-date recruiting strategies, and provision of interview design and rating services to departments.

We also recommend that the city move to the concept of "best suited" rather than "best qualified." The latter is traditionally associated with degrees, longevity, and credentials. Managers observe that there are many ways of acquiring and coming to possess the skills and abilities necessary to perform a job, not just length of service and credentials. In addition, many aspects of an applicant's future performance are important, including their willingness to work, their creativity, their discipline, their practice of teamwork, and so on. These qualities cannot be



determined by examining degrees and credentials; they require interviews, discussions with past colleagues of the applicant, and observation. (As the civil service staff has testified, "The best predictor of future job performance is past job performance.")

**General Recommendations:**

1. Ask the Civil Service Department to focus on ensuring compliance with rules and processes and investigating abuses, but create a separate HR office to provide recruitment, hiring, promotion and other services to the departments. The Civil Service Commission would continue to set personnel policy, and the Civil Service Department would enforce it, handling audits, investigations, and appeals. The HR office would be designed solely to help its customers—the departments—do a better job of finding and keeping the employees best suited to deliver excellent results to the citizens.
2. Let managers decide, with advice from a recruitment specialist, whether to look internally or externally to fill a job. Hiring managers should be able to limit a search to internal candidates, or open it to both internal and external candidates on an equal basis, or open it to both but give preference to internal candidates, depending on what they feel will best meet their needs.

**Job Classifications and Qualifications:**

3. If a position is new to the city, the HR office should allocate that position to an existing classification or, in rare cases, recommend that Civil Service create a new classification for it. The Civil Service Department would audit HR's decisions and might object to them, in which case the Civil Service Commission would make the final decision, after hearing arguments from their staff and the HR staff.
4. Let managers hire into any job classification they choose, rather than being limited to the lowest classification in a series.
5. Job Qualifications: Develop more specific qualifications for specific jobs posted within a job classification. (Some basic qualifications will of course apply to all jobs in the same classification; they will remain in the classification's minimum qualifications.) Managers we talked to often said qualifications for certain types of jobs existing throughout the city—entry-level management analysts, for example—are written quite broadly. This results in a lot of applicants going on registers who do not have the skills for a particular job, but who a department may be forced to interview and even hire, as they cannot reach a person with the specialized skills necessary on the register or in a particular band. To solve this problem, the city should allow the hiring manager, working with their HR recruiter, to set the minimum qualifications for each position under their supervision.
6. In addition, we recommend more flexible wording in job and classification qualifications. Because current class qualifications are often written to screen out anyone who does not meet absolute experience or education requirements (for example, an exact number of years of service in a particular job), a range of backgrounds and mix of experiences are not taken into account in rating and ranking applicants on registers, unless an absolute standard is also met. Solutions include stating experience requirements as "preferred" or "desired," or adding a statement to the effect that the city will consider "a combination of experience and education" that qualifies a person for a particular position. In addition,

the use of words like "some" or "extensive" convey a level of experience but leave room for interpretation.

Many local governments now use a more flexible way of developing qualifications standards. Here are several examples to illustrate the concept:

#### **Public Works Management Analyst**

Requires a Bachelor's Degree in Public Administration, Business Administration or a related field, and 3-5 years of responsible experience in policy analysis and development, policy administration or research analysis or an equivalent combination of education and experience. A Master's Degree is preferred.

#### **Clubhouse Manager Assistant**

Graduation from an accredited college or university with a Bachelor's Degree in Business Administration, Business management, Public Administration, or related field of study, to include customer relations training; experience in the area of golf course administrative activities; some experience in planning and directing golf tournaments; thorough knowledge of the rules of golf; excellent public relations and interpersonal skills; solid supervisory skills; ability to communicate effectively both orally and in writing; ability to establish and maintain harmonious working relationships with others; any combination of relevant education and experience may substitute for the more specific requirements listed above.

The Civil Service Commission should direct its staff to make such modifications as jobs within each classification need to be filled, so their workload is manageable.

7. If the hiring manager and HR recruiter both feel the minimum qualifications for the *classification* need to change to attract the best suited candidates, they should request that Civil Service modify them. If the civil service director disagrees, and if the director and the HR office cannot work out their disagreement, the issue should go to the Civil Service Commission for resolution. Similarly, if the civil service director feels the specific job qualifications posted do not meet the minimum classification qualifications, she would pull the job posting and request that HR and the hiring manager increase the job qualifications. If they cannot reach agreement, the issue would again go to the Commission for resolution.

#### **Registers and Bands:**

8. Change the testing program. Instead of testing large numbers of candidates who in fact may never be selected, we suggest that valuable resources be applied where it makes the most difference, among finalists for a particular job. Tests of general mental ability—basic math and English, for example—are most relevant at this point in the process.

Hiring managers should be able to decide, with advice from their HR specialist, whether to use tests, and when in the application process applicants should be tested. For some jobs, simple tests of performance, such as keyboarding or reading and writing, might be best taken by all applicants, to screen out those who cannot type or cannot read and write clear English. In cases where the hiring manager asks for such up-front tests, they

should be offered by the HR office on a walk-in basis to applicants. (Those who live outside the New Orleans region could be allowed to take the test when they come for an interview, if they get that far.) General mental ability tests and tests more specific to the jobs in question might be better given to fewer people at the end of the selection process, to save time and money—but again, this should remain the hiring manager's decision.

In addition, the use of work sample tests, structured interviews, and assessment centers can also be used by the hiring manager with considerable relevance at the final stages of the selection process.

9. We recommend that applications no longer be scored numerically, as the false objectivity in such scoring can prevent the best candidates from rising to the top. Instead, HR recruiters should use their judgment, based on the job qualifications, to sort the applications into bands, as follows:
  - Band 1, Veterans: All veterans who meet the minimum qualifications would be included; they would be considered first by hiring authorities.
  - Band 2, the Reemployment List: City employees laid off in the previous two years or city employees who were on military leave who worked in the same job classification and meet the minimum qualifications.
  - Band 3: All others who meet the minimum qualifications.
  - Excluded from register: All who do not meet the minimum qualifications.
10. Veterans would be considered first, then the list of former city employees in that job classification, then the list of other candidates who meet the qualifications. The hiring manager would decide how many candidates she wanted referred, but once referral took place, she would have to interview all she received. If no veterans applied, for instance, she might ask the recruiter to refer those the recruiter deemed to be the top five candidates of Band 2. If the hiring manager were not satisfied with any applicant in a band, she would be free to move on to the next band, until she found the best suited candidate. If she exhausted the entire register and was not satisfied with any candidates, she could provide justification and ask for a new register. If the HR or civil service staff believed this was being done for non-merit reasons, they could refuse or veto the request.
11. To enhance speed in filling jobs after referral, recruiters should review applications for jobs on a continuous basis throughout the posting period, sorting them into the specified groups so that when a posting closes the register can be sent within no more than three days to the hiring manager. Registers sent to departments should include applications, resumes, test scores (if any), email addresses, phone numbers, and addresses of applicants.
12. If the register is more than 90 days old, the hiring manager should be allowed to request that the HR recruiter check with those on the register to make sure they are still interested in the position, before sending the register along. This should be completed within three work days, so as not to delay the process.

### **Other Hiring Recommendations:**

13. Facilitate application from any location, by providing a way to apply online and upload resumes; by publicizing the fact that copies of documents are acceptable initially (original copies would be required after a job offer); and by publicizing the fact that drug tests can be taken in many states, or candidates can wait until they have a conditional job offer before coming to New Orleans and taking the drug test. Make the recruitment and hiring process electronic, rather than paper-based, by budgeting resources for the use of NeoGov.
14. Use resumes rather than special history forms, which signal applicants that New Orleans is an old-line bureaucracy. In job announcements, make it clear that resumes must address all education, experience, and other requirements in the job announcement.
15. Extend probation for new hires to 12 months, and create a new system of performance measurement, to provide reliable data about the performance of each new employee within their first year.
16. Once funding for a position has been established in the budget, only require approval of the department head to make the hire, since the department head is the one should be responsible for controlling spending within his or her organization. To eliminate delays, we recommend that no approval from the CAO, budget office, or civil service office be necessary.

### **Overview of the New Hiring Process**

Here are the basic elements of the process we recommend:

- An approved and funded vacancy is submitted to the recruiting office in HR.
- A recruiter talks with the hiring manager about a job description and minimum job qualifications, recruiting strategies, testing, whether to fill through internal or external candidates, and whether to use continuous recruitment and referral for high turnover positions. With the recruiter's advice, the hiring manager makes these decisions and writes the job description and job qualifications.
- If the hiring manager and recruiter feel the classification qualifications need to be modified, they request that Civil Service do that. If there is no agreement, the Commission decides.
- If the job is defined as high turnover, referral of candidates who meet minimum qualifications starts immediately, as they apply for the various jobs or at specific intervals (weekly, for example), as the manager desires. A candidate who indicates interest in more than one position could be referred and interviewed for any position available in that class. There is no register development or closing date.
- If the job is not defined as high turnover, the job is posted. If a register exists with current candidates who meet the qualifications for the particular job in question the manager should be sent that register. If the current register has been depleted of sufficient candidates, in the manager's opinion, and he or she wants to consider more, he or she may ask that the position be re-posted and another register developed.

- If Civil Service believes the specific job qualifications posted violate the classification qualifications, they pull the posting and work the problem out with the HR office, or take it to the Commission for resolution.
- The recruiter reviews incoming applications daily and groups candidates into four groups: band 1, veterans who meet the qualifications; band 2, members of the reemployment list who were laid off from the same job classification in the previous two years or took a military leave of absence and meet the qualifications; band 3, others who meet the qualifications; and those who don't meet the qualifications. For high turnover positions, the recruiter refers candidates immediately.
- The recruiter conducts necessary screening interviews and performance tests, checks references and credentials if requested, talks with the manager about final selection processes, such as panel interviews, and begins arranging those processes.
- The hiring manager tells the recruiter how many people he or she wants to interview, after discussing the potential pool of applicants.
- The recruiter assembles applicants on a register and sends the number of candidates requested to the hiring manager within three workdays after the posting expires. They are sent in this order: band 1, band 2, and band 3. If the number requested requires that the recruiter not send an entire band—if, for instance, he or she can send all of band 1 and 2 but only four people from band 3—he or she sends those from band 3 he or she considers best suited, based on his or her judgment and what the hiring manager is looking for.
- The hiring manager interviews all candidates forwarded and completes any testing or other selection methodology he or she has requested, with help from the recruiter, if needed. If he or she finds a candidate he wants to hire, he or she makes the selection, and his or her department head signs off on the selection. If not, he or she requests more candidates from the recruiter, and continues until he or she makes a selection.
- The new employee is notified of selection and scheduled to start work.

## **II. Pay and Promotions**

In today's world, city governments cannot be effective if they cannot pay what the market demands to attract talent. Given the complex challenges facing New Orleans, the city can no longer afford to hire people at rates that make it impossible to get talented employees. The city's pay structure should be set up to allow its managers to hire the talent they need to be effective, within the current market. On top of that, the pay system should help them reward their high performing employees financially and pay what is necessary to keep their best employees. Too often, New Orleans' civil service rules and budget restrictions combine to make that extremely difficult. Promotions and new hires, for instance, must be approved by the CAO, the budget office, and the Civil Service Department. The city is essentially using control over hiring, pay, and promotions to control spending. As a result, the city's personnel system is hamstrung in its ability to maximize organizational performance.

### **What Managers Say**

Managers express great dissatisfaction with the current pay and promotion structure and rules. Common comments include:

- Some pay ranges are out of date, so people are underpaid and it's difficult to hire anyone good for those jobs.
- Hiring at the bottom of the pay range means we often cannot get the candidates best suited to the job.
- We have almost no way to reward good performance. We can't give raises or bonuses, and promotions are difficult.
- When employees reach the top classification in their job series, we worry about losing the good ones, because they can't get raises without moving to a different job or department.
- Managers are willing to keep lousy employees for fear that they won't be allowed to replace them.
- When they are poorly paid, employees deeply resent the high salaries given to many unclassified employees.
- Longevity is given too much weight in the promotion process. We lose good people because we can't promote them.
- Sometimes good employees can't be promoted to a new job classification because they don't have certain degrees – which they don't need to do the job.
- When I want to promote from one job classification to another, I need permission from the deputy mayor, the CAO, the budget office, and the Civil Service Commission; if I've got the budget for it, I should be able to decide.
- Requirements that people take meaningless training courses before promotion are a waste of time; the manager should determine what training the person needs for promotion.
- The evaluation system is of no use at all to most managers.

#### **Recommendations re. Promotions**

People who work for the city should be encouraged to pursue promotions and climb career ladders, and managers should be free to promote and reward their high performers. Employees should apply for promotions, rather than automatically go on promotion lists based on written tests or completion of Civil Service courses. In addition, managers should be able to promote high performing employees. To make this possible:

1. The city should end today's automatic requirements of training classes for promotions. The only automatic requirements should be those built into the qualifications for jobs.
2. Managers should be allowed to promote their employees based primarily on their view of employees' performance, not based on how long the employee has been there, how



many or which training courses the employee took, or which degrees they have or don't have. Managers should set any training and/or testing requirements for promotions for employees within their purview, based on the job qualifications.

3. The city should end promotion and pay requirements tied to the number of employees someone supervises. In today's world, for example, many services are no longer performed by city employees, but by contractors. One of the most highly valued skills the city needs—and often lacks—is the ability to negotiate and manage performance contracts. Yet people holding such positions often supervise no one (other than their contractors). The city's pay and promotion structure should reward the value created by a position, not the number of employees supervised.
4. Managers should be allowed to move employees to a new job classification within their job series, without competition and without permission from anyone but the department head. The person would start at the bottom of the new range or receive a minimum 5% salary increase, whichever is greater.

### Recommendations re. Pay

Managers in New Orleans need the ability to pay what it takes to attract and retain talent and to reward high performing employees financially. For departments that report to the CAO and have negotiated a performance agreement with the CAO, we recommend the following pay flexibilities and performance pay options. However, if any pay decision will obligate the department to a higher overall budget in the following fiscal year, the CAO's approval should be required. In addition, department heads should keep the CAO apprised of how they are using these flexibilities during reviews of progress on their performance agreements at least every six months—or more often, if the department head judges it necessary.

### Flexibilities:

1. To help managers attract and retain the talent they need, they should be able to start a new hire anywhere within the bottom 50% of the pay range for that job classification, with their department head's approval. With the CAO's approval, they should be able to start a new hire anywhere within the pay range. When they do either of these, departments must document objective reasons why their decision is necessary, such as the inability to attract the talent they need at the minimum pay. If the promotion is made due to a candidate's particular qualifications, such as degrees, experience or performance level in past jobs, any employee in the same job who has the same qualifications must be raised to the same salary level.
2. Managers should be allowed to give employees raises within their job classification range, with the approval of their department head. They would be allowed for the following reasons, which the department head would document on a form applied by HR and include in the employee's personnel file:
  - a) to keep an employee who has another job offer (if they have a valid offer letter with a salary that they can show);
  - b) in cases where an employee has assumed significantly greater responsibility and a broader set of duties outside the former scope of the job, the performance of which has become a regular part of the employee's day-to-day work but which does not

warrant a promotion or other increase in pay grade. In this case, any employee in the same job, with the same duties and responsibilities, must be raised to the same salary level.

3. When someone hits the top of their pay range, they should remain ineligible for more raises until the range is changed, as is the case today. In cases where the department head wants to increase their pay, he or she should be able to request a review of the pay range from HR. The market data and reasons why change is needed should be presented to the CAO, who would make the final decision about raising the range, before going to the Civil Service Commission and City Council for approval.
4. We recommend that New Orleans leave in place its longevity pay, which awards employees a 2.5% salary increase after their first year and a 2.5% increase every fifth year thereafter. Because New Orleans has no cost-of-living increases and pay for many jobs is below market rates, eliminating this tiny amount of longevity pay would generate opposition among employees and make it more difficult for the city to keep employees at market rates of pay.
5. Flex time is now allowed in the city, but few managers seem aware of it. Since flex time is a tool some managers can use to avoid incurring overtime costs, we recommend that the new HR office adopt a flex time policy, publicize it, and offer training to managers in its use.

#### **Recommendations on Performance Pay**

We recommend the city adopt the following incentives and rewards for performance, which have been effective elsewhere (for more detail, see the document being sent out to department heads in preparation for the 11 a.m. session on Friday Aug. 24):

1. Performance bonuses based on a unit's performance against its measurable goals. (The only subjective judgment would be approval by the department head, to insure that teams did not receive bonuses just because they experienced some windfall, like falling demand for their services).
2. Gainsharing: If a unit has met its performance goals, its members would get to keep 25% of budgeted funds they did not spend, the department would keep 25%, and the general fund would receive 50%. The department head would have to certify that the unit met its performance goals, that the savings would not endanger future performance or drive costs up elsewhere or in the future, and that the savings did not come from some windfall, like declining demand for services. The budget office would have to certify the savings, but no other permissions or reviews would necessary.
3. Shared Savings: When employees or teams come up with ideas that increase revenues or save the city money (not necessarily from their own department's budget), they should get to keep 10% of the annual savings, up to a limit of \$10,000 per person. The budget office should have to certify the savings or revenues, but no other permissions or reviews should be necessary.
4. Performance-based salary increases up to 10-15 percent, provided that they are budget neutral in subsequent years, in the best interest of the city and justified based on

documentation and available for audit, investigation, and if abuse is found, veto, by the Civil Service Department.

5. The city should invest 2.5 percent of payroll in a performance pay bonus program; each department would receive 2.5 percent of its payroll (base salary) costs to use for performance pay one-time performance bonuses. To ensure that this investment is made every year, it should be required by city ordinance. The ordinance should state that if this is not included in the budget, the mayor and city council do not receive COLAs that year.
6. We also recommend that departments adopt non-monetary awards and recognition for their employees, which are often just as powerful as monetary rewards.

We recommend these performance pay strategies be phased in as follows:

- 2013: Start Shared Savings for all; work hard to establish performance goals and measures for every department, division, unit and work team; negotiate performance agreements between the CAO and the departments.
- 2014: Begin allowing gainsharing and salary increases based on performance for departments that have developed robust performance measurement systems; work hard to perfect performance goals and measures for every department; have meetings every six months between the CAO (or his designee) and each department head to review progress on their performance agreements and goals.
- 2015: Begin performance bonuses for departments that that have developed robust performance measurement systems. (There are options of doing this by stages, which are still under consideration. We are asking department heads and deputy mayors for feedback about these options on Friday, Aug. 24.)

### **Recommendations re. A Compensation Study**

The last pay study in New Orleans was completed in 2008, though it did not bring the city fully up to market pay levels. Four years later, some classified salaries have fallen further behind the market, making hiring and retention more difficult. A good compensation system should require a study every two years, with any other necessary adjustments made in between.

Such pay studies should be driven by personnel philosophies. In articulating its personnel philosophy, the city should define a new pay philosophy that covers both salary and benefits and that includes a commitment to rewarding performance more than longevity. Most traditional public-sector classification systems also reward hierarchy and specialization, but the world of work is moving toward a leaner, flatter, service-delivery model. Hence the compensation study should seek to create a pay and classification system that supports new ways of working, that rewards performance, and that includes both pay and benefits. It should review and change the underlying premises embodied in the classification system, such as pay and grading structures and promotion and pay requirements tied to the number of employees someone supervises.

Because the HR office will know from its work helping departments hire which jobs have fallen too far behind market and will feel an urgency to correct those situations, the compensation studies should be done by HR. But the Civil Service Commission must approve changes to the pay plan, so the civil service staff will review any compensation studies and register any

objections. It should try to work those out with the HR staff before the recommendations go to the commission.

1. New Orleans should conduct its next compensation study within the next two years, though implementation of the salary adjustments may well have to be done over several years, as the city is able to afford it. This implementation should begin with the lowest-paid classifications and gradually move up the pay scale.
2. In this process, the city should also abandon its structure of steps within each grade. Each job classification should have a pay range with a minimum, a midpoint, and a maximum, and managers should have flexibility to set employees' pay within that range, as detailed above.
3. The city should maintain the pay structure at market by doing a new pay study (by the HR staff) every two years, as well as making specific adjustments as needed in between, in preparation for recruitment or when for jobs are hard to fill. The Civil Service Commission should be required to vote on adjustments to the pay structure every two years, even if they feel no adjustments are necessary, simply as a way to make it difficult for them to ignore the need for periodic adjustments.

### **III. Checks and Balances**

The civil service rules and department exist to protect employees from actions taken for political reasons, or other forms of favoritism not based on merit. These rules have impeded good management by tying managers hands and slowing down hiring and promotion processes. We advocate reforming the rules to give managers more ability to manage their employees, but we don't want to throw the baby out with the bathwater. We still need civil service protections.

The model we advocate would move service functions to a new HR office under the CAO, but preserve compliance functions within the Civil Service Department. Rather than trying to prevent every possible abuse up front, as the rules attempt to do now, Civil Service would audit personnel practices such as hiring, promotion, and firing. They would preserve the power to intervene when they found decisions made for reasons other than merit. To allow effective audits, the city would need electronic hiring software, such as NeoGov.

Hiring managers would be required to indicate the reasons they did not select applicants they have interviewed, and they would certify that each selection has been made without regard to non-merit factors. Violations should be addressed through the city's disciplinary system and through a civil service complaint and investigations procedure, and we believe the mayor should make very public examples of the first few offenders.

We also recommend a process whereby civil service would investigate complaints by applicants and others, where there is evidence of civil service rule violations or personnel decisions not based on merit. Those not selected for jobs should be allowed to file complaints only if they can show that procedures were not properly followed or an appointment was made on the basis of non-merit factors. The investigative process would result in findings and recommendations to the Civil Service Commission, which could issue a public finding and a corrective action order to the CAO.

This order could require a series of disciplinary consequences, at the discretion of the commission. For instance, the CAO could be required to take certain hiring, promotion, and pay

authorities and flexibilities away from the offending manager or department. The commission could also require disciplinary consequences for the hiring manager, including fines and termination. And if the employee who was hired knowingly participated in subverting the merit principles of the hiring process, the Commission could require that that employee be terminated.

In order to provide this new model of a service-focused HR office and a compliance-focused Civil Service Department, we recommend a reallocation of the two department's budgets and positions. Civil service currently has approximately 18 employees focused on compliance and HR transactions at the same time, while the HR unit under the CAO has approximately 7 employees focused primarily on benefits and unclassified employees. We believe the staffing level should essentially be reversed, and the Civil Service Department should be given greater authority to audit, investigate and recommend and enforce remedies to abuse or waste involving personnel decisions. This reorganization can be accomplished at no increase to current budgets for these departments.

**Proposed HR Department Staffing Levels**

Work Groups & Titles	Internal Comparison - NOLA Classification Plan	External Comparison - Salary.com
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**Leadership**

HR Director	Personnel Director	Human Resources Director
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**Recruiting**

HR Professional	Mgt. Dev. Specialist I	Recruiter I
HR Professional	Mgt. Dev. Specialist I	Recruiter I
HR Professional	Mgt. Dev. Specialist I	Recruiter I
HR Professional	Mgt. Dev. Specialist I	Recruiter I

**Human Resource Advisors**

Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
HR Program Manager	Mgt. Dev. Admin. &	HR Manager

	Personnel Admin.	
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager

**Employee Benefits**

Benefits Manager	Mgt. Services Admin.	Benefits Manager
Benefits Analyst	Mgt. Services Specialist	Benefits Analyst
Benefits Analyst	Mgt. Services Specialist	Benefits Administrator
Benefits Analyst	Mgt. Services Specialist	Benefits Administrator

**Administration & Technical Support**

Admin & Tech Support Supervisor	Admin Support Mgr. II	Personnel Records Supervisor II
HR Assistant	Office Asst. II	Personnel Records Clerk
HR Assistant	Office Asst. II	Personnel Records Clerk
HR Assistant	Office Asst. II	Personnel Records Clerk
IT Graphics & Comm. Tech	Info Tech I	Personnel Records Clerk

**Suggested Civil Service Department Staffing Levels (Personnel Director would of course make decisions about positions and responsibilities)**

<p><b>Personnel Director</b> Leadership, Support to CS Commission</p>
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<p><b>Personnel Administrator</b> Audit Personnel Actions - Recruitment, Comp, Performance System, Maintain Classification System</p>
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**Personnel Administrator**

Complaint Investigation, Audit Disciplinary Actions

**Personnel Administrator**

Administer Appeals

**Administrative Support (2 Positions)**

Administrative Support Specialist

Office Assistant IV

#### **IV. Appeals**

The civil service appeals process is currently the most successful of the functions that the Civil Service Department currently performs. Most appeals are not overturned, but most employees believe that the appeals process is fair and protects their rights. The major problem with appeals is that they take too long. To best serve the interests of employees in having their rights to a fair and timely hearing, and to remove the deterrent to managers in terminating and disciplining employees, we must speed up the appeals process.

New Orleans has a very high volume of appeals of disciplinary actions every year, primarily for suspensions, letters of reprimand, and terminations. Although civil service does not maintain exact statistics, last year terminations made up an estimated 20 percent of the appeals, while suspensions made up perhaps 60 percent. The Law Department estimates that two-thirds of the appeals come from the Police Department. The Fraternal Order of Police pays for attorneys, and most NOPD disciplinary actions are appealed by police officers.

Two attorneys in the Law Department, one Civil Service Department employee, and one hearing officer work on these appeals. The Civil Service Commission typically takes 4-6 months to decide on an appeal, though the rules require a decision within 120 days after the hearing officer makes his decision (a limit that is not enforceable and is often exceeded). Then the employee can appeal to Fourth Circuit Court, which can take up to a year to render a decision. Hence most appeals stretch out for a year and a half, two years, or even two and a half years.

There are three ways to solve these problems: 1) to speed up the appeals process; 2) to reduce the volume of appeals; and 3) to negotiate settlements of more of the appeals once filed. We believe all three are important, but the biggest pay-off will come from reducing the volume of appeals.

Accomplishing this will require a long-term culture change within the organization. Rule changes proposed for this area are minor, the real changes will require new managerial perspectives on how to deal with misconduct and poor performance and a Human Resources Office that takes a pro-active approach to resolving problems before they result in formal discipline and appeals. Today, prevention of problems with employees is no one's primary goal. Efforts are focused more on preparing for battle if a disciplinary action does take place. In this report we offer tested approaches that can prevent the need for some punitive actions and thereby eliminate the need for some appeals.

I. Speeding up the process:

- A. Consider having more than one hearing officer on contract. Currently there is only one hearing officer, a contract attorney, who only works on this about 1.5 days per week. A second officer would allow hearings on other days and avoid loss of time when the hearing officer is out of town, sick, or on vacation. It would also prevent problems if one officer had a conflict of interest. In the past the city had two hearing officers, but budget cutbacks changed that.
- B. The Civil Service Commission should require that its three member panel review each appeal and make a decision within 90 days of receiving the hearing officer's recommendation; if a panel fails to meet this deadline, the hearing officer's decision should stand or the Commission should conclude the process within 30 more days. If it fails to reach a decision within 120 days, the hearing officer's decision should stand.

II. Reducing the volume of appeals:

A. Employee Performance Problems: A new Human Resources Office should train and provide support to departments in dealing with performance problems before moving to formal discipline. The goal would be to help managers and employees correct the performance problem using less adversarial solutions that are in the city's and the employee's interest. Generally, performance problems are distinguishable from misconduct in that they typically do not involve willful violation of standards of conduct. Tools available for dealing with performance problems include:

1. Verbal Counseling: A conversation between a manager and employee in regard to a problem with performance (or misconduct). The manager should record the date and conversation in his or her own files. Records of these conversations should not be included in the HR Office's central employee personnel file, but should be considered in, and made a part of, future action in connection with poor performance.
2. Letter of Guidance: A letter advising the employee that a problem exists, describing the nature and extent of the problem, and outlining expectations for resolving the problem. Letters of Guidance may be issued in conjunction with a requirement for Performance Improvement Plans as described below in Item 3. Letters of Guidance are not official disciplinary actions (they are not included in Rule II, Section 4, Appeals, or in Rule IX, Disciplinary Actions) and are therefore not appealable. Letters of Guidance would be included in the employee's central personnel file, and the employee could enter a response into the file if he or she desired. Over time, the supervisor or manager could use as many of these letters as he or she felt were necessary.
3. Performance Improvement Plans: A plan developed by an employee, upon direction of a manager, that is intended to correct a performance problem. Performance plans contain specific information about what the employee will do to correct performance problems and include deadlines and resources required. Plans are developed, then discussed with the supervisor or manager, who refine and approve them; the two then have periodic meetings to review progress. If the employee does not meet the terms of the plan, the supervisor or manager moves on to another approach.
4. Options available to managers under all of these steps would include the following:

- a. Training for the employee. The city should develop training courses for departments aimed at employees who need improvement, based on a city-wide or specific department's need. For instance, the Police Department needs training on specific policies that are often violated; another department might need basic training on how to be a responsible crew member; other departments might need other kinds of training.
  - b. Having the employee work with a coach or mentor. Department heads could seek and develop employee volunteers from within their departments who had the time and skills to serve as coaches and mentors to fellow employees at a peer level. Prospective coaches/mentors could be trained in the appropriate skills and such service could be designed as a special honor and recognition provided for employees willing to serve.
  - c. Giving the employee feedback from his or her peers and/or customers or compliers.
  - d. Giving the employee the option, rather than formal discipline, of undertaking a task related to their problem. For instance, in one city a driver who repeatedly failed to get a spotter when backing up a heavy vehicle and hit something was, after injuring a co-worker, required to drive that co-worker to his doctor's appointments several times a week.
  - e. Reassigning the employee to different duties within the same job classification. For instance, if the employee does not have the skills needed to do the job because technology has changed, the employee might be reassigned to a different position in the department.
  - f. Moving an employee to a different job, in a lower job classification. This would only make sense when an employee does not have the ability to perform in the current job and classification. For instance, some good employees who are promoted to supervisory positions are unable to perform as effective supervisors, and are subsequently moved back to their previous jobs.
- B. Employee Misconduct: Misconduct is generally defined as a willful disregard of the standards of conduct an employer has a right to expect. (There are some circumstances where misconduct and poor performance overlap.) We recommend that the city develop a clear and comprehensive personnel policies manual and train all managers in the proper use of all formal disciplinary tools, so as to maximize their effectiveness, minimize the number of appeals, and minimize the number of appeals lost because of missing documentation, errors in letters, etc. These policies should explain the city's employee relations and disciplinary philosophy, outline the standards of conduct, provide guidance on establishing disciplinary penalties, and contain a complete list of disciplinary infractions and penalties.

Disciplinary actions available to managers include the following. (These are options, but managers don't have to do all of this in any particular case; in some cases, the violation might be so egregious they would move right to termination.)

1. Letter of Reprimand: A letter that describes the specifics of misconduct and warns of more serious consequences if the misconduct occurs again. Employees would be requested to sign these letters, showing that they have received them, but their signature would not indicate agreement with the reprimand. (These are appealable, but can be held in abeyance—see C below.)
2. Involuntary retirement.
3. Fine. In cases where the employee is responsible for the loss or damage of things of value, a fine is appropriate.
4. Termination. In advance of any termination, the department head already must issue a letter to the employee notifying them of the intent to terminate, the employee's right of appeal, and that a pre-termination hearing will be held with the department head. The pre-termination hearing is informal; the employee can bring an attorney and can request witnesses; the department head decides how the hearing will be conducted, and at his or her option, may appoint a panel to review the circumstances and proposed action (this is not required). The department head then makes the final decision. Terminations are appealable. (If the employee has abandoned the position (been absent without notice for at least five consecutive days), the department should send a letter telling the employee they are terminated unless they have a satisfactory explanation.)

We do not recommend reductions in pay within the employee's pay range, nor demotion, to deal with misconduct, because they do not serve to correct or rehabilitate; instead, they often create long-standing morale problems.

- C. Create an "abeyance" policy. In some cases, to give an employee another chance and avoid an appeal process, management could offer to hold any disciplinary action (including termination) in abeyance for a period of time. The manager could ask the employee to agree to certain conditions, such as undergoing training, adhering to a performance improvement plan, working with a coach or mentor, completing counseling, or other appropriate actions. He or she would put write a note documenting the action and ask the employee to sign it to indicate he or she acknowledged it. If no other disciplinary issues emerge during the period of abeyance, the disciplinary action could be rescinded and never put in the employee's central personnel file. But if any other disciplinary issues emerged during the period of abeyance, the manager could consider the previous misconduct and proposed disciplinary action in setting the penalty. Managers would have to make it clear that the employee was under no obligation to agree to this deal; he or she would be free to choose to undergo the formal discipline instead. HR would train employees and managers in the use of abeyances and offer problem-solving support to managers and employees.
- D. Increase the number of negotiated departures. It is far easier and usually less expensive to remove someone from city employment through a negotiated departure than through termination. The city should develop the capacity within HR to help department managers do this, and as much as possible, it should become the norm. HR should teach departmental managers about this option, so they are all aware of it, and encourage them to discuss this option with HR when they are considering terminations. The people within HR who conduct these negotiations must be able to educate

employees to their rights of appeal as well as the possibilities for amicable departure or settlement. They should have experience weighing the advantages and disadvantages of various types of agreements, have the special negotiating skills required, and have experience working with city attorneys to craft written agreements. They should always coordinate their work with city attorneys, who would help draft written agreements. It is important to conduct these conversations without pressure or coercion, allowing employees to decide of their own free will whether to leave or face termination and appeal.

- E. The department should indicate whether an employee who departs is "not recommended for rehire" or "recommended for rehire." If the employee is not recommended for rehire, this classification should be backed up by official records contained in the employee's personnel file documenting poor performance or misconduct. When someone who has worked for the city before applies for a job, the HR recruiter should check the file to see if that person is recommended for rehire, investigate why the employee received the designation he/she did, forward the information to the hiring manager if that person meets or exceed qualifications, and allow the hiring manager to decide whether that employee should be considered. The hiring manager may decide to speak to the manager who supervised the employee during his/her previous employment.
- F. The Civil Service Department should post all Commission decisions on appeals online, to create greater transparency and understanding of precedents.

### III. Increasing settlements of appeals:

- A. The Law Department should normally propose settlements to management within the first 10 days after an appeal is filed as standard policy. On any appealed discipline, the attorneys would look at the case, and if they felt a settlement made sense, they would propose it to the appointing authority to see if they could get permission to negotiate a settlement. The Law Department could use the abeyance policy described above as one of their bargaining chips, if authorized by the manager in question.
- B. The hearing officers should always attempt to settle any appeal they feel would be worth settling, before proceeding to a hearing.
- C. Since the Police Department is responsible for roughly 70 percent all the city's appeals, we urge the Police Department to reduce the volume they cause. Approaches should include completing negotiations with the unions on a settlement package and implementing it; giving prompt decisions on proposed settlements to city attorneys and hearing officers; considering establishment of a new category for employees who resign, in addition to "Resigned under Investigation," to which both the Police Department and employees considering negotiated departures could agree; and other approaches the department deems effective at reducing appeals.

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<sup>1</sup> See for instance, Schmidt, Frank L.; Hunter, John E. (1998). "The validity and utility of selection methods in personnel psychology: Practical and theoretical implications of 85 years of research findings". *Psychological Bulletin* 124 (2): 262-74. DOI:10.1037/0033-2909.124.2.262.

**CIVIL SERVICE REFORM:  
A CUSTOMER SERVICE MODEL**

**DRAFT**

**DRAFT FOR DISCUSSION, NOT FOR CIRCULATION**

**Public Strategies Group  
City of New Orleans  
September 6, 2012**





## A MANDATE FOR CHANGE

The purpose of the New Orleans Civil Service System is to prevent politically motivated patronage and punishment and ensure merit-based decisions about hiring, promotion, pay and continued employment. We believe that the current system is generally successful at preventing political patronage and punishment, but largely unsuccessful in maintaining a merit-based personnel system, if "merit" means that the best performers are hired, promoted, and rewarded.

At a retreat in December, 2010, the mayor and his deputy mayors and department heads identified civil service reform—the need for a more responsive, flexible, and effective human resources model—as one of their top priorities. In interviews and focus groups, managers say the current system is neither fast nor flexible enough to meet their needs, and it doesn't produce the best performers as candidates for employment or promotion.

On a recent employee survey, only 18% of employees agreed "that the current city civil service system is effective," while 58% disagreed. When asked if it was "efficient," 17.% agreed while 59.5% disagreed. The hiring process got even lower marks.

Managers and supervisors were even harsher in their judgments. Only 22.5% felt that the "civil service system allows me to hire the best candidates for the position," while only 13% said it "gives me the flexibility to create positions of the type and number I need." Some 16% said hiring "occurs quickly enough to meet the needs of my department/office," and 15% said they were "able to hire the best candidates at the appropriate salary to support the needs" of their department or office. And only 15% said they were "able to promote qualified employees" when needed, while 52% disagreed.

Civil service systems across the country, from the federal level down to local government, are being reformed, primarily because these systems have not kept pace with changes in the way work is carried out, the impact of technology on job design, and the need for "soft skills" in the workplace: creativity, problem-solving, and customer service. The strategies embodied in traditional civil service systems have little relationship to acquiring and retaining such talent. They are designed to prevent bad things from happening, but they do so by tying managers up in so many rules and red tape that good management becomes impossible. Managers cannot hire those they want, promote and reward those who perform best, or fire those who fail to perform. Without these essential tools, service to the public is often mediocre at best.

The New Orleans Civil Service system is fairly typical. The focus of the system is on compliance with rules and prevention of personnel actions not based on merit but on political connections, race, gender, age, disability, religion, and the like. The system does appear to prevent most patronage and other non-merit selections actions. But because it uses rigid rules to prevent such actions, it gets in the way of performance. The primary goal of the Civil Service Department is to enforce compliance with rules, not to provide the best possible service to managers for their recruiting, salary setting, evaluation, promotion, and employee improvement needs. In addition, lack of funding for improved technology, recruiting, and other service improvements has made some changes desired by the civil service staff difficult. The staff tries to serve its customers

using the tools they have, but these are severely limited. Most managers in other departments find the civil service staff friendly but feel that the rules they administer are so rigid and their processes so slow that departmental performance suffers.

To make clear their intentions of dramatically modernizing this system, city leaders should begin by adopting a new personnel philosophy that reflects what they want to achieve. It should include their compensation philosophy, regarding both pay and benefits. This philosophy should guide top management, elected leaders, civil service officials, and human resources staff with responsibility for approving personnel strategies and structures. New Orleans' leaders need to arrive at a new balance that is fair to employees, that rewards performance more than longevity, and that spurs innovation and excellence rather than mediocrity.

We propose adoption of the following personnel and compensation philosophy for the City of New Orleans:

"The city's personnel policies seek to reward outstanding performance and achievement of organizational missions. We offer competitive, at-or-near-market base pay, plus a mix of pay for performance, non-monetary awards, and benefits, to reward high performance and excellent customer service.

Our policies are intended to provide sufficient flexibility to employees and managers to allow as much independent judgment as possible, while ensuring accountability to the public. Employees must be empowered to make the decisions necessary to achieve their missions, within the boundaries set by our Core Values:

**Integrity:** We are committed to serving the citizens of New Orleans, not ourselves. We are honest and trustworthy. We continually strive to improve efficiency and cost-effectiveness.

**Excellence:** We deliver high-quality city services focused on better outcomes for all New Orleanians. We raise and exceed the expectations of our citizens. Our service inspires others to deliver their best.

**Transparency:** We are clear and honest in public decision-making, provision of data and delivery of city services.

**Teamwork:** We work across departments, programs and services to deliver better results for our citizens. We are passionate about our work, have fun doing it and celebrate a job well done.

**Responsiveness:** We are eager to respond to citizen requests and committed to delivering solutions in a timely manner.

**Innovation:** We build partnerships across city agencies and with community partners to create new solutions to the city's most intractable problems.

**Diversity and Inclusion:** We seek a city where all people, irrespective of race, religion, creed, color, gender or sexual orientation, share opportunity and responsibility, risk and reward, political power and economic prosperity."

## **SEPARATING SERVICE FUNCTIONS FROM COMPLIANCE FUNCTIONS**

New Orleans' residents are crying out for a more functional, effective government. But in making changes, we must remember the city's history, both positive and negative. For this reason, any redesign of the civil service system needs to embody safeguards and protections that have value to the city and its employees. We recommend keeping safeguards, but separating those who must enforce them from those who must provide services to the departments. Organizations that combine regulatory and compliance functions with service roles, as the civil service office must in today's system, find themselves pulled in two opposite directions. Their job is to prevent managers throughout city government from using favoritism or political connections to hire, promote, and pay, but they are also expected to help those managers hire, promote, and make pay decisions. In one role, they are cops. In the other, they provide services to customers, like an employment agency. Public organizations that face such a dilemma inevitably have to decide which role is more important. In the case of civil service, it has to be the compliance role.

We advocate reforming the rules to give managers more ability to manage their employees, but we don't want to throw the baby out with the bathwater. We still need civil service protections. We believe New Orleans should move service functions to a new HR office under the CAO, but preserve compliance functions within the Civil Service Department. Rather than trying to prevent every possible abuse up front, as the rules attempt to do now, Civil Service would audit personnel practices such as hiring, promotion, and firing. (To allow effective audits, the city would need electronic hiring software, such as NeoGov.) Our recommendations would strengthen their power to intervene when they found decisions made for reasons other than merit.

Hiring managers would be required to indicate the reasons they did not select applicants they have interviewed, and they would certify that each selection has been made without regard to non-merit factors. Violations should be addressed through the city's disciplinary system and through a civil service complaint and investigations procedure, and we believe the mayor should make very public examples of the first few offenders.

Civil service would investigate complaints by applicants and others, where there is evidence of civil service rule violations or personnel decisions not based on merit. Those not selected for jobs should be allowed to file complaints only if they can show that procedures were not properly followed or an appointment was made on the basis of non-merit factors. The investigative process would result in findings and recommendations to the Civil Service Commission, which could issue a public finding and a corrective action order to the CAO.

This order could require a series of disciplinary consequences, at the discretion of the commission. For instance, the CAO could be required to take certain hiring, promotion, and pay authorities and flexibilities away from the offending manager or department. The commission could also require disciplinary consequences for the hiring manager, including fines and termination. And if the employee who was hired knowingly participated in subverting the merit principles of the hiring process, the Commission could require that that employee be terminated.

To protect against discrimination in hiring, pay, promotion, termination and other personnel actions, we also recommend that the HR office do standard adverse impact

testing (based on the standard 4/5ths rule specified by the EEOC) in connection with the hiring process. Where adverse impact has been determined to have occurred the HR Office, in collaboration with Civil Service, should develop strategies to either mitigate such adverse impact or statistically validate the necessity for the requirement or portion of the process where adverse impact has been determined to have occurred, by showing that there is a correlation between its hiring process (specifically, the step that created the adverse impact) and actual job performance.

This model of a service-focused HR office and a compliance-focused Civil Service Department is now common in American cities. To implement it in New Orleans, we recommend a reallocation of the two departments' budgets and positions. Civil service currently has approximately 18 employees focused on compliance and HR transactions at the same time, while the HR unit under the CAO has approximately 7 employees focused primarily on benefits and unclassified employees. We believe the staffing levels should essentially be reversed, at no increase to the total city budget other than for two new positions in HR, one to manage training, the second a performance management specialist. For details, see Appendix A.

The Sewer and Water Board would enjoy the same benefits from these reforms as other agencies, since Civil Service would instruct it to process its personnel transactions through its designee, the HR Office. In addition, the HR Office could facilitate recruitment and hiring of unclassified employees for the city.

## **RECRUITMENT AND HIRING**

The approach taken to hiring classified employees in the New Orleans is a familiar—if outdated—one. Jobs are posted in a variety of ways and applications are initially evaluated and sorted primarily based on years of service in previous or current positions, education attained, and other credentials. Individuals who do not meet these minimal qualifications are eliminated from the hiring process. Testing is then done for some positions and applicants are scored numerically based on test scores (except for tests which are administered as pass/fail). Those determined to have passed their test (or are otherwise determined qualified through other assessment methods) are scored and ranked and placed within bands on registers, which are then made available to hiring managers. The manager must then hire off the register from a limited number of candidates in a prescribed order. Candidates he or she may think are better suited for the particular position may not be reachable on the register.

Once the manager selects someone, the employee must be paid at the beginning of the range, except in certain exceptional situations. New Orleans has not been able to keep its pay structure in line with the market, and the rigidity of the qualification, rating, testing, and referral system, combined with lack of pay flexibility, has resulted in managers settling for mediocre candidates, important jobs remaining unfilled, and the loss of talented employees. It has also had the effect of increasing requests for new job classifications, as a way to get pay increases for employees, and for new positions in the unclassified service, where there is greater flexibility.

### **What Managers Say**

Managers who work within the system to fill their vacancies say the system creates a number of barriers to acquiring and retaining the talent they need to accomplish their missions in a timely fashion. Here are the most common complaints:

- Some job descriptions and qualifications are out-of-date and irrelevant, and the way they are interpreted for purposes of ranking applicants on registers doesn't produce the best candidates. Managers can't get the people they need.
- Some registers are outdated, full of people no longer interested in the job, and the "rule of 3," which often requires them to hire from Band 1 or 2, means managers cannot always get the best suited candidate.
- The Civil Service Department only recruits with postings in City Hall and on Craig's List, which narrows the pool of candidates.
- The system begins to break down as jobs become more specialized and need more specialized qualifications and candidate evaluations. (For instance, when hiring an analyst—a broad job classification—the Public Works Department has to weed through many candidates who have HR expertise rather than the expertise Public Works is looking for.)
- When departments get a register, they don't always get the applications; all they receive are names and addresses, and they have to mail the applicants. Because Civil Service has lost funding for its online application program, everything is done on paper, and staffing limits mean paper applications are not always forwarded to the hiring manager.
- Much of the testing is irrelevant to the jobs managers are filling; it may produce the best test-takers on registers, but not the best candidates with the specific skills sought. In addition, testing slows down the development of registers.
- Low pay overall, lack of flexibility to manage pay, and requirements that they hire people at the minimum of their range exacerbate the difficulties they already have in attracting good people to the city and retaining them.
- In some job classifications, such as those for clerical work, departments are not allowed to hire into any job classification they prefer, but only the lowest of the job series.
- The hiring process takes too long, particularly for professional positions. Sign-off on new hires is required from the Civil Service office, the CAO's office, and the budget office, which creates delays.
- Most people think applicants have to come to New Orleans in person to apply, which cuts down on the potential pool. (In reality, those who don't live in New Orleans can mail in their applications and take drug tests in their own state or a nearby state, or come to New Orleans after they have a job offer and take the drug test. But few hiring managers or applicants know this; most believe it is



impossible to apply for a job without coming to New Orleans. This belief itself limits the pool of potential candidates.)

### **General Recruitment and Hiring Recommendations**

We recommend a basic change in the way the city allocates resources in evaluating job candidates. Currently it invests a great deal of time and energy in screening candidates out through absolute education and longevity requirements, testing many applicants, attempting to differentiate the best candidates from a large group, and limiting hiring managers to selecting from the three individuals who emerge at the top of that process. Studies in other similar systems, such as the federal government, have shown that this way of selecting candidates is the least effective.<sup>i</sup> Screening applicants primarily by their education levels, test scores, longevity in city jobs, and other experience is not an objective method of finding the best candidate, because other elements are equally or more important. Indeed, several sources and studies we found cite evidence that ratings of work experience, education, and credentials are not the most effective in predicting future success on the job.<sup>ii</sup>

We recommend investing in fast, accessible, low-cost processes at the front end, investing in screening processes that are more closely related to future job success<sup>iii</sup> (such as work sample tests and structured interviews) at the middle or end of the process, and applying these to fewer candidates who emerge as finalists. This would give managers a larger pool to select from, much faster referral of candidates, and the opportunity to hire candidates who are better suited to their needs. It would also create a more professional role for recruiting staff, requiring the use of more judgment, analysis of applicant strengths and weaknesses, partnership with operating managers, and provision of interview design and rating services to departments.

1. Hiring managers should be able to decide, with advice from their HR specialist, whether to use tests, and when in the application process applicants should be tested. For some jobs, simple tests of performance, such as keyboarding or reading and writing, might be best taken by all applicants, to screen out those who cannot type or cannot read and write clear English. In cases where the hiring manager asks for such up-front tests, they should be offered by the HR office on a walk-in basis to applicants. (Those who live outside the New Orleans region could be allowed to take the test when they come for an interview, if they get that far.) General mental ability tests and tests more specific to the jobs in question might be better given to fewer people at the end of the selection process, to save time and money—but again, this should remain the hiring manager's decision. Work sample tests, structured interviews, and assessment centers can also be used by the hiring manager with considerable relevance at the final stages of the selection process.
2. We also recommend that the city move to the concept of "best suited" rather than "best qualified." The latter is traditionally associated with degrees, longevity, and credentials. But there are many ways of acquiring and coming to possess the skills and abilities necessary to perform a job, not just length of service and credentials. In addition, many aspects of an applicant's future performance are important, including their willingness to work, their creativity, their discipline, their practice of teamwork, and so on. These qualities cannot be determined by examining degrees and credentials; they require interviews, discussions with



past colleagues of the applicant, and observation. (As the civil service staff has testified, "The best predictor of future job performance is past job performance.") We think New Orleans needs to take advantage of all the talent it can get in all the many forms and packages it comes in.

3. We also believe it should be up to managers decide, with advice from a recruitment specialist, whether to look internally or externally to fill a job. Hiring managers should be able to limit a search to internal candidates, or open it to both internal and external candidates on an equal basis, or open it to both but give preference to internal candidates, depending on what they feel will best meet their needs.

#### **Job Classifications and Qualifications:**

4. If a position is new to the city, the HR office should allocate that position to an existing classification or, in rare cases, recommend that Civil Service create a new classification for it. The Civil Service Department would audit HR's decisions and might object to them, in which case the Civil Service Commission would make the final decision, after hearing arguments from their staff and the HR staff.
5. Managers should be free to hire into any job classification they choose, rather than being limited to the lowest classification in a series.
6. Job Qualifications: the city needs to develop more specific qualifications for specific jobs posted within a job classification. (Some basic qualifications will of course apply to all jobs in the same classification; they will remain in the classification's minimum qualifications.) Managers we talked to often said qualifications for certain types of jobs existing throughout the city—entry-level management analysts, for example—are written quite broadly. This results in a lot of applicants going on registers who do not have the skills for a particular job, but who a department may be forced to interview and even hire, as they cannot reach a person with the specialized skills necessary on the register or in a particular band. To solve this problem, the city should allow the hiring manager, working with their HR recruiter, to set the minimum qualifications for each position under their supervision.
7. In addition, we recommend more flexible wording in job and classification qualifications. Current class qualifications are often written to screen out anyone who does not meet absolute experience or education requirements (for example, an exact number of years of service in a particular job). Hence those with a broader a range of backgrounds and mix of experiences are excluded when putting applicants on registers, unless an absolute standard is also met. Solutions include stating experience requirements as "preferred" or "desired," or adding a statement to the effect that the city will consider "a combination of experience and education" that qualifies a person for a particular position. In addition, the use of words like "some" or "extensive" convey a level of experience but leave room for interpretation.

Many local governments now use a more flexible way of developing qualifications standards. Here are several examples to illustrate the concept:

### Public Works Management Analyst

Requires a Bachelor's Degree in Public Administration, Business Administration or a related field, and 3-5 years of responsible experience in policy analysis and development; policy administration or research analysis or an equivalent combination of education and experience. A Master's Degree is preferred.

### Clubhouse Manager Assistant

Graduation from an accredited college or university with a Bachelor's Degree in Business Administration, Business management, Public Administration, or related field of study, to include customer relations training; experience in the area of golf course administrative activities; some experience in planning and directing golf tournaments; thorough knowledge of the rules of golf; excellent public relations and interpersonal skills; solid supervisory skills; ability to communicate effectively both orally and in writing; ability to establish and maintain harmonious working relationships with others; any combination of relevant education and experience may substitute for the more specific requirements listed above.

The Civil Service Commission should direct its staff to make such modifications in class qualifications as jobs within each classification need to be filled, so their workload is manageable.

8. If the hiring manager and HR recruiter both feel the minimum qualifications for the *classification* need to change to attract the best suited candidates, they should request that civil service modify them. If the civil service director disagrees, and if the director and the HR office cannot work out their disagreement, the issue should go to the Civil Service Commission for resolution.
9. The civil service staff should review specific job qualifications within two business days, and if the civil service director feels they do not meet the minimum classification qualifications, she should block the job posting and request that HR and the hiring manager increase the job qualifications. (If no action is taken within two days, the posting should go forward.) If they cannot reach agreement, the issue would again go to the commission for resolution. If the commission ends up siding with the HR staff in either of these cases, its chairman should give the civil service staff guidance about qualifications, to prevent the problem from recurring.

### Registers and Bands:

10. We recommend that applications no longer be scored numerically, as the false objectivity in such scoring can prevent the best candidates from rising to the top. Instead, HR recruiters should use their judgment, based on the job qualifications, to sort the applications into bands, as follows:
  - Band 1, Veterans: All veterans who meet the minimum qualifications would be included; they would be considered first by hiring authorities.

- Band 2, the Reemployment List: City employees laid off in the previous two years who worked in the same job classification and meet the minimum qualifications.
- Band 3: All others who meet the minimum qualifications.
- Excluded from register: All who do not meet the minimum qualifications.

Veterans would be considered first, then the list of former city employees in that job classification, then the list of other candidates who meet the qualifications. The hiring manager would decide how many candidates she wanted referred, but once referral took place, she would have to interview all she received. If no veterans applied, for instance, she might ask the recruiter to refer those the recruiter deemed to be the top five candidates of Band 2. If the hiring manager were not satisfied with any applicant in a band, she would be free to move on to the next band, until she found the best-suited candidate. If she exhausted the entire register and was not satisfied with any candidates, she could provide justification and ask for a new register. If the HR or civil service staff believed this was being done for non-merit reasons, they could refuse or veto the request.

11. To enhance speed in filling jobs after referral, recruiters should review applications for jobs on a continuous basis throughout the posting period, sorting them into the specified bands so that when a posting closes the register can be sent within three days to the hiring manager. Registers sent to departments should include applications, resumes, special history forms, test scores (if any), email addresses, phone numbers, and addresses of applicants.
12. The HR staff should work to make sure registers do not get too old to be useful. If the register is more than 90 days old, the hiring manager should be allowed to request that the HR recruiter check with those on the register to make sure they are still interested in the position, before sending the register along. This should be completed within three work days, so as not to delay the process.

#### **Other Hiring Recommendations:**

13. The recruitment and hiring process should be electronic, rather than paper-based, by budgeting resources for the use of NeoGov. HR and Civil Service should both have administrative rights to the software.
14. The city should facilitate application from any location, by providing a way to apply online and upload resumes; by publicizing the fact that copies of documents are acceptable initially (original copies would be required after a job offer); and by publicizing the fact that drug tests can be taken in many states, or candidates can wait until they have a conditional job offer before coming to New Orleans and taking the drug test.
15. The HR Office should accept resumes along with special history forms, as part of the application process.
16. The city should extend probation for new hires to 12 months, and create a new system of performance measurement, to provide reliable data about the

performance of each new employee within their first year. (See p. 19.) Managers of probationary employees should be required to do a mutual employee feedback assessment of their performance after six months, so they know how they are doing and whether they need to improve anything. (See p. 27-28.)

17. As long as funding for a vacant position has been established in the budget, only the approval of the department head should be required to make a hire, since the department head is the one who should be responsible for controlling spending within his or her organization. To eliminate delays, we recommend that no approval from the CAO, budget office, or civil service office be necessary. The HR office should, however, check to make sure funding for a position was established in the budget before posting it.

### **A New Role for the Recruiter**

We are recommending a new and interesting role for staff involved in recruiting: Get the right person into the right job, fast. Rather than a passive role of processing paper, we are recommending a proactive and collaborative role for recruiters. Their job would be to:

- help managers develop the job descriptions and minimum qualifications for the positions they need to fill (the hiring manager would have final approval of the job qualifications);
- collaborate with managers to understand their needs, design recruitment strategies, and help design processes that will produce the best candidates for hire using the tools available;
- advertise positions in a variety of places and ways;
- conduct screening interviews as necessary and check credentials and references if requested;
- arrange for written tests if requested by the hiring manager;
- arrange and set up interview panels, develop scoring tools, assist with interview panels, and generally administer the hiring process for the manager; and
- create the register of qualified candidates and certify those forwarded to the hiring manager. (The Civil Service Director would delegate the authority to certify candidates to the HR office.)

This new role would take the recruiter out of the office, into the departments, and make him or her a partner in building a great workforce. This role works extremely well in organizations that use it. Recruiters could be assigned work by type of positions for which they recruit, by department, or both. Generally, giving a recruiter responsibility for a specific set of departments works best because they develop working relationships with the managers and become knowledgeable about the jobs in those departments. This is becoming the accepted role for human resource professionals, and we think New Orleans would benefit by redesigning its human resource services in this way.

The new HR director should also consider creative recruiting strategies in recruiting for hard-to-fill jobs, such as social networking sites, employee referrals, signing bonuses, housing and car allowances, travel expenses, and student loan paybacks. HR should also upgrade the city's website, using a marketing approach that sells the city to potential candidates and links to resources of interest to out-of-town applicants.

### **The Hiring Manager's Role**

In the model we recommend, the manager would work with recruiters to develop an accurate job description and qualifications that would produce the type of candidates he or she is seeking, provide direction as to where to recruit for particular openings, and ask for any needed help with panel interviews, testing, or other services. She would be responsible and accountable for ensuring that selections were made based only on merit.

### **Overview of the New Hiring Process**

Here are the basic elements of the process we recommend:

- An approved and funded vacancy is submitted to the recruiting office in HR.
- A recruiter talks with the hiring manager about a job description and minimum job qualifications, recruiting strategies, testing, whether to fill through internal or external candidates, and whether to use continuous recruitment and referral for high turnover positions. With the recruiter's advice, the hiring manager makes these decisions and writes the job description and job qualifications.
- The civil service staff have two business days to review the job qualifications and—if they feel they violate the classification qualifications—block the posting. They work the problem out with the HR office and hiring manager or take it to the Commission for resolution.
- If the hiring manager and recruiter feel the classification qualifications need to be modified, they request that Civil Service do so. If there is no agreement, the Commission decides.
- If the job is defined as high turnover, it is always posted. Referral of candidates who meet minimum qualifications starts immediately, as they apply for the various jobs or at specific intervals (weekly, for example), as the manager desires. A candidate who indicates interest in more than one position could be referred and interviewed for any position available in that class. There would be no register development or closing date.
- If the job is not defined as high turnover, it is posted. If a register exists with current candidates who meet the qualifications for the particular job in question the manager should be sent that register. If the current register has been depleted of sufficient candidates, in the manager's opinion, and he or she wants to consider more, he or she may ask that the position be re-posted and another register developed.



- The recruiter reviews incoming applications daily and groups candidates into four groups: band 1, veterans who meet the qualifications; band 2, members of the reemployment list who were laid off from the same job classification in the previous two years and meet the qualifications; band 3, others who meet the qualifications; and those who don't meet the qualifications.
- The recruiter conducts necessary screening interviews and performance tests, checks references and credentials if requested, talks with the manager about final selection processes, such as panel interviews, and begins arranging those processes.
- The hiring manager tells the recruiter how many people he or she wants to interview, after discussing the potential pool of applicants.
- The recruiter assembles applicants on a register and sends the number of candidates requested to the hiring manager within three workdays after the posting expires. They are sent in this order: band 1, band 2, and band 3. If the number requested requires that the recruiter not send an entire band—if, for instance, he or she can send all of band 1 and 2 but only four people from band 3—he or she sends those from band 3 he or she considers best suited, based on his or her judgment and what the hiring manager is looking for.
- The hiring manager interviews all candidates forwarded and completes any testing or other selection methodology he or she has requested, with help from the recruiter, if needed. If he finds a candidate he wants to hire, he makes the selection, and his department head signs off on the selection. If not, he requests more candidates from the recruiter and continues until he makes a selection.
- The new employee is notified of selection and scheduled to start work.

## **PAY AND PROMOTIONS**

In today's world, city governments cannot be effective if they cannot pay what the market demands to attract talent. Given the complex challenges facing New Orleans, the city can no longer afford to hire people at rates that make it impossible to get talented employees. The city's pay structure should be set up to allow its managers to hire the talent they need to be effective, within the current market. On top of that, the pay system should help them reward their high performing employees financially and pay what is necessary to keep their best employees. Too often, New Orleans' civil service rules and budget restrictions combine to make that extremely difficult. As a result, the city's personnel system is hamstrung in its ability to maximize organizational performance.

### **What Managers Say**

Managers express great dissatisfaction with the current pay and promotion structure and rules. Common comments include:

- Some pay ranges are out of date, so people are underpaid and it's difficult to hire anyone good for those jobs.



- Hiring at the bottom of the pay range means we often cannot get the candidates best suited to the job.
- We have almost no way to reward good performance. We can't give raises or bonuses, and promotions are difficult.
- When employees reach the top classification in their job series, we worry about losing the good ones, because they can't get raises without moving to a different job or department.
- Managers are willing to keep lousy employees for fear that they won't be allowed to replace them.
- When they are poorly paid, employees deeply resent the high salaries given to many unclassified employees.
- Longevity is given too much weight in the promotion process. We lose good people because we can't promote them.
- Sometimes good employees can't be promoted to a new job classification because they don't have certain degrees—which they don't need to do the job.
- When I want to promote from one job classification to another, I need permission from the deputy mayor, the CAO, the budget office, and the Civil Service Commission; if I've got the budget for it, I should be able to decide.
- Requirements that people take meaningless training courses before promotion are a waste of time; the manager should determine what training the person needs for promotion.
- The evaluation system is of no use at all to most managers.
- I have to get permission to pay overtime, and sometimes it is denied.
- I'd like to be able to use flex and comp time, to avoid high overtime costs.

#### **Recommendations Regarding Promotions:**

People who work for the city should be encouraged to pursue promotions and climb career ladders, and managers should be free to promote and reward their high performers. To make this possible:

1. The city should end today's automatic requirements of training classes for promotions. The only automatic requirements should be those built into the qualifications for jobs.
2. Managers should be allowed to promote their employees based primarily on their view of employees' performance, not based on how long the employee has been there, how many or which training courses the employee took, or which degrees

they have or don't have. Managers should set any training and/or testing requirements for promotions for employees within their purview, based on the job qualifications.

3. The city should end promotion and pay requirements tied to the number of employees someone supervises. In today's world, for example, many services are no longer performed by city employees, but by contractors. One of the most highly valued skills the city needs—and often lacks—is the ability to negotiate and manage performance contracts. Yet people holding such positions often supervise no one (other than their contractors). The city's pay and promotion structure should reward the value created by a position, not the number of employees supervised.
4. Managers should be allowed to move employees to a new job classification within their job series, without competition and without permission from anyone but the department head. The person would start at the bottom of the new range or receive a minimum 5% salary increase, whichever is greater.

#### **Recommendations Regarding Pay:**

Managers in New Orleans need the ability to pay what it takes to attract and retain talent and to reward high performing employees financially. For departments that report to the CAO and have negotiated a performance agreement with the CAO, we recommend the following pay flexibilities. However, if any pay decision will obligate the department to a higher overall budget in the following fiscal year, the CAO's approval should be required. In addition, department heads should keep the CAO apprised of how they are using these flexibilities during reviews of progress on their performance agreements at least every six months—or more often, if the department head judges it necessary.

#### *Flexibilities:*

1. To help managers attract and retain the talent they need, they should be able to start a new hire anywhere within the bottom 50% of the pay range for that job classification, with their department head's approval. With the CAO's approval, they should be able to start a new hire anywhere within the pay range. When they do either of these, departments must document objective reasons why their decision is necessary, such as the inability to attract the talent they need at the minimum pay. If the decision is made due to a candidate's particular qualifications, such as degrees, experience, or performance level in past jobs, any employee in the same job who has the same qualifications must be raised to the same salary level.
2. Managers should be allowed to give employees raises within their job classification range, with the approval of their department head. They would be allowed for the following reasons, which the department head would document on a form supplied by HR and would include in the employee's personnel file:
  - a. to keep an employee who has another job offer (if they have a valid offer letter with a salary that they can show);

- b. in cases where an employee has assumed significantly greater responsibility and a broader set of duties outside the former scope of the job, the performance of which has become a regular part of the employee's day-to-day work but which does not warrant a promotion or change in job classification. In this case, any employee in the same job, with the same duties and responsibilities, must be raised to the same salary level.
3. When someone hits the top of their pay range, they should remain ineligible for more raises until the range is changed, as is the case today. In cases where the department head wants to increase their pay, he or she should be able to request a review of the pay range from HR. The market data and reasons why change is needed should be presented to the CAO, who would make the final decision about raising the range, before going to the Civil Service Commission and City Council for approval.
4. We recommend that New Orleans leave in place its longevity pay, which awards employees a 2.5% salary increase after their first year and a 2.5% increase every fifth year thereafter. Because New Orleans has no cost-of-living increases and pay for many jobs is below market rates, eliminating this tiny amount of longevity pay would generate opposition among employees and make it more difficult for the city to keep employees at market rates of pay.
5. Flex time is now allowed in the city, but few managers seem aware of it. Since flex time is a tool some managers can use to avoid incurring overtime costs, we recommend that the new HR office adopt a flex time policy, publicize it, and offer training to managers in its use.

*A Compensation Study:*

The last pay study in New Orleans was completed in 2008, though it did not bring the city fully up to market pay levels. Four years later, some classified salaries have fallen further behind the market, making hiring and retention more difficult. A good compensation system should require a study every two years, with any other necessary adjustments made in between.

Such pay studies should be driven by personnel philosophies. In articulating its new personnel and compensation philosophy (see p. 3), the city should commit to rewarding performance more than longevity. Most traditional public-sector classification systems also reward hierarchy and specialization, but the world of work is moving toward a leaner, flatter, service-delivery model. Hence the compensation study should seek to create a pay and classification system that supports new ways of working, that rewards performance, and that includes both pay and benefits. It should review and change the underlying premises embodied in the classification system, such as pay and grading structures and promotion and pay requirements tied to the number of employees someone supervises.

Because the HR office will know from its work helping departments hire which jobs have fallen too far behind market and will feel an urgency to correct those situations, the compensation studies should be done by HR. But the Civil Service Commission must approve changes to the pay plan, so the civil service staff will review any compensation

studies and register any objections. It should try to work those out with the HR staff before the recommendations go to the commission.

1. New Orleans should conduct its next compensation study within the next two years, though implementation of the salary adjustments may well have to be done over several years, as the city is able to afford it. This implementation should begin with the lowest-paid classifications and gradually move up the pay scale. The HR office or, for purposes of objectivity and credibility, a qualified compensation consulting firm, should gather data from a variety of sources—not just other public organizations, but also private sector data—in order to evaluate the city's true position in the market relative to the many kinds of jobs it has in the system. The consultant should make recommendations for market adjustments in pay ranges for each job classification, based on what it will take to attract the talent needed for each job, as well as pension system adjustments. The consultant should provide coaching and tools to the HR staff for the maintenance of the system.
2. In this process, the city should also abandon its structure of steps within each grade. Each job classification should have a pay range with a minimum, a midpoint, and a maximum, and managers should have flexibility to set employees' pay within that range, as detailed above.
3. The city should maintain the pay structure at market by doing a new pay study (by the HR staff) every two years, as well as making specific adjustments as needed in between, in preparation for recruitment or when for jobs are hard to fill. The Civil Service Commission should be required to vote on adjustments to the pay structure every two years, even if they feel no adjustments are necessary, simply as a way to make it difficult for them to ignore the need for periodic adjustments.

*Performance Pay:* See section below on Performance Management: Incentives and Evaluations.

### **Other Changes Necessary to Make New Flexibilities Work**

The rigidities we have discussed stem not only from civil service rules; they also stem from the city's budget practices. The city has used control of hiring, promotions, and pay to control spending. This has created severe problems for managers in finding and retaining the talent they need to improve results for the citizens. If these practices are not changed, civil service reform will not yield the results city leaders seek.

We believe city leaders should let department heads manage their budgets and personnel, but hold them accountable and create consequences when they overspend. This means that the CAO and budget office should no longer have to approve new hires, promotions, or most pay increases (with the conditions outlined above, on p. 15). In addition, the city should do whatever it can to avoid mid-year budget cuts, which wreak havoc with managers' ability to fill unfilled positions, punish departments that manage their money well, and create perverse incentives to overspend in the beginning of a fiscal year.

To make these things possible, the city should consider the following recommendations:

- Gradually build up a rainy day fund, which can be used instead of midyear budget cuts. This should be put in a city ordinance, as a requirement.
- Make it easy for departments to download monthly reports that show their spending and whether they are over or under their budgets, so they know if they have money to give promotions, raises, and make hires. This will require fixing a technology problem that does not allow this if they have the current Windows 7 operating system. In addition, the city should train department heads and their budget analysts in the use of these reports, as well as in other practices to promote continuous improvement of efficiency and cost-effectiveness.
- Change the current budget practice of not budgeting for positions if they are vacant.
- When department heads overspend their budgets, the CAO and budget director should require that they accompany them to City Council meetings, hear the feedback, and explain directly to the Council why they exceeded their budget and how they plan to correct the situation and prevent it from happening again. This might be an effective form of budget discipline for department heads.

#### **PERFORMANCE MANAGEMENT: EVALUATIONS AND INCENTIVES**

The current employee evaluation system in New Orleans is not working. In the recent employee survey, less than half of employees said they received regular feedback on their performance, only about half agreed that “my performance is evaluated fairly,” only 29 percent agreed that “poor performance is dealt with effectively on my team,” and only 21 percent agreed that “annual evaluations are tied to my promotional opportunities and continued employment with the city.” Only 12 percent of supervisors reported that they regularly provided ratings of “unsatisfactory” or “needs improvement” for employees; of the reasons others gave for why they did not, one of the largest categories was that “evaluations are not worthwhile because the Civil Service system makes it too complex to discipline or terminate employees for low performance.”

In our interviews and focus groups, virtually everyone told us the evaluation system was worthless—nothing more than a hoop they had to jump through. Very few employees are ever rated “unsatisfactory” or “needs improvement,” in part because managers learn that such ratings create morale problems and grievances, without helping them manage or improve performance. As a result, very few managers fill out the evaluations honestly.

This is not unusual; we have never encountered or heard of a public sector evaluation system based on subjective ratings of employees that worked, anywhere in the world. Managers learn that honest ratings bring more headaches than they are worth, so pretty soon everyone is rated above average, and the system loses its value.

Yet managers and employees in New Orleans are eager for a system that rewards performance. On the recent survey, more than 70% agreed that “the availability of pay

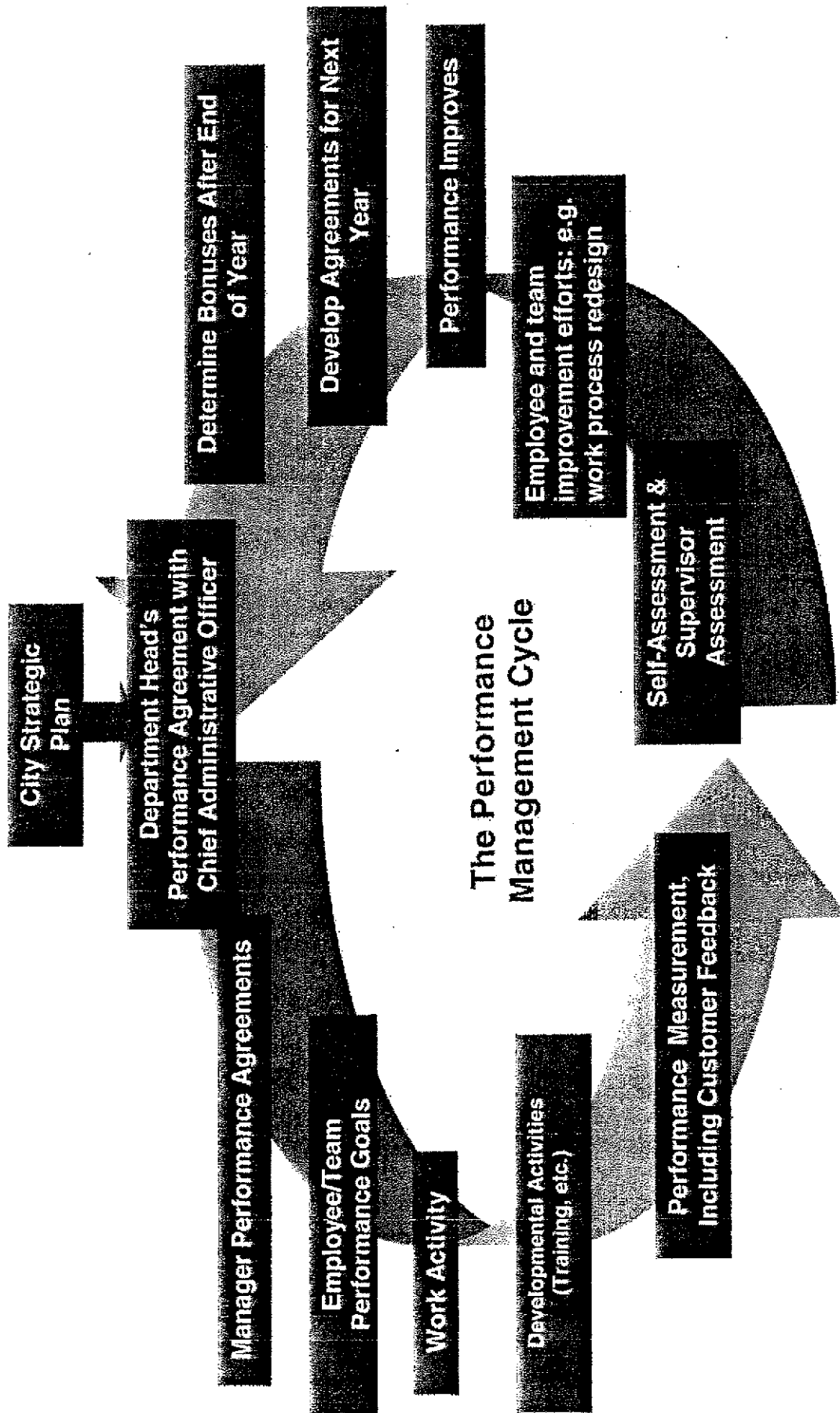
increases or bonuses for outstanding performance would help improve my performance," while only 10.5% disagreed.

Our proposed solution is to abandon subjective ratings and create a Performance Management and Incentive System focused mostly on objective measures of performance. It would have six basic components, the first three of which would take effect in 2013:

1. **Performance Agreements:** Department heads, division heads, and the heads of large units within divisions would negotiate performance agreements with their supervisors, which would include performance goals for their departments, divisions, or units. They would become eligible for bonuses and salary increases based on the performance of their department, division, or unit, but not until their employees became eligible for such rewards.
2. **Employee Performance Feedback System:** Employees and their supervisors would assess their performance at least once a year. (Managers would be encouraged but not required to do this more than once a year.) The two would meet to discuss their assessments, which would go into their personnel file, but there would be no ratings of employees. The purpose would be to help the employee grow and improve. Managers would also be encouraged to use 360-degree feedback if they chose: from an employee's supervisor, peers, subordinates, and customers.
3. **Non-Monetary Awards.** Every department in New Orleans should create a range of awards to recognize high performing teams and individuals. Such recognition is often more important to employees than money.
4. **Incentives for Savings:** Employees would also have incentives to save the city money. Through "gainsharing," teams or units that met their performance goals but did not spend their entire budgets would get to keep 25% of the savings as bonuses. Through "shared savings or earnings," employees who came up with proposals that saved the city money or earned new revenue would be rewarded with 10% of the annual savings or earnings, up to a limit of \$10,000 per person. These incentives would be designed to turn every employee into a budget-cutter.
5. **Base Pay Increases Based on Employee Performance:** Departments would have the right to give individual employees salary increases of up to 10 percent to reward exceptional individual performance. In doing so, they would consider both the employees' objective performance against individual or team goals and the feedback assessments in their files. This would help managers reward and retain their best employees, but it would be used sparingly, compared to one-time performance bonuses, because salary increases not only cost money in the current year but in every year thereafter—including the years after the employee retires, in pension payments.
6. **Work Team Performance Goals and Bonuses:** Every employee would have a balanced scorecard of 3-6 objective, measurable performance goals each year. Most of these would be team goals, because most work in the public sector is teamwork, but if the work were truly individual, they would be individual goals. If the individual or team achieved its performance goals for a year, they would receive a one-time bonus, typically five percent of their salary. Departments would have a bonus account sufficient to reward half their employees with 5 percent bonuses each year.



The purpose of all this effort, which would take several years to implement, would be to create a city government in which every employee wants to improve their organization's performance every year. The figure below shows how such a system ideally works.



### **Rollout of the Performance Management System**

Creating this performance measurement and management system will require a great deal of work, and collecting and auditing the performance data will require work as well. The effort could collapse if there were no software employees could use to enter data, examine data at multiple levels of the organization, create graphs and charts that help people understand the data, and print out reports.

In addition, experience teaches that it is a mistake to add financial consequences before employees are satisfied that their performance goals are reasonable, fair, and meaningful. This usually takes about three iterations: i.e., two years of refinement and improvement after the goals are first set and performance is first measured. Hence we recommend these performance pay strategies be phased in over several years. As departments develop performance goals, departmental managers and employees who prove adept at performance measurement and management could serve as advisors to departments, units, and teams that have more challenges setting reasonable, fair and meaningful goals.

The performance management specialist in the HR office should evaluate the system each year and plan improvements. If a department is not taking it seriously, or not measuring fully or accurately, that person should recommend to the CAO that the department lose bonus funding and the right to give bonuses until the situation is corrected.

#### **Initiatives to Launch in 2013:**

##### **A. Performance Agreements for Department, Division, and Unit Heads**

Every three years, department heads would negotiate departmental performance agreements with the CAO. These would specify:

- Resources: firm budgets for year one and estimated budgets over the following two years.
- Expected Results:
  - 5-10 departmental performance goals that should, if achieved, help the city achieve its citywide outcome goals; these would normally include departmental goals from the budget process, unless the CAO or department head found those goals inadequate or otherwise flawed;
  - Any citywide outcome goals to which the department is expected to contribute;
  - Individual objectives for the department head, such as leadership development or skill development in a particular area;
  - How performance will be measured and reported;
  - How performance measurement will be audited, to ensure accuracy.
- Strategies to be used to produce these results.

- **Flexibilities:** any budget, personnel, procurement, or other management flexibilities the department would be granted to help it achieve its goals.
- **Special Conditions:** any conditions that must be met by others for the department to succeed, such as reform of purchasing rules or improved service from Human Resources.
- **Expectations of the CAO:** this is where the CAO could communicate expectations other than results, such as, "When problems occur, I want to hear about them first."
- **Responsibilities of the CAO:** How the CAO would exercise oversight; who he would delegate oversight duties to, if anyone; how often review meetings would take place; how available the CAO would be to the department head; etc.
- **Consequences:** Typically this section would lay out the formula by which a department head could earn up to a 5% bonus or a salary increase, as well as potential negative consequences if performance were not up to expectations.

Those who report directly to department heads would negotiate similar one or two year agreements. If there were organizational units below that level, but above the level of frontline work teams, the managers of those units would negotiate similar one-year agreements with their division head.

An example of a departmental performance agreement follows, adapted from *The Reinventor's Fieldbook*, by David Osborne and Peter Plastrik:

### **Sample Performance Agreement for a Police Department**

#### **I. Mission Statement**

Improve public safety through collaboration, problem solving, and equitable and fair enforcement of the law.

#### **II. The Organization's Basic Responsibilities**

A. Prevent crime.

B. Investigate and apprehend criminals.

C. Work with prosecutors and the courts to achieve convictions.

#### **III. Resources**

A. The budget over the term of this agreement will be \$31.2 million in year one and between \$31.5 and \$32 million in years two and three.

#### **IV. Expected Results**

**A. Departmental Outcome and Output Goals:**

1. Reduce the rate of violent crime: murder, rape, robbery, aggravated assault, and domestic assault.
2. Increase the number of firearms confiscated by 10 percent a year.
3. Improve the clearance rate of homicides to 60 percent within eight months of the crime.
4. Achieve a positive customer satisfaction rating from 70 percent of citizens surveyed.
5. Respond to all action line requests/complaints within five business days.
6. Achieve at least a "satisfactory" rating by neighborhood organizations on a survey of their members' satisfaction with departmental responsiveness to their concerns.

**B. Citywide Outcome Goals:**

1. Increase the percentage of overall positive ratings on the city's annual citizen satisfaction survey.

**C. Individual Objectives:**

1. Participate in at least five days of leadership development training per year.

**D. Performance Measurement, Reporting, and Auditing:**

1. Performance on these goals will be measured by the measurement unit within the Police Department, certified as accurate by the Superintendent, reported to the CAO quarterly, and entered into the city's Results NOLA website.
2. The CAO's office will use a contracted organization to audit the measurement system through periodic spot-checks.

**V. Strategies to be Used to Achieve These Results:**

- A. Community policing.
- B. Compstat.
- C. Intensive intervention with youth gangs, adapted from "Operation Ceasefire."
- D. Work with all other agencies dealing with criminal justice to eliminate problem that get in the way of expedited justice, particularly in the courts and local jails.

**VI. Flexibilities:**

A. Budget flexibilities: The Superintendent is free to transfer funds within the department as needed, without permission, with the exception of spending on hiring additional personnel.

B. Support service flexibilities: Authority is granted to have departmental vehicles serviced at any repair shop designated by the Superintendent.

**VI. Special Conditions**

This agreement assumes that no major catastrophe, such as a civil disturbance, a gang war, or a natural disaster, occurs. Should such an event occur, this agreement will be renegotiated.

**VII. Expectations of the CAO**

A. I expect you to anticipate problems and opportunities and act upon them, rather than waiting to be told what to do by the CAO's office.

B. I expect deadlines set by the CAO's office to be met. If you cannot meet a deadline, I expect an explanation in advance.

C. I expect all police officers to receive diversity training within their first year on the job.

**VIII. Responsibilities of the CAO:**

A. The Police Superintendent will report to Deputy Mayor Sneed, who will meet with the Superintendent quarterly to review performance data.

B. In the event of a civil disturbance in response to police behavior, the CAO and Deputy Mayor Sneed reserve the right to intervene and override decisions of the Superintendent.

**IX. Consequences:**

A. Financial consequences: If all 8 performance goals are met in a year, the Superintendent will receive an annual bonus of 5 percent of his salary; if 7 are met, including goal 1, the bonus will be 4 percent; if 7 are met, not including goal 1, the bonus will be 3 percent; if six are met, the bonus will be 2 percent.

B. Other consequences: If the department fails to meet five or more of the performance goals, the CAO will impose at least one of the following consequences:

1. A monthly meeting to review performance.
2. Limits on travel until performance improves.
3. Probation for a specific period of time.

**X. Term of the Agreement**



This agreement will be valid for fiscal years 2013, 2014, and 2015. Specific performance targets will be renegotiated at the beginning of each fiscal year.

#### XI. Amendment Procedures

This agreement may be amended at any time through the mutual written consent of the CAO and the Superintendent.

The CAO would negotiate these agreements with department heads himself or delegate that task to other deputy mayors. The first time, he would be wise to engage coaches with experience in developing performance agreements—one for himself (or the other deputy mayors) and one for the department head. As part of the process, the coaches should help the participants develop a “logic model” for each of the departmental performance goals. Logic models are “theories of the business;” they help show what it will take to produce the desired results, and they help clarify what should be measured. For more on logic models, see Appendix B.

The process would then flow down through the organization:

- Each division’s goals and performance agreement would then be developed in negotiation with the department head; they should fit into the logic models, showing how they would contribute to the departmental goals.
- Each unit within a division (if they exist) would then develop its goals and performance agreement in negotiation with the division head, also using a logic model framework to ensure that they would help achieve the division’s goals.
- Each team’s (or, in a few cases, individual employee’s) performance goals would then be developed in negotiation with its supervisor, again using a logic model framework to ensure that they help achieve the unit, division, and department’s goals.

In all these cases, performance management specialists from OPA and/or the Human Resources Office would help with this process. They would start by training managers and supervisors in performance management, then move on to developing performance agreements. The manager to whom the unit reports would first define what results were important to them, using a balanced scorecard matrix to insure that at least three of the four perspectives were covered. (See Appendix B.) Then the performance management specialists would work with the unit to help them understand these results, flesh out the logic models so they understood how their work fit into them, and suggest specific strategies and goals. Ideally, at least some employees in the unit would participate in these discussions (and in the case of frontline teams, all members should participate.) Then the two sides would meet to negotiate the agreement, with a coach or performance management specialist facilitating and mediating. This would take as many sessions as necessary.

Where feasible, a group of customer or complier representatives should be brought into the process to give input on what is important to them. (This may be more doable in

subsequent years than in the first year, as it would add to the workload. And in some activities, it may simply not be realistic.) To complete the process, the coach or specialist would have to approve the final agreement and goals, to ensure that they were neither too easy nor too difficult to achieve. (This would all apply to team performance goals as well.)

However, no department heads or managers would be eligible for performance bonuses or performance-based pay increases until their employees were eligible as well. (See p. 38 below.) It would do significant harm to morale to see well-paid department heads receiving bonuses or pay increases for which frontline employees were not eligible.

Managers who arrived in a position that had a performance agreement mid-year (or part way through a 2 or 3-year performance agreement) would work with their supervisor to modify and amend the agreement. If mid-year budget cuts or other new circumstances make achieving any set of goals (from performance agreements or team or individual performance goals) more difficult (or easier), the goals should be renegotiated.

#### *Periodic Discussions of Performance Data and How to Improve It*

Data should be reported at least quarterly, and managers and their teams should meet quarterly—or at a minimum, every six months—to discuss the results with the person to whom they report. At departmental review sessions, other departments whose work bears on the results should also attend. (For instance, problems in purchasing could create delays that affect the department's performance.) Within departments, meetings should likewise include everyone who has significant impact on the results. Together they should review the data and discuss what it means and what actions the organization or unit should take to improve it—or what others need to do to improve it.

#### *Auditing Performance Data*

When consequences are linked to performance data, some people will be tempted to cheat. To inhibit such behavior, the CAO should contract with an outside organization that has expertise in performance measurement to spot-audit measurement throughout the organization and report any problems. In addition, all the performance data should be entered into Results NOLA, so anyone interested can drill down from citywide goals and strategies to departmental goals and strategies to division or bureau goals to team and individual goals. They should be able to see both past and current performance levels for each goal, so they can see the trend over time.

### **B. Employee Performance Feedback System**

While we recommend doing away with the current employee evaluation system, we do not recommend doing away with feedback on employee performance. Such feedback is critical, if organizations are to improve. Hence we suggest that a feedback system exist, *without* ratings of employees.

The first step would be an employee self-assessment, done at least annually, but more often if department heads or managers wished. Self-assessment would allow each employee to play an active role in his or her own professional and personal development. Its purpose would be to give employees an opportunity to celebrate their

accomplishments and contributions, explore what they have learned in carrying out their work, and plan for future growth and development. The list of accomplishments should include progress on activities and projects as well as results on individual and/or team performance goals. The employee should also articulate any training or educational needs they perceive.

The employee's supervisor would also complete an assessment of the employee's performance. This feedback would include any specific projects or tasks he wanted completed in the next year, along with any training or educational requirements, customer service improvements, or other relevant goals. Timetables, resources required, and deadlines would be included for each item.

This process would be intended both to help employees with personal and professional development and to help the unit improve its performance. The key to useful assessments is not the quality of the forms but the quality of the manager and employee and their relationship—as well as the quality of conversation the forms help stimulate. But the proposed assessment forms below include a series of items that are often identified as key issues in individual and work unit success. Managers would be free to ignore some and add others they found more relevant to the employee.

After each completed their assessment forms, the two would meet to discuss them. Often this might lead to some kind of performance improvement plan or training and development plan for the employee, for the next year. Either party could amend their forms after the discussion, based on new information or understandings. Again, this process should occur annually, at a minimum, but some managers might want to do it more often. Managers who wanted to use 360-degree feedback—from customers, peers, the supervisor and subordinates—would be encouraged to do so, but no one would be required to use 360-degree feedback.

The feedback and coaching process would not be directly tied to ratings, pay or other personnel actions. However, the forms would go into the employees' personnel files and could be used as a source of information to support recommendations for recognition, performance-related base pay increases, or disciplinary actions.

**Employee Self-Assessment Form**

**Employee Name:** \_\_\_\_\_

**FY:** \_\_\_\_\_

**Accomplishments This Year:**

**Learning:**

**Goals for Next Year:**

**Training/Education Needed:**

**Employee Signature** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Employee Self-Assessment Form (continued)**

**Special Areas of Focus:**

Use these specific categories to address any particular areas that you feel require improvement or to elaborate on areas where you feel you are performing in an exceptional manner. Answer only relevant items and feel free to add more categories as needed.

Quantity and Quality of Work:

Attendance (Timeliness and Punctuality):

Effectiveness with Others (Co-workers, Customers & Supervisor):

Following Instructions/Carrying Out Assigned Tasks:

Safety:

Use of Equipment and Materials:

Leadership Skills:

Planning and Organizing Work:

Other relevant categories:

**Performance Feedback And Coaching Form**

**Employee Name:** \_\_\_\_\_

**FY:** \_\_\_\_\_

**Overall Feedback on Employee's Progress:**

**Strengths:**

**Challenges:**

**Specific Issues or Problems Arising This Year:**

**Tasks or Strategies Assigned for Next Year (if applicable):**

**Training Assigned for Next Year:**



**Performance Feedback And Coaching Form (continued)**

**Special Areas of Focus:**

Use these specific categories to address any particular areas that require attention by the employee or to elaborate on areas where an employee is performing in an exceptional manner. Answer only categories that are relevant, and feel free to add more categories as needed.

Quantity and Quality of Work:

Attendance (Timeliness and Punctuality):

Effectiveness with Others (Co-workers, Customers & Supervisor):

Following Instructions/Carrying Out Assigned Tasks:

Safety:

Use of Equipment and Materials:

Leadership Skills:

Planning and Organizing Work:

Other relevant categories:

### **C. Non-Monetary Awards**

Departments are encouraged to create non-monetary ways to recognize their high performers, both teams and individuals. Recognition can be a more powerful motivator than pay, and it is far cheaper.

Each department should create its own approach. Indeed, creative managers sometimes ask their employees what kind of recognition they would prefer, since not everyone appreciates the same things. (Some people crave public attention, for instance, while others dislike it.) The possible forms of recognition are endless, including:

- Award ceremonies for employees and/or teams
- Plaques or certificates of achievement
- Flowers, ice cream parties, etc.
- Lapel pins
- Engraved objects like nameplates and coffee mugs
- Employee or Team of the Month awards
- Photos and stories in organizational newsletters
- News stories about achievements
- Breakfast, lunch, or dinner with the department head
- Peer-to-peer awards, in which employees can reward another employee's "beyond the call" performance
- Vouchers, gift certificates, or tickets to events
- A trip to a conference the employee wants to attend
- A technology upgrade of some kind
- An education or training opportunity the employee desires

These kinds of awards are worth their weight in gold. They have a double effect: they show employees that they are valued, and they signal what kind of behavior and achievement matters to the organization.

### **Initiatives to Begin in 2014:**

#### **D. Incentives for Savings**

##### *Gainsharing.*

In other cities gainsharing has proven itself a powerful way to motivate employees to root out waste and find smarter, cheaper ways to do things. We recommend that if an individual, team or unit has met its performance goals, its members would get to keep 25% of budgeted funds they did not spend, the department would keep 25%, and the general fund would receive 50%. The department head would have to certify that they met their performance goals, that the savings would not endanger future performance or drive costs up elsewhere or in the future, and that the savings did not come from some windfall, like declining demand for services. The budget office would have to certify the savings, but no other permissions or reviews would necessary.

*Shared Savings and Earnings:*

Other cities have used this method to motivate employees to come up with big new ideas that save or earn the city money—even ideas that would be implemented by departments over than their own. We recommend that when employees or teams come up with ideas that increase revenues or save the city money (not necessarily from their own department's budget), they should get to keep 10% of the annual savings, up to a limit of \$10,000 per person. The budget office should have to certify the savings or revenues, but no other permissions or reviews should be necessary.

**E. Performance-Related Base Pay Increases**

We recommend that employees be eligible for increases in their base pay as rewards for exceptional performance, but because these increases are much more expensive over time than one-time bonuses, we recommend that bonuses be the usual form of performance pay.

A department head could approve an increase for an individual employee of up to 10% of base pay, within the pay range, for sustained contributions over a year or more that significantly improved:

- accomplishment of organizational missions or goals,
- customer service,
- compliance with laws or rules (in compliance enforcement, like police work or permitting),
- the department's or city's capacity to perform over time, or
- the city's image within the community.

In awarding such pay increases, a manager should consider both the employee's contribution to the accomplishment of individual, team, unit, division, and departmental performance goals and the feedback forms in the employee's file, received from supervisors. (If 360-degree feedback is practiced in the employee's unit, feedback from customers, peers, and subordinates would also be considered). On the form used to document the increase (see below), the link to one or both of these factors should be explained.

This type of increase could be granted at any time of year, though only one increase would be possible during a year. It would become part of the employee's base pay for purposes of retirement, overtime, and holiday pay calculations.

We intend for such raises to be relatively rare. We acknowledge that there are certain risks in allowing them: irresponsible department heads could overspend their budgets, obligating the city to higher future budgets, if they gave too many performance-related pay increases. Others could reward favorites, falsifying information about their

performance. However, the current inability to give such raises creates risks as well—principally the risk of losing (or never attracting) the best employees, who know they could make more money elsewhere.

To minimize the downside risks, we propose three limits on a department's ability to give performance-based pay increases. First, such increases would be explained and documented using the form below, signed by the department head, and placed in the employee's personnel file. The Civil Service Department would audit such pay increases, and if it believed they were given for reasons unrelated to performance, it would investigate. The Civil Service Commission would have the power to rescind such pay increases if it found they were not justified by at least one of the performance criteria explained above. Second, such increases would raise the department's spending, so department heads would have an obvious incentive to use them only when necessary. And third, if the increase obligated the city to higher costs in the subsequent fiscal year, the CAO would have to approve the pay increase. (However, if the department made other changes that freed up money for the pay increase—and therefore did not create higher costs in the subsequent fiscal year—the CAO would not have to approve the increase.)

**City of New Orleans  
Record of Performance-Related Base Pay Increases**

**The Policy:** The City allows performance-related pay increases for sustained contributions over a year or more which significantly improve performance in one of the following categories (please check those for which this employee is receiving this pay increase):

- accomplishment of organizational mission or goals,
- customer service,
- compliance with laws or rules (in compliance enforcement, like police work or permitting),
- the organization's capacity to perform over time, or
- the city's image within the community.

This is to document the award of a Performance-Related Base Pay Increase for:

_____ Name
_____ Job Title
_____ Amount of Increase (Percentage)
_____ Effective Date of Increase

**Description of the employee's contribution to improved performance:**

**Documentation of that improvement through performance data (attach documentation if using performance data):**

**Documentation of the employee's role through performance assessment forms (attach relevant forms):**

**Does this salary increase create an increased budget obligation for the next fiscal year (in which case the CAO must approve it) or will its costs be offset through other actions by the department? If the latter, please explain.**

Approved by Department/Agency Head: \_\_\_\_\_

Date: \_\_\_\_\_

If necessary: Approved by Chief Administrative Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Employee Acknowledgement: \_\_\_\_\_

Date: \_\_\_\_\_



## **Initiatives to Roll Out in 2014-2017, Department by Department**

### **F. Team Performance Goals and Bonuses**

As noted above, employee teams and, in rare cases where results are truly delivered on an individual basis, individuals would each have a balanced scorecard of 3-6 important performance goals each year. To create a powerful incentive to achieve these goals, we recommend one-time bonuses of 5% of salary for those who do, payable in March for their work the previous year.

All departments would be expected to develop performance goals for their employees in 2013. Departments that have succeeded in creating objective, fair, meaningful performance goals from top to bottom, in the judgment of the CAO and performance management specialist, would be allowed to begin giving bonuses in 2014. Since it usually takes several iterations for most organizations to develop a fair and meaningful set of goals, these would probably be departments that already have goals for all employees today.

Other departments with fair and meaningful performance measurement systems by the end of 2014, in the judgment of the CAO and performance management specialist, would begin awarding bonuses in 2015. Others would win approval in 2016, and all departments would be expected to launch bonus programs by 2017. (If a department were not ready by 2017, the CAO should consider whether to retain the department head or not.)

Most work in the public sector is accomplished by teams—crews that cut grass, pave or mark streets, clear storm drains, investigate crimes, and so on. Hence most public employees are more comfortable being measured as a team. Group goals and bonuses also help build the teamwork necessary for success. In addition, when teams can earn bonuses by improving performance, they usually discipline their own members, quietly forcing those who are not carrying their share of the load to improve or leave the team.

Occasionally, however, someone's work is truly individual in nature, and their performance does not depend on other employees. For instance, in a finance department there might be one person whose job it was to request reimbursements from the state government, and no one else might be involved in that work. In such cases, it makes more sense to negotiate individual performance goals and bonuses. Sometimes it even makes sense for a team's goals to include one or two measures of individual performance within the team, or for an individual's goals to include a measure of how well they collaborate with other employees—to balance incentives for individual and group performance.

There are many ways of measuring performance, and in Appendix B, we have included information about the various types of information that can be useful. But here are two examples of possible team performance goals for a year, to illustrate what we mean by "objective, measurable performance goals:"

FastTrack Permitting:

1. Process X% of homeowner and contractor building permits online.
2. Decrease the cost per building permit processed.
3. Approve or reject X% of homeowner and contractor building permits within one day.
4. Improve the percentage of those receiving permits who rate the service "good" or "excellent."
5. Inspect X% of permitted projects after completion.
6. Provide at least one week of training annually to each team member.

Street Sweeping:

1. Increase average number of miles swept per day.
2. Decrease cost of a mile swept.
3. Increase percentage of streets rated clean on inspection, after sweeping.
4. Improve citizen ratings of street cleanliness on survey.
5. Improve employee engagement, as measured by annual survey.

The level of performance that would trigger a bonus, whether for an executive, a manager, a team, or an individual, should be negotiated when the goals are set. Organizations often make the mistake of establishing subjective, arbitrary targets, such as "decrease the time it takes to process a permit by 30 percent." Sometimes this makes sense, when there is vast room for improvement and a manager and team want to redesign the process to yield a quantum leap in speed. But too often, these targets are pulled out of thin air. When that happens, employees become cynical about the whole process and quit trying to meet the goals, because they consider them arbitrary and unfair. This is one reason W. Edwards Deming, the father of Total Quality Management, admonished managers against setting arbitrary numerical targets in his famous 14 points.

In many situations (but not all), the best thing to do is measure the current level of performance (e.g. service volume, quality, speed, customer satisfaction, etc.), then set a goal of improving it. The agreement would then specify how many of the team's or individual's goals they would have to achieve to earn a bonus: 100%, 80%, 60%, etc. When negotiating a subsequent year's goals, the presumption should be that the level reached last year on any measure would become the expected level for next year (unless there were extenuating circumstances); hence it would take further improvement, beyond that level, to trigger a new bonus. This would create an incentive to continuously improve performance.

In some cases, one can compare a department or unit's performance to similar departments or units in other, similar cities—or one can compare the performance of different crews within one department in New Orleans. This can be tricky; sometimes cities are different enough that one is really comparing apples to oranges, or crews face different challenges. But where it does make sense, it can be a useful way to set targets. Most employees will agree that if their work is only half as productive as their counterparts elsewhere in New Orleans, or in other cities, it is fair to expect significant improvements. This practice, known as benchmarking, can be quite useful in setting performance goals, because it grounds them in standards already achieved elsewhere, rather than in standards plucked out of the air.

### **Subjective Judgments About the Data**

Normally, any bonuses earned should be given automatically, if the performance goals are achieved. If employees believe their bonuses will depend on subjective decisions by their supervisor, the organization will encounter all the problems that occur with subjective ratings of employees. But if bonuses depend entirely on objective performance data, most of those problems will disappear, and organizations and teams will strive to improve their performance.

Subjective judgment should enter the picture only if the manager to whom the team, unit, division or department reports feels that the results were or were not achieved because of some windfall that had nothing to do with the work, such as the weather. In such cases, the manager would decide whether to eliminate, give, or partially give the bonus, and the department head would review and approve the decision. The affected unit could ask for a meeting with the department head to make its case.

Mid-year changes to the performance goals or elements of a performance agreement would be made only in cases where the manager in charge determined that circumstances external to the units' or employees' control made accomplishment of specific strategies too easy or impossible (because of mid-year budget cuts, for instance). In these cases, strategies and/or goals could be deleted or changed, and others might be added. Employees would be responsible for making their manager aware of circumstances that might require changes to their performance agreements or goals.

### **The Bonus Formula**

Each participating department should receive 2.5 percent of its salary and wage payroll to use for performance bonuses. (In 2012, this would be \$8.3 million, if every department participated.) To ensure that this investment is made every year, it should be required by city ordinance. The ordinance should state that if this is not included in the budget, the mayor and city council would not receive COLAs that year.

Hence, departments could give half of their employees bonuses of 5% in a typical year. This tends to be the minimum level required to create significant motivation on the part of many employees.

One of the lessons learned elsewhere is that if you put an arbitrary limit on the number or percentage of employees who can receive bonuses in a year, you dramatically decrease their motivation to improve, because many employees assume they won't qualify for a bonus. However, if you don't limit the number, you can't predict how many bonuses you will have to pay. This creates a dilemma. We believe departments should be given some leeway to design their own systems, within these parameters:

1. There would be no limit imposed on the number of teams and individuals that could receive bonuses.
2. Teams and individuals qualifying for bonuses would normally receive 5% of their salaries.

3. Departments could augment their bonus fund over time with the departmental share of gainsharing, or other sources of funds.
4. Bonuses would be triggered by achievement of 3-6 objective, measurable performance goals defined at the beginning of the year. "Achievement" would also be defined: for instance, in some cases it might be reaching 100% of the goals; in others it might be exceeding the goals; in others it might be achieving 75% of the goals—all depending on how demanding the goals were.
5. If there were not enough money to give everyone who earned a bonus 5%, the amount of the bonuses would be lowered to the figure necessary.
6. If there were money left over, the department head could give higher bonuses to teams that exceeded their goals by a significant amount—but only if that amount had been defined at the beginning of the year. He or she could also give lower bonuses to teams achieving most of their goals—again, only if that amount had been defined at the beginning of the year.

The performance bonus cycle would begin on January 1 of each calendar year. Performance bonuses for the previous year would be paid as a lump sum in March, less any applicable taxes. Such bonuses would not become a part of base pay and would not be included in overtime, holiday pay, or retirement calculations.

Employees who had departed or arrived in a work unit mid-year would be eligible for a performance bonus for a partial year, as long as they had been there at least three months and were still employed by the city. The bonus would be prorated based on the total number of months the employee had served under the agreement or goals during the performance cycle, rounded to the next highest month. For example, an employee who was eligible for a 5% bonus and who had served under an agreement for 7 ½ months would be granted a 3.34% bonus. (Eight months is 2/3 of 12 months; 2/3 of 5% is 3.34%). Employees whose performance goals were individual, not team-based, would negotiate goals with their supervisor when they arrived, unless it was in the final three months of the year. In that case, they would simply negotiate goals for the following year, like everyone else.

Employee misconduct will be addressed separately under the city's disciplinary policies and will not normally affect eligibility for performance bonuses unless an employee is in the process of termination, in which case he or she will not be eligible for a bonus. However, the department head may withhold a bonus if an employee has received disciplinary action during the year or is working under a Performance Improvement Plan and his or her conduct has negatively affected departmental or work group performance. (Employees on sick leave or otherwise not working would be eligible only for the months they actually worked.) The goal of performance bonuses is to create a powerful incentive for every employee to help improve results for citizens, regardless of their other issues—and for employees to pressure their coworkers into better performance. If bonuses are withheld for misconduct that is not related to work performance, some employees will lose faith that they can ever earn a bonus, and the city will lose some of the bonuses' motivational impact.

If a department has fewer than a dozen employees and must lay off an employee to pay bonuses (because that year's bonus money must come out of the department's payroll),

the CAO should either provide its bonus funding from the general fund or waive its requirement to participate in the bonus program. The CAO should do the same if a department receives its payroll money from federal or state grants that do not permit employee bonuses (though most federal grants do allow employee bonuses).

Below are forms that can be used 1) to record team and individual goals and bonus formulas at the beginning of the year, and 2) to report the results and any bonus earned at the end of the year. Department heads should approve the second form for any individual or team receiving a bonus; they should also certify that the measurement of performance has been monitored within the department and that the results are believed to be accurate.

**Team or Individual Performance Goals and Bonus Formula**

**Choose 3-6 goals, at least one from three of the four perspectives below. Goals must be measurable. The goal can simply be "improvement," or it can include a target, such as "Increase number of miles paved per week by 20 percent." If the current performance is not measured, simply write "unknown."**

**Citizen (owner) perspective—options include:**

- Effectiveness (% of outcome achieved)
- Cost-effectiveness (cost per unit of outcome)

Goal 1: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

Goal 2: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

**Business perspective—options include:**

- Quantity (of activities, processes, or outputs)
- Efficiency (cost or volume of work or time per unit of output)

Goal 1: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_



Goal 2: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

**Customer perspective—options include:**

- Quality (timeliness, accuracy, reliability, appearance, accessibility, availability, convenience; etc.)
- Customer satisfaction

Goal 1: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

Goal 2: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

**Organizational perspective—options include:**

- Employee engagement
- Employee skills & development

Goal 1: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

Goal 2: \_\_\_\_\_

Current Performance Level: \_\_\_\_\_

Goal for upcoming year: \_\_\_\_\_

**Bonus Requirements:**

To receive a bonus of 7.5%, individual or team must exceed these goals by \_\_\_\_\_

- To receive a bonus of 5%, individual or team must achieve \_\_\_\_ of these goals.
- To receive a bonus of 2.5%, individual or team must achieve \_\_\_\_ of these goals

**Signed by:**

**Team Members or Individual:**

**Supervisor:**

\_\_\_\_\_  
\_\_\_\_\_

**Date:**

**Date:**

**End of Year Team or Individual Performance Goals and Bonus Report**

**For each performance goal, state the goal and the level of performance achieved during the past year and the current year. Then fill out the bonus.**

**Team or Individual:** \_\_\_\_\_

Goal 1: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

Goal 2: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

Goal 3: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

Goal 4: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

Goal 5: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

Goal 6: \_\_\_\_\_

Last year's performance level: \_\_\_\_\_

The previous year's performance level: \_\_\_\_\_

**Bonus Requirements:**

- To receive a bonus of 7.5%, individual or team must exceed these goals by \_\_\_\_\_
- To receive a bonus of 5%, individual or team must achieve \_\_\_\_% of these goals.
- To receive a bonus of 2.5%, individual or team must achieve \_\_\_\_% of these goals

**Amount of Bonus Due:**

**Signed by:**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

### G. Longer-term Improvements

Other improvements should simply be implemented by a new HR department after it gets off the ground, and as funds are available. These include the following:

1. Allow departments to create "alternative compensation plans" within specific units, with the approval of the CAO. These might include team compensation plans, where groups of employees are paid for collective rather than individual accomplishment and cross-trained to do multiple jobs; or compensation plans in which employees are rewarded at least in part through commissions or other compensation for sales; or others. This would normally be done when the work is important to the achievement of the city's goals and the current compensation method makes it difficult to achieve those goals. The alternative pay methods would be designed to incentivize achievement of those goals. Alternative pay plans should generally link rewards to results, such as improving customer satisfaction, accomplishing specific performance goals, carrying out specific strategies, and so on. The plans would be part of a written performance contract between the employees and the department head. They could include the normal bonuses for team or individual accomplishment.
2. Encourage departments to set up Workforce Investment Funds, for the purpose of adding funding for bonuses, as well as funding for education, training, technology, and other investments and awards. Departments would be allowed to keep and roll over any unspent balance from their performance pay into their Workforce Investment Fund, along with any gainshare savings. The department head would decide whether to put these savings in the fund and how to use them. The city should create a pool that small departments could use to augment their Workforce Investment Funds, since small departments have fewer opportunities to save money by keeping vacant positions open.

### IV. BUMPING AND REDUCTIONS IN PAY

When layoffs are necessary, employees in New Orleans currently have the right to "bump" other employees in the same job classification, and the city, based on their evaluation ratings ("outstanding," "needs improvement," and longevity. The current rules emphasize performance over longevity, but they rely on an evaluation system that is broken. After temporary, emergency, and provisional employees are laid off, those rated "unsatisfactory" go next, ranked by seniority so the most recent hire is laid off first. Next come those rated "needs improvement," and so on. As we have seen, however, few evaluation ratings are honest, and almost no one is rated "satisfactory" or "needs improvement." Hence longevity plays a much larger role than intended by the rules, and lay-offs have little to do with performance. This results in employees being moved into jobs they did not seek and were not trained for, and service to the citizens suffers significant harm. New Orleans' leaders have to decide whether protecting the workforce is more important than serving the citizens.

The current mayor inherited a budget with a huge structural deficit, which has led to repeated budget cuts over the past two years. If service to the citizen is the most important value, departments forced to downsize should be able to lay off their worst

employees, not their most recent hires. And no one from another department, with skills for a very different job, should be allowed to bump one of their employees, simply because they have worked for the city longer.

We have recommended doing away with evaluation ratings, because they are almost never done honestly in the public sector (see pp. 18-19). We also recommend doing away with bumping, because it is unfair to employees, because it undermines performance, and because there will no longer be ratings of employees to use in deciding who loses their jobs and who bumps whom. In its place, we recommend that during a reduction in force (RIF) each department head decide where it makes most sense to reduce staffing—which positions, within which units. Those employees should be given preference, in the form of first access to interviews, for any vacancies within city government, in their job classification or another classification with a higher or lower pay range, if they meet the position qualifications. (Hiring managers would be obligated to interview them, but not to hire them.)

During a RIF, if it becomes necessary to choose who to lay off among multiple employees who hold the same position, there are a number of criteria that might be used. The most obvious—and traditional—is seniority. But using longevity means some high performing employees will be let go, some low performing employees will be kept on, and service to the public will suffer.

Another possibility is using performance data: qualitative information from employee assessments and quantitative information from individual and team performance measures. The one problem here is that some teams with outstanding performance may have one or two members who perform poorly, and some low-performing teams may have one or two outstanding members.

A third possibility is giving employees some kind of advantage if they have received formal awards or recognition from the department. The downside here is that this may create incentives for departments to hand out lots of awards when they suspect a RIF is coming, cheapening the value of awards and fueling employee cynicism about management.

A fourth possibility is first laying off employees who have been the subject of disciplinary actions for misconduct or poor performance. However, this could create multiple problems: a reluctance on the part of managers to use disciplinary tools; an incentive for employees to appeal every disciplinary action; and lay-offs of employees who have made one mistake but corrected it, while exhibiting excellent performance in other ways.

Of all these alternatives, we prefer that RIFs target low-performing employees, using the best available information about performance. To protect outstanding employees on low-performing teams, a department head should consult with supervisors to get their input before making final decisions. We recommend that department heads who feel they have adequate performance data—from employee assessments, team and individual performance measures, and input from supervisors and managers—choose which employees to lay off based on performance. Those who feel they do not have adequate performance data could fall back on longevity, letting go those hired most recently into the units and positions targeted for layoffs.



To protect against favoritism, we recommend that department heads present their layoff plans, including their business reasons for targeting particular units and positions and their justification for and documentation of performance-based decisions about which individuals to lay off, to the Civil Service Commission. If the Commission felt their decisions were made for non-merit reasons, demonstrating favoritism toward employees on some basis other than their performance, it could block the plan and require that the department develop a new one. If that plan were not acceptable, the Commission could require that the layoffs—within the units and positions chosen for downsizing—be based solely on longevity.

## V. APPEALS

The civil service appeals process is the most successful of the functions that the Civil Service Department currently performs. Most appeals are not overturned, and most employees believe that the appeals process is fair and protects their rights. The major problem with appeals is that they take too long. To save money, to help managers manage effectively, and to ensure that employees have their concerns addressed in a reasonable period of time, the city must speed up the process.

New Orleans has a very high volume of appeals of disciplinary actions every year, primarily for suspensions, letters of reprimand, and terminations. Though we do not have exact statistics, last year terminations made up an estimated 20 percent of the appeals, while suspensions made up perhaps 60 percent. The Law Department estimates that two-thirds of the appeals come from the Police Department. The Fraternal Order of Police pays for attorneys, and most suspensions and terminations are appealed by police officers.

With only two attorneys in the Law Department working part-time on these appeals and only one hearing officer, it typically takes 8 or more months to decide on an appeal due to delays caused by continuances, subpoenas, and scheduling. The rules require a decision from the Commission within 120 days after the hearing officer makes his decision (a limit that is not enforceable and is sometimes exceeded). Then the employee can appeal to Fourth Circuit Court, which can take up to a year to render a decision. Hence many appeals stretch out for a year and a half, two years, or even two and a half years.

In addition to discouraging managers from terminating and disciplining poor employees, the delays cost the city money. Last year the budget for hearings of appeals ran out before the year ended. And when the city loses an appeal and a suspended or terminated employee returns to their job with back pay, the process gets extremely expensive.

There are three ways to solve these problems: 1) to speed up the appeals process; 2) to reduce the volume of appeals; and 3) to negotiate settlements of more of the appeals once filed. We believe all three are important, but the biggest pay-off will come from reducing the volume of appeals.

Accomplishing this will require a long-term culture change within the organization. Part of that will be policy changes, which we have recommended below, but it will also require new managerial perspectives on how to deal with misconduct and poor

performance. In this change process, a new Human Resources Office that takes a pro-active approach to resolving problems before they result in formal discipline and appeals is essential. Today, prevention of problems with employees is no one's primary goal. Efforts are focused more on preparing for battle if a disciplinary action does take place. Below we offer tested approaches that can prevent the need for some punitive actions and thereby eliminate the need for some appeals.

**A. Speeding up the process:**

1. Consider having more than one hearing officer on contract. Currently there is only one hearing officer, a contract attorney, who only works on this about 1.5 days per week. A second officer would allow hearings on other days and avoid loss of time when the hearing officer is out of town, sick, or on vacation. It would also prevent problems if one officer had a conflict of interest. In the past the city had two hearing officers, but budget cutbacks changed that.
2. The Civil Service Commission should require that its three member panel review each appeal and make a decision within 120 days of receiving the hearing officer's recommendation; if a panel fails to meet this deadline, the the Commission could discuss this delay at the next Commission meeting.

**B. Reducing the volume of appeals:**

1. Employee Performance Problems: A new Human Resources Office should train and provide support to departments in dealing with performance problems before moving to formal discipline. The goal would be to help managers and employees correct the performance problem using less adversarial solutions that are in the city's and the employee's interest. Generally, performance problems are distinguishable from misconduct in that they typically do not involve willful violation of standards of conduct. Tools available for dealing with performance problems include:
  - a. Verbal Counseling: A conversation between a manager and employee in regard to a problem with performance (or misconduct). The manager should record the date and conversation in his or her own files. Records of these conversations should not be included in the HR Office's central employee personnel file, but should be considered in, and made a part of, future action in connection with poor performance.
  - b. Letter of Guidance: A letter advising the employee that a problem exists, describing the nature and extent of the problem, and outlining expectations for resolving the problem. Letters of Guidance may be issued in conjunction with a requirement for Performance Improvement Plans as described below in Item 3. Letters of Guidance are not official disciplinary actions (they are not included in Rule II, Section 4, Appeals, or in Rule IX, Disciplinary Actions) and are therefore not appealable. Letters of Guidance would be included in the employee's departmental personnel file, and the employee could enter a response into the file if he or she desired. Over time, the supervisor or manager could use as many of these letters as he or she felt were necessary.

- c. **Performance Improvement Plans:** A plan developed by an employee, upon direction of a manager, that is intended to correct a performance problem. Performance plans contain specific information about what the employee will do to correct performance problems and include deadlines and resources required. Plans are developed, then discussed with the supervisor or manager, who refine and approve them; the two then have periodic meetings to review progress. If the employee does not meet the terms of the plan, the supervisor or manager moves on to another approach.
  - d. Options available to managers under all of these steps would include the following:
    - i. **Training for the employee.** The city should develop training courses for departments aimed at employees who need improvement, based on city-wide or specific departments' needs. For instance, the Police Department needs training on specific policies that are often violated; another department might need basic training on how to be a responsible crew member; other departments might need other kinds of training.
    - ii. **Having the employee work with a coach or mentor.** Department heads could seek and develop employee volunteers from within their departments who had the time and skills to serve as coaches and mentors to fellow employees at a peer level. Prospective coaches/mentors could be trained in the appropriate skills and such service could be designed as a special honor and recognition provided for employees willing to serve.
    - iii. **Giving the employee feedback from his or her peers and/or customers or compliers.**
    - iv. **Giving the employee the option, rather than formal discipline, of undertaking a task related to their problem.** For instance, in one city a driver who repeatedly failed to get a spotter when backing up a heavy vehicle and hit something was, after injuring a co-worker, required to drive that co-worker to his doctor's appointments several times a week.
    - v. **Reassigning the employee to different duties within the same job classification.** For instance, if the employee does not have the skills needed to do the job because technology has changed, the employee might be reassigned to a different position in the department.
    - vi. **Moving an employee to a different job, in a lower job classification.** This would only make sense when an employee does not have the ability to perform in the current job and classification. For instance, some good employees who are promoted to supervisory positions are unable to perform as effective supervisors, and are subsequently moved back to their previous jobs.
2. **Employee Misconduct:** Misconduct is generally defined as a willful disregard of the standards of conduct an employer has a right to expect. (There are some circumstances where misconduct and poor performance overlap.) We

recommend that the city develop a clear and comprehensive personnel policies manual and train all managers in the proper use of all formal disciplinary tools, so as to maximize their effectiveness, minimize the number of appeals, and minimize the number of appeals lost because of missing documentation, errors in letters, etc. These policies should explain the city's employee relations and disciplinary philosophy, outline the standards of conduct, provide guidance on establishing disciplinary penalties, and contain a complete list of disciplinary infractions and penalties.

Disciplinary actions available to managers include the following. (These are options, but managers don't have to do all of this in any particular case; in some cases, the violation might be so egregious they would move right to termination.)

- a. Letter of Reprimand: A letter that describes the specifics of misconduct and warns of more serious consequences if the misconduct occurs again. Employees would be requested to sign these letters, showing that they have received them, but their signature would not indicate agreement with the reprimand. (These are appealable, but can be held in abeyance—see 3 below.)
  - b. Involuntary retirement.
  - c. Fine. In cases where the employee is responsible for the loss or damage of things of value, a fine is appropriate.
  - d. Termination. In advance of any termination, the department head already must issue a letter to the employee notifying them of the intent to terminate, the employee's right of appeal, and that a pre-termination hearing will be held with the department head. The pre-termination hearing is informal; the employee can bring an attorney and can request witnesses; the department head decides how the hearing will be conducted, and at his or her option, may appoint a panel to review the circumstances and proposed action (this is not required). The department head then makes the final decision. Terminations are appealable. (If the employee has abandoned the position—i.e., been absent without notice for at least five consecutive days—the department should send a letter telling the employee they are terminated unless they have a satisfactory explanation.)
  - e. We do not recommend reductions in pay within the employee's pay range, nor demotion, to deal with misconduct, because they do not serve to correct or rehabilitate; instead, they often create long-standing morale problems. Nor do we recommend disciplining employees for refusing to sign letters of disciplinary action. When that happens, managers should simply note the refusal in the file.
3. Create an "abeyance" policy. In some cases, to give an employee another chance and avoid an appeal process, management could offer to hold any disciplinary action (including termination) in abeyance for a period of time. The manager could ask the employee to agree to certain conditions, such as undergoing training, adhering to a performance improvement plan, working with a coach or mentor, completing counseling, or other appropriate actions. He or she

would write a note documenting the action and ask the employee to sign it to indicate he or she acknowledged it. If no other disciplinary issues emerged during the period of abeyance, the disciplinary action could be rescinded and never put in the employee's central personnel file. But if any other disciplinary issues emerged during the period of abeyance, the manager could consider the previous misconduct and proposed disciplinary action in setting the penalty. Managers would have to make it clear that the employee was under no obligation to agree to this deal; he or she would be free to choose to undergo the formal discipline instead. HR would train employees and managers in the use of abeyances and offer problem-solving support to managers and employees.

4. Increase the number of negotiated departures. It is far easier and usually less expensive to remove someone from city employment through a negotiated departure than through termination. The city should develop the capacity within HR to help department managers do this, and as much as possible, it should become the norm. HR should teach departmental managers about this option, so they are all aware of it, and encourage them to discuss this option with HR when they are considering terminations. The people within HR who conduct these negotiations must be able to educate employees to their rights of appeal as well as the possibilities for amicable departure or settlement. They should have experience weighing the advantages and disadvantages of various types of agreements, have the special negotiating skills required, and have experience working with city attorneys to craft written agreements. They should always coordinate their work with city attorneys, who would help draft written agreements. It is important to conduct these conversations without pressure or coercion, allowing employees to decide of their own free will whether to leave or face termination and appeal.
5. The department should indicate whether an employee who departs is "not recommended for rehire" or "recommended for rehire." If the employee is not recommended for rehire, this classification should be backed up by official records contained in the employee's personnel file documenting poor performance or misconduct. When someone who has worked for the city before applies for a job, the HR recruiter should check the file to see if that person is recommended for rehire, investigate why the employee received the designation he/she did, forward the information to the hiring manager if that person meets or exceed qualifications, and allow the hiring manager to decide whether that employee should be considered. The hiring manager may decide to speak to the manager who supervised the employee during his/her previous employment.
6. The Civil Service Department should post all Commission decisions on appeals online, to create greater transparency and understanding of precedents. In its March 2011 report, the Justice Department explained why this is important: "We heard concerns that recommendations to the Commission by past hearing officers were in some instances influenced by bias or favoritism. We found no evidence that such bias was widespread, indeed as discussed below, the Commission overwhelmingly affirms NOPD's disciplinary decisions. Nonetheless, it is clear that even a small number of notorious decisions by the Commission can delegitimize the process in the eyes of the officers and the public. Further, the almost complete lack of transparency in the way the Commission operates – none of its decisions are posted online, for example –

has fostered an atmosphere where rumors can fester. Addressing this lack of transparency by posting Commission decisions in full and online, will give the public and NOPD officers the tools to better understand the Commission's decisions."

**C. Increasing settlements of appeals:**

1. The Law Department should normally propose settlements to management within the first 10 days after an appeal is filed as standard policy. On any appealed discipline, the attorneys would look at the case, and if they felt a settlement made sense, they would propose it to the appointing authority to see if they could get permission to negotiate a settlement. The Law Department could use the abeyance policy described above as one of their bargaining chips, if authorized by the manager in question.
2. The hearing officers should always attempt to settle any appeal they feel would be worth settling, before proceeding to a hearing.
3. Since the Police Department is responsible for roughly 70 percent all the city's appeals, we urge the Police Department to reduce the volume they cause. Approaches should include completing negotiations with the unions on a settlement package and implementing it; giving prompt decisions on proposed settlements to city attorneys and hearing officers; considering establishment of a new category for employees who resign, in addition to "Resigned under Investigation," to which both the Police Department and employees considering negotiated departures could agree; and other approaches the department deems effective at reducing appeals.



**APPENDIX A:**

**PROPOSED HR AND CIVIL SERVICE STAFFING**

The Civil Service Director would be responsible for organizing her new office, but our advice would be to allocate 8 positions and responsibilities roughly as follows:

- **Director:** Provide leadership and supervision, do staff work for the Commission, maintain the classification system, and help with investigations
- **Personnel Administrator:** Audit personnel actions and help maintain classification system (cross-trained to help with other functions)
- **Personnel Administrator:** Audit personnel actions and investigate complaints or irregularities (cross-trained)
- **Management Development Specialist:** Cross-trained support for Audits and Investigations
- **Personnel Administrator:** Administer appeals (cross-trained)
- **3 Administrative Support Positions,** cross-trained to help with most of these functions

The new Human Resources Office would have 20 positions, organized into 4 teams that all report to the director, as outlined in the chart and graphic below. The recruiters would handle recruitment for low-level positions that have to be filled constantly; each of the three recruiters would be assigned to departments employing roughly one-third of these employees. The HR Advisors would include 4 senior HR professionals, each assigned to departments representing about one-fourth of all employees. They would help their departments with recruitment and testing for higher level positions, plus advice on discipline, performance, compensation, training, and other issues. Their group would also include 4 program managers, who would guide their work in four areas of expertise: learning and organization development; testing and selection; compensation, and performance management. The Benefits, Safety and Wellness Group would manage benefits, including health, disability, time off, wellness, and safety programs for the city. And the Administrative and Technical Resources Group would provide clerical, IT, graphics, receptions, telephone, and other support to the other groups.

<b>Work Groups &amp; Titles</b>	<b>Internal Comparison - NOLA Classification Plan</b>	<b>External Comparison - Salary.com</b>
<b>Leadership</b>		
HR Director	Personnel Director	Human Resources Director

**Recruiting**

HR Professional	Mgt. Dev. Specialist I	Recruiter I
HR Professional	Mgt. Dev. Specialist I	Recruiter I

**Human Resource Advisors**

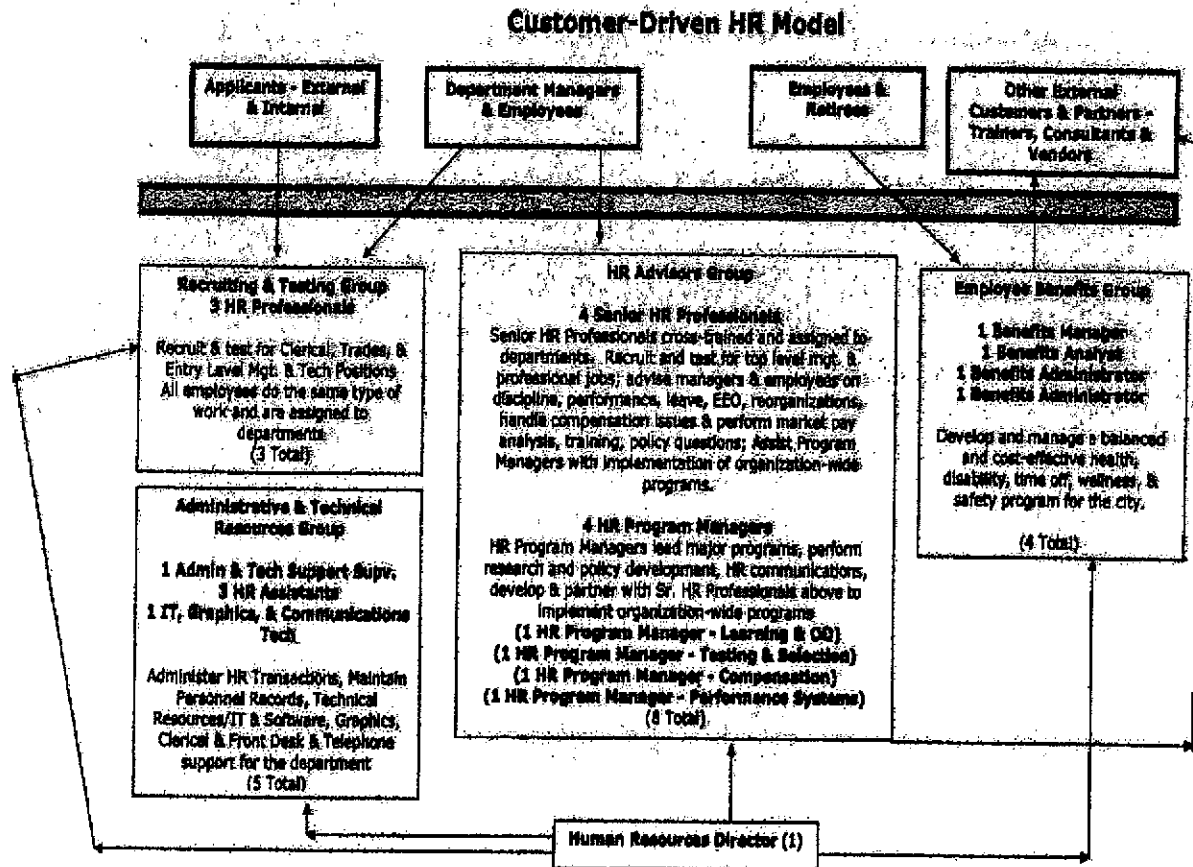
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
Sr. HR Professional	Mgt. Dev. Specialist II	Recruiter II, Generalist I-II
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager
HR Program Manager	Mgt. Dev. Admin. & Personnel Admin.	HR Manager

**Employee Benefits**

Benefits Manager	Mgt. Services Admin.	Benefits Manager
Benefits Analyst	Mgt. Services Specialist	Benefits Analyst
Benefits Analyst	Mgt. Services Specialist	Benefits Administrator
Benefits Analyst	Mgt. Services Specialist	Benefits Administrator

**Administration & Technical Support**

Admin & Tech Support Supervisor	Admin Support Mgr. II	Personnel Records Supervisor II
HR Assistant	Office Asst. II	Personnel Records Clerk
HR Assistant	Office Asst. II	Personnel Records Clerk
HR Assistant	Office Asst. II	Personnel Records Clerk
IT Graphics & Comm. Tech	Info Tech I	Personnel Records Clerk



## **A Customer-Driven Human Resources Department**

**Proposed Vision:** To inspire, support, and engage our employees in fulfilling the promise of New Orleans as America's most unique city.

**Proposed Mission:** To provide hiring, compensation, benefits, employee development, and performance management assistance that ensures the attraction and retention of talented employees and promote high performance in the City of New Orleans.

**Structure and Function:** The customer-driven human resources (HR) department we recommend would be designed to provide a comprehensive array of HR services to employees, managers, and citizens in the areas of recruiting and hiring, equal employment opportunity, compensation, rewards & recognition, employee relations, training and employee development, performance management, benefits, wellness, and safety, human resources policy, employee records, and personnel transactions. The department would be organized under the leadership of a Director of Human Resources, who would be responsible for the development and communication of user-friendly policies, programs, and administrative guidance within the context of a merit-based personnel system.

The department would have four service delivery groups: An **HR Advisors Group**, consisting of cross-trained professionals providing customized HR services to a defined set of customer departments; a **Recruiting and Testing Group**, which would handle entry and mid-level testing and hiring and serve as a resource to the advisors; an **Employee Benefits Group**, which would design and manage the city's employee benefits, wellness, and safety programs; and an **Administrative and Technical Support Group**, which would manage personnel transactions, records, communications, reports and analysis, IT interface, and reception.

Using technology, electronic and print communications, workshops and meetings, and face-to-face interaction at all levels of the organization, Human Resources would support and partner with individual managers, employees, departments, work units, and community partners in support of the city's mission. The Human Resources Department would add value by providing useful advice and assistance, tools and techniques, internal and external learning resources, and supportive policies that would help the organization get things done.

### **Cross-Trained Senior HR Representatives Assigned to Departments**

Each city department would be assigned a senior level HR Representative from the HR Advisors Group, who would serve as their primary point of contact for most HR services. This person would handle most departmental HR issues personally; he or she would be able to access services from specialized recruiters, in the Recruiting and Testing Group, who would handle recruiting and testing for entry and mid-level jobs. The Senior HR Representative would also have access to HR Program Managers with expertise in testing and selection, compensation, training and employee development, performance management, and benefits. The Senior HR Representatives would be developed and trained in the advanced specialties by the HR Program Managers; they would be able to deliver a variety of training, performance management, work redesign, and compensation management services within their customer departments and, when necessary, throughout the organization.

### **HR Program Managers to Lead Organization-Wide Programs and Initiatives**

The HR Program Managers would take the lead in developing and implementing major HR initiatives, by designing structured interview and final selection processes, performing market-based pay studies and making city-wide compensation recommendations, designing and delivering training programs throughout the organization, identifying creative ways of accessing community resources as a means of enhancing services to the workforce, leading work redesign and performance management initiatives, and helping departments design employee reward and recognition programs. They would work closely with the HR Representatives to deliver customer-focused internal services that require a high level of expertise and knowledge. The HR Program Managers are part of the HR Advisors Group. They may also be assigned to serve as the primary point of contact for customer departments, in addition to taking a lead role in citywide HR initiatives.

### **Recruiters for Testing and Entry to Mid-Level Hiring**

A small team of recruiters would handle skills testing for entry to mid-level jobs upon departmental request, recruit and conduct preliminary interviews, screen candidates, and make referrals for entry to mid-level jobs. They would manage a process allowing departments to quickly receive applications and select employees for high turnover positions. Applicants and internal customers may deal directly with the recruiters. Departments may also choose to utilize these recruiter services through their HR Advisor, who can facilitate all the department's hiring processes if the department prefers. The recruiters would have support from technical support staff in the administration of testing for entry and mid-level jobs.

### **Benefits Group to Design and Manage a Service-Oriented Benefits Program**

This group would analyze the city's benefit programs and recommend a balanced and cost-effective mix of benefits, time off, wellness, and safety initiatives that meet the needs of the workforce, can be accomplished within budget, and represent an acceptable level of liability and risk to the city. Employees in this group would provide information and assistance to employees regarding various types of insurance, assist them with claims problems and questions, and help with enrollment of employees into various benefit programs. The benefits group would organize and manage new employee orientation and enrollment in the city's benefit programs and coordinate the participation of other Human Resources and city staff in orientation programs. In addition, this group would conduct and contract for wellness and safety training programs and partner with local organizations in providing educational and wellness programs for the workforce.

### **Administration and Technical Support Group to Provide Support for HR Department, Manage Personnel Transactions, and Manage Records**

This group would provide administrative support to the Director and the other HR groups in the preparation of reports and documents, approve personnel actions in the city's personnel/payroll system, interface with the IT Department, maintain the city's personnel records, create graphics in support of training efforts, and manage written and electronic communications. The group would provide reception services for the department and assist with administering tests for entry and mid-level positions.

**APPENDIX B:**

**PERFORMANCE MEASUREMENT TOOLS:  
PUBLIC SECTOR BALANCED SCORECARDS AND LOGIC MODELS**

In this process, New Orleans would use a public sector "balanced scorecard" approach, which would include four basic perspectives. Each team or unit would typically have about five key performance goals, drawn from at least three of these perspectives.

**Citizen (owner) perspective:**

- Effectiveness (% of outcome achieved)  
Examples: Reduction in murder rate  
Improvement in road conditions  
Reduction in traffic congestion
- Cost-effectiveness (cost per unit of outcome)  
Examples: Cost per graduate who tests at grade level or above  
Cost per trainee who subsequently gets hired

**Business perspective:**

- Quantity (of activities, processes, or outputs)  
Examples: Number of permits processed per month  
Miles of roads paved per week
- Efficiency (cost per unit of output)  
Examples: Cost per permit processed  
Cost per mile of road paved

**Customer perspective:**

- Quality (timeliness, accuracy, reliability, appearance, accessibility, availability, convenience)  
Examples: Percentage of arrests thrown out by courts  
Average time to process a permit  
Percentage of buses or trains that arrive on time
- Customer satisfaction  
Example: Customer rating of service or interaction, on a survey or feedback card

**Organizational perspective:**

- Employee engagement  
Example: Results of employee survey on 12 questions  
Gallup developed to measure employee engagement
- Employee skills & development  
Examples: Percentage of team members who developed a particular new



skill during the year

Percentage of team members who fulfilled their development goals for the year.

These things can be measured at different levels of the organization. To understand what to measure at what levels, it helps to have a "theory of the business." This is also known as a logic model: an analytical framework that identifies the cause-and-effect relationships in government work, showing how specific activities are expected to produce specific results. Logic models can help organizations figure out what strategies, programs, outputs and activities would be necessary to achieve the results that are important to citizens. They can include the following elements (but don't have to include all of them):

Outcome Goal: A broad outcome a public organization is trying to achieve over a relatively long time horizon, such as 10-20 years. For example: "Improve public safety."

Objective: A specific, measurable outcome that contributes to the overall goal, often in a given time period. For example: "Reduce violent crime."

Strategy: A set of activities used to help achieve an objective. A strategy may consist of one or more programs. Examples of strategies: "Reduce gang violence through Operation Ceasefire;" or "Community policing;" or "Work with prosecutors to improve conviction rate."

Strategy Outcome: An intermediate (2-10 year) outcome of a strategy. For example: "Reduce gang membership."

Program: The basic work product of government, which aims to achieve an outcome. A program consists of at least three elements: inputs, activities, and outputs. For example: "A summer jobs program."

Program Outcome: A relatively short-term (2-5 year) outcome of a program. (If a strategy consists of one program, the program outcome and the strategy outcome are the same.) For example: "Number of summer jobs participants who quit their gangs."

Output: The actual product of an organization's work. For example: "Number of participants who complete summer jobs program."

Activities: The segments of work within a program, which help transform inputs into outputs. For example: "Recruitment of employers to provide summer jobs."

Processes: The actual pieces of work that make up activities and programs. For example: "Advertising for employers for a summer jobs program."

Inputs: The resources – such as personnel, assets, or financing – required to implement an activity or program. For example: “Funds to pay for a summer jobs program.”

As shown below, the logic model’s elements form a causal chain from left to right, each contributing to the success of the next.



By creating logic models, one can make clear what needs to improve in order to produce better outcomes for the citizens. For instance, if a citywide goal is better mobility in New Orleans, and you work in the vehicle repair shop, this might be one appropriate logic model, which would help you understand what needs to improve and therefore what should be measured:

- **Improved inputs lead to improved activities**  
(better tools → faster repairs)
- **Improved activities lead to improved outputs**  
(faster repairs → more vehicles functioning)
- **Those outputs lead to improved program outputs**  
(more vehicles functioning → more buses running, higher % on time)
- **Those program outputs lead to improved program outcomes**  
(higher % on time → higher ridership)
- **Those program outcomes lead to improved citywide outcome**  
(higher ridership → greater mobility)

In using this framework with a balanced scorecard approach, the key is to hold the right team or organization accountable for the right results. It is important to build incentives around results a unit can control or influence. Some front line teams may have little control over outputs but significant control over processes, for example. Consider a unit that controls the process of determining clients' eligibility for welfare benefits. Other units may have to complete other processes before the basic output -- payment of benefits -- can take place. So the first unit should be held accountable only for the quality and efficiency of the process it controls.

If you ask frontline employees to become accountable for outcomes, you will only frustrate and confuse them. If you ask most operating divisions to be accountable for citywide outcomes, they will object. They will rightly feel that they are at the mercy of events beyond their control, and they will become cynical about the entire performance measurement process.

At the same time, you want to motivate high-level managers to look for new strategies

that will produce better outcomes. If they have no responsibility for outcomes, most will not do this. They will concentrate on what earns them rewards.

There is a real dilemma here: If you go so far in the direction of holding managers accountable for outcomes that they feel their targets are unfair, they will run and hide. They will develop easy targets, or vague targets, or they will make sure no real measurement takes place. Some may even falsify data. Evaluation expert Michael Quinn Patton offers an equation that sums up the danger nicely:

<p><i>Demand to produce outcome</i></p> <p style="margin-left: 40px;"><i>- control over outcomes</i></p> <p style="margin-left: 80px;"><i>+ high stakes</i></p> <hr style="width: 50%; margin: 0 auto;"/> <p style="margin-left: 40px;"><i>= corruption of indicators</i></p>
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But if you don't go far enough in this direction, everyone will work hard to improve what they already do, but no one will question whether other strategies would be more effective.

Every situation is different, but the challenge is the same: to figure out which results you can reasonably ask each level of your system to produce. In general, we suggest the following rough guidelines:

<b>Who Should Be Accountable?</b>	<b>For What?</b>
Mayor, CAO & Deputy CAOs	Citywide Outcomes Goals, Objectives, Strategy Outcomes
Department Heads	Program and Strategy Outcomes
Division Heads	Program and Strategy Outcomes and Outputs
Unit Managers	Unit Outputs and Activities
Work Teams	Processes, Activities, and their Outputs

What, when and how often to measure are also important decisions; they depend on the type of activity being measured and how rapidly it is likely to change or produce results. The most important criteria in choosing performance goals is their effectiveness in giving employees the information they need to continually improve performance. Teams will need help in developing good performance goals and indicators, because most have never done it before.

**Appendix C:**

**SAMPLE CUSTOMER FEEDBACK SURVEY  
(FROM A WELFARE-TO-WORK AGENCY)**

The Agency is working hard to improve customer service. We have made many changes in an effort to provide an efficient process and a caring environment. Your feedback is very important to us in our continuing efforts to improve our services. We appreciate your honest opinion of our performance in the areas below. Your answers will be anonymous.

**1. Initial Contact with the Agency**

Telephone call to inquire about benefits or appointment

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

Visit to Reception Area

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

**2. Meeting with Your Worker - Worker Name \_\_\_\_\_**

Usefulness of information you received about benefits and services

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

Attitude and helpfulness of your worker

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

In addition to the above, is there anything else your worker could do that would help your family overcome current difficulties and assist you in becoming self-sufficient?

**3. Benefits and Services**

How well the benefits and services you received help you address current problems

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

**4. The Process**

The efficiency of the work process – how many steps you had to go through and how many times you had to provide the same information

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

The speed with which you saw a worker and had your benefits processed

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

**5. Your Overall Experience With the Agency This Time**

Dissatisfied  Somewhat Satisfied  Satisfied  Very Satisfied  Delighted

**6. Your Past Experience**

Have you been a customer of the Agency in the past?  Yes  No

If yes, please compare your experience this time with the old process

No change  Some Improvement  Much Improvement

**What did you like most about your experience with the Agency this time?**

**What did you like least?**

**What are your suggestions for improvement?**

**Endnotes:**

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<sup>i</sup> See for instance *Reforming Federal Hiring: Beyond Faster and Cheaper* (Washington, D.C., U.S. Merit Systems Protection Board, September 1, 2006) available at <http://www.mspb.gov/studies/mspbstudiespage.html>, and *Create a Flexible and Responsive Hiring System* (Washington, D.C., National Performance Review, 1994), available at <http://govinfo.library.unt.edu/npr/library/reports/hrm01.html>

<sup>ii</sup> See *Reforming Federal Hiring*, *ibid.*, p. 19.

<sup>iii</sup> See for instance, Schmidt, Frank L.; Hunter, John E. (1998). "The validity and utility of selection methods in personnel psychology: Practical and theoretical implications of 85 years of research findings". *Psychological Bulletin* 124 (2): 262-74. DOI:10.1037/0033-2909.124.2.262.



**Civil Service Reform:  
A Customer Service Model**

**DRAFT**

**DRAFT FOR DISCUSSION, NOT FOR CIRCULATION**

**Public Strategies Group  
City of New Orleans  
June 29, 2012**



### **A Mandate for Change**

The city leadership has identified the need for a more responsive, flexible, and effective human resources model. Managers have said the current system is not fast or flexible enough to meet their needs and doesn't produce the best candidates for employment. Civil service systems across the country from the federal level down to local government, are being reformed, primarily because these systems have not kept pace with changes in the way work is carried out, the impact of technology on job design, and the need for "soft skills" in the workplace: creativity, problem-solving, and customer service. Often, the strategies embodied in civil service systems have little relationship to acquiring and retaining such talent.

The New Orleans Civil Service system is fairly typical. The focus of the system is on compliance with civil service rules and prevention of personnel actions that are not based on merit, but on political connections, race, gender, age, disability, religion, and the like. There is a general consensus among the civil service staff that the system does prevent most potential selections and other actions from taking place for the wrong reasons, but because it is structured around regulation, compliance, and problem prevention, the primary goal of the Civil Service Department is not to provide the best possible service to hiring managers for their recruiting, salary setting, evaluation, promotion, and employee improvement needs. In addition, lack of funding for improved technology, recruiting, and other service improvements has made some changes desired by the civil service staff difficult. The staff tries to serve its customers using the tools they have, but these are limited by system and procedural barriers as well as funding restraints. Managers in other departments find the civil service staff cooperative and friendly, but feel that the rules they administer are often too rigid and their processes are too slow, thus inhibiting departmental performance.

To make clear their intentions of making dramatic changes, city leaders should begin by adopting a new personnel philosophy that reflects what they want to achieve. It should include their compensation philosophy regarding both pay and benefits. This philosophy should guide top management, elected leaders, and civil service officials with responsibility for approving personnel strategies and structures. New Orleans' leaders need to arrive at a new balance that is fair to employees, that rewards performance more than longevity, and that spurs innovation and excellence rather than mediocrity.

We propose adoption of the following personnel and compensation philosophy for the City of New Orleans:

"The city's personnel policies seek to reward outstanding performance and achievement of organizational missions. We offer competitive, at-or-near-

market base pay, plus a mix of pay for performance, non-monetary awards, and benefits, to reward high performance and excellent customer service.

Our policies are intended to provide sufficient flexibility to employees and managers to allow as much independent judgment as possible, while ensuring accountability to the public. Employees must be empowered to make the decisions necessary to achieve their missions, within the boundaries set by our Core Values:

**Integrity:** We are committed to serving the citizens of New Orleans, not ourselves. We are honest and trustworthy. We continually strive to improve efficiency and cost-effectiveness.

**Excellence:** We deliver high-quality city services focused on better outcomes for all New Orleanians. We raise and exceed the expectations of our citizens. Our service inspires others to deliver their best.

**Transparency:** We are clear and honest in public decision-making, provision of data and delivery of city services.

**Teamwork:** We work across departments, programs and services to deliver better results for our citizens. We are passionate about our work, have fun doing it and celebrate a job well done.

**Responsiveness:** We are eager to respond to citizen requests and committed to delivering solutions in a timely manner.

**Innovation:** We build partnerships across city agencies and with community partners to create new solutions to the city's most intractable problems.

**Diversity and Inclusion:** We seek a city where all people, irrespective of race, religion, creed, color, gender or sexual orientation, share opportunity and responsibility, risk and reward, political power and economic prosperity."

## **I. Recruitment and Hiring**

The approach taken to hiring by the New Orleans system is a familiar—if outdated—one. Jobs are posted in a variety of ways and applications are initially evaluated and sorted primarily based on years of service in previous or current positions, education attained, and other credentials. Individuals who do not meet these minimal qualifications are eliminated from the hiring process. Testing is then done for some positions and applicants are scored numerically based on test scores (except for tests which are administered as pass/fail). Those determined to have passed their test or are otherwise determined qualified through other assessment methods are scored and ranked and placed within bands on registers, which are then made available to hiring managers. The manager must then hire off the register from a

limited number of candidates in a prescribed order. Candidates he or she may think are better suited for the particular position may not be reachable on the register.

Once the manager selects someone, the employee must be paid at the beginning of the range, except in certain exceptional situations. New Orleans has not been able to keep its pay structure in line with the market, and the rigidity of the qualification, rating, testing, and referral system, combined with lack of pay flexibility, has resulted in managers settling for mediocre candidates, important jobs remaining unfilled, and the loss of talented employees. It has also had the effect of increasing requests for new job classifications, as a way to get pay increases for employees, and for new positions in the unclassified service, where there is greater flexibility.

### **What Managers Say**

Managers who work within the system to fill their vacancies say the system creates a number of barriers to acquiring and retaining the talent they need to accomplish their missions in a timely fashion. Here are the most common complaints:

- Some job descriptions and qualifications are out of date and irrelevant, and the way the system ranks applicants on registers does not produce the best candidates. Managers can't get the people they need.
- Some registers are outdated, full of people no longer interested in the job, and the system often requires them to hire from Band 1 or 2, means managers cannot always get the best suited candidate.
- The system breaks down as jobs become more specialized and need more specific qualifications and candidate evaluations. (For instance, when hiring an analyst—a classification—the Public Works Department has to weed through candidates who have HR expertise rather than the expertise Public Works is looking for.)
- When departments get a register, they do not always get the applications; all they receive are names and addresses, and they have to mail the applicants. Because Civil Service has no online application program, everything is done on paper. Staffing limits mean paper applications are not always forwarded to the hiring manager.
- Much of the testing is irrelevant to the jobs managers are filling; it may produce the best test-takers on registers, but not the best candidates with the specific skills sought. In addition, testing slows down the development of registers.

- Low pay overall, lack of flexibility to manage pay, and requirements that they hire people at the minimum of their range exacerbate the difficulties they already have in attracting good people to the city and retaining them.
- In some job classifications, such as those for clerical work, departments are not allowed to hire into any job classification they prefer, but only the lowest of the job series.
- The hiring process takes too long, particularly for professional positions. Sign-off on new hires is required from the Civil Service office, the CAO's office, and the budget office, which creates delays.
- Applicants have to come to New Orleans in person to apply, which cuts down on the potential pool. (In reality, those who don't live in New Orleans can mail in their applications and take drug tests in their own state or a nearby state, or come to New Orleans after they have a job offer and take the drug test. But few hiring managers or applicants know this; most believe it is impossible to apply for a job without coming to New Orleans. This belief itself limits the pool of potential candidates.)

### **How Should We Approach Change?**

New Orleans' residents are crying out for a more functional, effective government. But in making changes, we must remember the city's history, both positive and negative. For this reason, any redesign of the civil service system needs to embody safeguards and protections that have value to the city and its employees. We recommend keeping safeguards, but separating those who must enforce them from those who must provide services to the departments. Organizations that combine regulatory and compliance functions with service roles, as the civil service office must in today's system, find themselves pulled in two opposite directions. Their job is to prevent managers throughout city government from using favoritism or political connections to hire, promote, and pay, but they are also expected to help those managers hire, promote, and make pay decisions. In one role, they are cops. In the other, they provide services to customers, like an employment agency. Public organizations that face such a dilemma inevitably have to decide which role is more important. In the case of civil service, it has to be the compliance role. Hence the only way to get high quality HR services for the departments is to create a separate HR office to handle those functions.

In addition, we recommend changing the way the city allocates resources in evaluating job candidates. Currently it invests a great deal of time and energy in screening candidates out through absolute education and longevity requirements, testing many applicants, attempting to differentiate the best candidates from a large group, and limiting hiring managers to selecting from the three individuals who emerge at the top of that process. Studies in other

similar systems, such as the federal government, have shown that this way of selecting candidates is the least effective.<sup>i</sup> Screening applicants primarily by their education levels, test scores, longevity in city jobs, and other experience is not an objective method of finding the best candidate, because other elements are equally or more important. Indeed, several sources and studies we found cite evidence that ratings of work experience, education, and credentials are not the most effective in predicting future success on the job.<sup>ii</sup>

We recommend investing in fast, accessible, low-cost processes at the front end, allowing more people with a wider range of qualifications in at the beginning, discontinuing testing at this stage unless the hiring manager requests it, investing in screening processes that are more closely related to future job success<sup>iii</sup> (such as work sample tests and structured interviews) at the middle or end of the process, and applying these to fewer candidates who emerge as finalists. This would give managers a larger pool to select from, much faster referral of candidates, and the opportunity to hire candidates who are better suited to their needs. It would also create a different and more professional role for recruiting staff, which involves the use of more professional judgment, analysis of applicant strengths and weaknesses, partnership with operating managers, use of up-to-date recruiting strategies, and provision of interview design and rating services to departments.

We also recommend that the city move to the concept of "best suited" rather than "best qualified." The latter is traditionally associated with degrees, longevity, and credentials. Managers observe that there are many ways of acquiring and coming to possess the skills and abilities necessary to perform a job, not just length of service and credentials. In addition, many aspects of an applicant's future performance are important, including their willingness to work, their creativity, their discipline, their practice of teamwork, and so on. These qualities cannot be determined by examining degrees and credentials; they require interviews, discussions with past colleagues of the applicant, and observation. (As the civil service staff has testified, "The best predictor of future job performance is past job performance.") We think New Orleans needs to take advantage of all the talent it can get in all the many forms and packages it comes in.

#### **General Recommendations:**

1. Ask the Civil Service Department to focus on ensuring compliance with rules and processes and investigating abuses, but create a separate HR office to provide recruitment, hiring, promotion and other services to the departments. The Civil Service Commission would continue to set personnel policy, and the Civil Service Department would enforce it, handling audits, investigations, and appeals. The HR office would be designed solely to help its customers—the departments—do a

better job of finding and keeping the employees best suited to deliver excellent results to the citizens.

2. Let managers decide, with advice from a recruitment specialist, whether to look internally or externally to fill a job. Hiring managers should be able to limit a search to internal candidates, or open it to both internal and external candidates on an equal basis, or open it to both but give preference to internal candidates, depending on what they feel will best meet their needs.

#### **Job Classifications and Qualifications:**

3. If a position is new to the city, the HR office should allocate that position to an existing classification or, in rare cases, recommend that Civil Service create a new classification for it. The Civil Service Department would audit HR's decisions and might object to them, in which case the Civil Service Commission would make the final decision, after hearing arguments from their staff and the HR staff.
4. Let managers hire into any job classification they choose, rather than being limited to the lowest classification in a series.
5. **Job Qualifications:** Develop more specific qualifications for specific jobs posted within a job classification. (Some basic qualifications will of course apply to all jobs in the same classification; they will remain in the classification's minimum qualifications.) Managers we talked to often said qualifications for certain types of jobs existing throughout the city—entry-level management analysts, for example—are written quite broadly. This results in a lot of applicants going on registers who do not have the skills for a particular job, but who a department may be forced to interview and even hire, as they cannot reach a person with the specialized skills necessary on the register or in a particular band. To solve this problem, the city should allow the hiring manager, working with their HR recruiter, to set the minimum qualifications for each position under their supervision.
6. In addition, we recommend more flexible wording in job and classification qualifications. Because current class qualifications are often written to screen out anyone who does not meet absolute experience or education requirements (for example, an exact number of years of service in a particular job), a range of backgrounds and mix of experiences are not taken into account in rating and ranking applicants on registers, unless an absolute standard is also met. Solutions include stating experience requirements as "preferred" or "desired," or adding a statement to the effect that the city will consider "a combination of experience and education" that qualifies a person for a particular position. In addition, the use of words like "some" or "extensive" convey a level of experience but leave room for interpretation.



Many local governments now use a more flexible way of developing qualifications standards. Here are several examples to illustrate the concept:

**Public Works Management Analyst**

Requires a Bachelor's Degree in Public Administration, Business Administration or a related field, and 3-5 years of responsible experience in policy analysis and development, policy administration or research analysis or an equivalent combination of education and experience. A Master's Degree is preferred.

**Clubhouse Manager Assistant**

Graduation from an accredited college or university with a Bachelor's Degree in Business Administration, Business management, Public Administration, or related field of study, to include customer relations training; experience in the area of golf course administrative activities; some experience in planning and directing golf tournaments; thorough knowledge of the rules of golf; excellent public relations and interpersonal skills; solid supervisory skills; ability to communicate effectively both orally and in writing; ability to establish and maintain harmonious working relationships with others; any combination of relevant education and experience may substitute for the more specific requirements listed above.

The Civil Service Commission should direct its staff to make such modifications as jobs within each classification need to be filled, so their workload is manageable.

7. If the hiring manager and HR recruiter both feel the minimum qualifications for the *classification* need to change to attract the best suited candidates, they should request that Civil Service modify them. If the civil service director disagrees, and if the director and the HR office cannot work out their disagreement, the issue should go to the Civil Service Commission for resolution. Similarly, if the civil service director feels the specific job qualifications posted do not meet the minimum classification qualifications, she would pull the job posting and request that HR and the hiring manager increase the job qualifications. If they cannot reach agreement, the issue would again go to the Commission for resolution.

**Registers and Bands:**

8. Change the testing program. Instead of testing large numbers of candidates who in fact may never be selected, we suggest that valuable resources be applied where it makes the most difference, among finalists for a particular job. Tests of general mental ability—basic math and English, for example—are most relevant at this point in the process.

Hiring managers should be able to decide, with advice from their HR specialist, whether to use tests, and when in the application process applicants should be tested. For some jobs, simple tests of performance, such as keyboarding or reading and writing, might be best taken by all applicants, to screen out those who cannot type or cannot read and write clear English. In cases where the hiring manager asks for such up-front tests, they should be offered by the HR office on a walk-in basis to applicants. (Those who live outside the New Orleans region could be allowed to take the test when they come for an interview, if they get that far.) General mental ability tests and tests more specific to the jobs in question might be better given to fewer people at the end of the selection process, to save time and money—but again, this should remain the hiring manager's decision.

In addition, the use of work sample tests, structured interviews, and assessment centers can also be used by the hiring manager with considerable relevance at the final stages of the selection process.

9. We recommend that applications no longer be scored numerically, as the false objectivity in such scoring can prevent the best candidates from rising to the top. Instead, HR recruiters should use their judgment, based on the job qualifications, to sort the applications into bands, as follows:
  - Band 1, Veterans: All veterans who meet the minimum qualifications would be included; they would be considered first by hiring authorities.
  - Band 2, the Reemployment List: City employees laid off in the previous two years or city employees who were on military leave who worked in the same job classification and meet the minimum qualifications.
  - Band 3: All others who meet the minimum qualifications.
  - Excluded from register: All who do not meet the minimum qualifications.
10. Veterans would be considered first, then the list of former city employees in that job classification, then the list of other candidates who meet the qualifications. The hiring manager would decide how many candidates she wanted referred, but once referral took place, she would have to interview all she received. If no veterans applied, for instance, she might ask the recruiter to refer those the recruiter deemed to be the top five candidates of Band 2. If the hiring manager were not satisfied with any applicant in a band, she would be free to move on to the next band, until she found the best suited candidate. If she exhausted the entire register and was not satisfied with any candidates, she could provide justification and ask for a new register.

If the HR or civil service staff believed this was being done for non-merit reasons, they could refuse or veto the request.

11. To enhance speed in filling jobs after referral, recruiters should review applications for jobs on a continuous basis throughout the posting period, sorting them into the specified groups so that when a posting closes the register can be sent within no more than three days to the hiring manager. Registers sent to departments should include applications, resumes, test scores (if any), email addresses, phone numbers, and addresses of applicants.
12. If the register is more than 90 days old, the hiring manager should be allowed to request that the HR recruiter check with those on the register to make sure they are still interested in the position, before sending the register along. This should be completed within three work days, so as not to delay the process.

#### **Other Hiring Recommendations:**

13. Facilitate application from any location, by providing a way to apply online and upload resumes; by publicizing the fact that copies of documents are acceptable initially (original copies would be required after a job offer); and by publicizing the fact that drug tests can be taken in many states, or candidates can wait until they have a conditional job offer before coming to New Orleans and taking the drug test. Make the recruitment and hiring process electronic, rather than paper-based, by budgeting resources for the use of NeoGov.
14. Use resumes rather than special history forms, which signal applicants that New Orleans is an old-line bureaucracy. In job announcements, make it clear that resumes must address all education, experience, and other requirements in the job announcement.
15. Extend probation for new hires to 12 months, and create a new system of performance measurement, to provide reliable data about the performance of each new employee within their first year.
16. Once funding for a position has been established in the budget, only require approval of the department head to make the hire, since the department head is the one who should be responsible for controlling spending within his or her organization. To eliminate delays, we recommend that no approval from the CAO, budget office, or civil service office be necessary.

#### **A New Role for the Recruiter**

We are recommending a new and interesting role for staff involved in recruiting: Get the right person into the right job, fast. Rather than a

passive role of processing paper, we are recommending a proactive and collaborative role for recruiters. Their job would be to:

- help managers develop the job descriptions and minimum qualifications for the positions they need to fill (the hiring manager would have final approval of the job qualifications);
- collaborate with managers to understand their needs, design recruitment strategies, and help design processes that will produce the best candidates for hire using the tools available;
- advertise positions in a variety of places and ways;
- conduct screening interviews as necessary and check credentials and references if requested;
- arrange for written tests if requested by the hiring manager;
- arrange and set up interview panels, develop scoring tools, assist with interview panels, and generally administer the hiring process for the manager; and
- create the register of qualified candidates and certify those forwarded to the hiring manager. (The Civil Service Director would delegate the authority to certify candidates to the HR office.)

This new role would take the recruiter out of the office into the departments and make him or her a partner in building a great workforce. This role works extremely well in organizations that use it. Recruiters could be assigned work by type of positions for which they recruit, by department, or both. Generally, giving a recruiter responsibility for a specific set of departments works best because they develop working relationships with the managers and become knowledgeable about the jobs in those departments. This is becoming the accepted role for human resource professionals, and we think New Orleans would benefit by redesigning its human resource services in this way.

### **The Hiring Manager's Role**

In the model we recommend, the manager would work with recruiters to develop an accurate job description and qualifications that would produce the type of candidates he or she is seeking, provide direction as to where to recruit for particular openings, and ask for any needed help with panel interviews, testing, or other services. She would be responsible and accountable for ensuring that selections were made based only on merit.

### **Overview of the New Hiring Process**

Here are the basic elements of the process we recommend:

- An approved and funded vacancy is submitted to the recruiting office in HR.
- A recruiter talks with the hiring manager about a job description and minimum job qualifications, recruiting strategies, testing, whether to fill through internal or external candidates, and whether to use continuous recruitment and referral for high turnover positions. With the recruiter's advice, the hiring manager makes these decisions and writes the job description and job qualifications.
- If the hiring manager and recruiter feel the classification qualifications need to be modified, they request that Civil Service do that. If there is no agreement, the Commission decides.
- If the job is defined as high turnover, referral of candidates who meet minimum qualifications starts immediately, as they apply for the various jobs or at specific intervals (weekly, for example), as the manager desires. A candidate who indicates interest in more than one position could be referred and interviewed for any position available in that class. There is no register development or closing date.
- If the job is not defined as high turnover, the job is posted. If a register exists with current candidates who meet the qualifications for the particular job in question the manager should be sent that register. If the current register has been depleted of sufficient candidates, in the manager's opinion, and he or she wants to consider more, he or she may ask that the position be re-posted and another register developed.
- If Civil Service believes the specific job qualifications posted violate the classification qualifications, they pull the posting and work the problem out with the HR office, or take it to the Commission for resolution.
- The recruiter reviews incoming applications daily and groups candidates into four groups: band 1, veterans who meet the qualifications; band 2, members of the reemployment list who were laid off from the same job classification in the previous two years or took a military leave of absence and meet the qualifications; band 3, others who meet the qualifications; and those who don't meet the qualifications. For high turnover positions, the recruiter refers candidates immediately.
- The recruiter conducts necessary screening interviews and performance tests, checks references and credentials if requested, talks with the manager about final selection processes, such as panel interviews, and begins arranging those processes.
- The hiring manager tells the recruiter how many people he or she wants to interview, after discussing the potential pool of applicants.

- The recruiter assembles applicants on a register and sends the number of candidates requested to the hiring manager within three workdays after the posting expires. They are sent in this order: band 1, band 2, and band 3. If the number requested requires that the recruiter not send an entire band—if, for instance, he or she can send all of band 1 and 2 but only four people from band 3—he or she sends those from band 3 he or she considers best suited, based on his or her judgement and what the hiring manager is looking for.
- The hiring manager interviews all candidates forwarded and completes any testing or other selection methodology he or she has requested, with help from the recruiter, if needed. If he or she finds a candidate he wants to hire, he or she makes the selection, and his or her department head signs off on the selection. If not, he or she requests more candidates from the recruiter, and continues until he or she makes a selection.
- The new employee is notified of selection and scheduled to start work.

## **II. Pay and Promotions**

In today's world, city governments cannot be effective if they cannot pay what the market demands to attract talent. Given the complex challenges facing New Orleans, the city can no longer afford to hire people at rates that make it impossible to get talented employees. The city's pay structure should be set up to allow its managers to hire the talent they need to be effective, within the current market. On top of that, the pay system should help them reward their high performing employees financially and pay what is necessary to keep their best employees. Too often, New Orleans' civil service rules and budget restrictions combine to make that extremely difficult. Promotions and new hires, for instance, must be approved by the CAO, the budget office, and the Civil Service Department. The city is essentially using control over hiring, pay, and promotions to control spending. As a result, the city's personnel system is hamstrung in its ability to maximize organizational performance.

### **What Managers Say**

Managers express great dissatisfaction with the current pay and promotion structure and rules. Common comments include:

- Some pay ranges are out of date, so people are underpaid and it's difficult to hire anyone good for those jobs.
- Hiring at the bottom of the pay range means we often cannot get the candidates best suited to the job.

- We have almost no way to reward good performance. We can't give raises or bonuses, and promotions are difficult.
- When employees reach the top classification in their job series, we worry about losing the good ones, because they can't get raises without moving to a different job or department.
- Managers are willing to keep lousy employees for fear that they won't be allowed to replace them.
- When they are poorly paid, employees deeply resent the high salaries given to many unclassified employees.
- Longevity is given too much weight in the promotion process. We lose good people because we can't promote them.
- Sometimes good employees can't be promoted to a new job classification because they don't have certain degrees--which they don't need to do the job.
- When I want to promote from one job classification to another, I need permission from the deputy mayor, the CAO, the budget office, and the Civil Service Commission; if I've got the budget for it, I should be able to decide.
- Requirements that people take meaningless training courses before promotion are a waste of time; the manager should determine what training the person needs for promotion.
- The evaluation system is of no use at all to most managers.
- I have to get permission to pay overtime, and sometimes it is denied.
- I'd like to be able to use flex and comp time, to avoid high overtime costs.

### **Promotions**

People who work for the city should be encouraged to pursue promotions and climb career ladders, and managers should be free to promote and reward their high performers. Employees should apply for promotions, rather than automatically go on promotion lists based on written tests or completion of Civil Service courses. In addition, managers should be able to promote high performing employees. To make this possible:



1. The city should end today's automatic requirements of training classes for promotions. The only automatic requirements should be those built into the qualifications for jobs.
2. Managers should be allowed to promote their employees based primarily on their view of employees' performance, not based on how long the employee has been there, how many or which training courses the employee took, or which degrees they have or don't have. Managers should set any training and/or testing requirements for promotions for employees within their purview, based on the job qualifications.
3. The city should end promotion and pay requirements tied to the number of employees someone supervises. In today's world, for example, many services are no longer performed by city employees, but by contractors. One of the most highly valued skills the city needs—and often lacks—is the ability to negotiate and manage performance contracts. Yet people holding such positions often supervise no one (other than their contractors). The city's pay and promotion structure should reward the value created by a position, not the number of employees supervised.
4. Managers should be allowed to move employees to a new job classification within their job series, without competition and without permission from anyone but the department head. The person would start at the bottom of the new range or receive a minimum 5% salary increase, whichever is greater.

## **Pay**

Managers in New Orleans need the ability to pay what it takes to attract and retain talent and to reward high performing employees financially. For departments that report to the CAO and have negotiated a performance agreement with the CAO, we recommend the following pay flexibilities and performance pay options. However, if any pay decision will obligate the department to a higher overall budget in the following fiscal year, the CAO's approval should be required. In addition, department heads should keep the CAO apprised of how they are using these flexibilities during reviews of progress on their performance agreements at least every six months—or more often, if the department head judges it necessary.

### *Flexibilities:*

1. To help managers attract and retain the talent they need, they should be able to start a new hire anywhere within the bottom 50% of the pay range for that job classification, with their department head's approval. With the CAO's approval, they should be able to start a new

hire anywhere within the pay range. When they do either of these, departments must document objective reasons why their decision is necessary, such as the inability to attract the talent they need at the minimum pay. If the decision is made due to a candidate's particular qualifications, such as degrees, experience, or performance level in past jobs, any employee in the same job who has the same qualifications must be raised to the same salary level.

2. Managers should be allowed to give employees raises within their job classification range, with the approval of their department head. They would be allowed for the following reasons, which the department head would document on a form supplied by HR and include in the employee's personnel file:
  - a. to keep an employee who has another job offer (if they have a valid offer letter with a salary that they can show);
  - b. in cases where an employee has assumed significantly greater responsibility and a broader set of duties outside the former scope of the job, the performance of which has become a regular part of the employee's day-to-day work but which does not warrant a promotion or other increase in pay grade. In this case, any employee in the same job, with the same duties and responsibilities, must be raised to the same salary level.
3. When someone hits the top of their pay range, they should remain ineligible for more raises until the range is changed, as is the case today. In cases where the department head wants to increase their pay, he or she should be able to request a review of the pay range from HR. The market data and reasons why change is needed should be presented to the CAO, who would make the final decision about raising the range, before going to the Civil Service Commission and City Council for approval.
4. We recommend that New Orleans leave in place its longevity pay, which awards employees a 2.5% salary increase after their first year and a 2.5% increase every fifth year thereafter. Because New Orleans has no cost-of-living increases and pay for many jobs is below market rates, eliminating this tiny amount of longevity pay would generate opposition among employees and make it more difficult for the city to keep employees at market rates of pay.
5. Flex time is now allowed in the city, but few managers seem aware of it. Since flex time is a tool some managers can use to avoid incurring overtime costs, we recommend that the new HR office adopt a flex time policy, publicize it, and offer training to managers in its use.

### *Performance Pay*

We recommend the city adopt the following incentives and rewards for performance, which have been effective elsewhere:

1. Performance bonuses based on a unit's performance against its measurable goals. (The only subjective judgment would be approval by the department head, to insure that teams did not receive bonuses just because they experienced some windfall, like falling demand for their services).
2. Gainsharing: If a unit has met its performance goals, its members would get to keep 25% of budgeted funds they did not spend, the department would keep 25%, and the general fund would receive 50%. The department head would have to certify that the unit met its performance goals, that the savings would not endanger future performance or drive costs up elsewhere or in the future, and that the savings did not come from some windfall, like declining demand for services. The budget office would have to certify the savings, but no other permissions or reviews would necessary.
3. Shared Savings: When employees or teams come up with ideas that increase revenues or save the city money (not necessarily from their own department's budget), they should get to keep 10% of the annual savings, up to a limit of \$10,000 per person. The budget office should have to certify the savings or revenues, but no other permissions or reviews should be necessary.
4. Performance-based salary increases: [to be fleshed out later]
5. The city should invest 2.5 percent of payroll in performance pay; each department would receive 2.5 percent of its payroll (base salary) costs to use for performance pay one-time performance bonuses or, in exceptional cases, for salary increases. To ensure that this investment is made every year, it should be required by city ordinance. The ordinance should state that if this is not included in the budget, the mayor and city council do not receive COLAs that year.

We recommend these performance pay strategies be phased in as follows

- 2013: Start Shared Savings for all; work hard to establish performance goals and measures for every department, division, unit and work team; negotiate performance agreements between the CAO and the departments.
- 2014: Begin allowing gainsharing and salary increases based on performance for departments that have developed robust performance measurement systems; work hard to perfect performance goals and

measures for every department; have meetings every six months between the CAO and each department head to review progress on their performance agreements and goals.

- 2015: Begin performance bonuses for departments that that have developed robust performance measurement systems.

*A Compensation Study:*

The last pay study in New Orleans was completed in 2008, though it did not bring the city fully up to market pay levels. Four years later, some classified salaries have fallen further behind the market, making hiring and retention more difficult. A good compensation system should require a study every two years, with any other necessary adjustments made in between.

Such pay studies should be driven by personnel philosophies. In articulating its personnel philosophy, the city should define a new pay philosophy that covers both salary and benefits and that includes a commitment to rewarding performance more than longevity. Most traditional public-sector classification systems also reward hierarchy and specialization, but the world of work is moving toward a leaner, flatter, service-delivery model. Hence the compensation study should seek to create a pay and classification system that supports new ways of working, that rewards performance, and that includes both pay and benefits. It should review and change the underlying premises embodied in the classification system, such as pay and grading structures and promotion and pay requirements tied to the number of employees someone supervises.

Because the HR office will know from its work helping departments hire which jobs have fallen too far behind market and will feel an urgency to correct those situations, the compensation studies should be done by HR. But the Civil Service Commission must approve changes to the pay plan, so the civil service staff will review any compensation studies and register any objections. It should try to work those out with the HR staff before the recommendations go to the commission.

1. New Orleans should conduct its next compensation study within the next two years, though implementation of the salary adjustments may well have to be done over several years, as the city is able to afford it. This implementation should begin with the lowest-paid classifications and gradually move up the pay scale. The HR office—or, for purposes of objectivity and credibility, a qualified compensation consulting firm—should gather data from a variety of sources, not just other public organizations, but also private sector data in order to evaluate the city's true position in the market relative to the many kinds of jobs it has in the system. The consultant should make recommendations for market adjustments in pay ranges for each job classification, based on what it will take to attract the talent needed for each job, as well as

pension system adjustments. The consultant should provide coaching and tools to the HR staff for the maintenance of the system.

2. In this process, the city should also abandon its structure of steps within each grade. Each job classification should have a pay range with a minimum, a midpoint, and a maximum, and managers should have flexibility to set employees' pay within that range, as detailed above.
3. The city should maintain the pay structure at market by doing a new pay study (by the HR staff) every two years, as well as making specific adjustments as needed in between, in preparation for recruitment or when for jobs are hard to fill. The Civil Service Commission should be required to vote on adjustments to the pay structure every two years, even if they feel no adjustments are necessary, simply as a way to make it difficult for them to ignore the need for periodic adjustments.

### **Checks and Balances**

The civil service rules and department exist to protect employees from actions taken for political reasons, or other forms of favoritism not based on merit. These rules have impeded good management by tying managers hands and slowing down hiring and promotion processes. We advocate reforming the rules to give managers more ability to manage their employees, but we don't want to throw the baby out with the bathwater. We still need civil service protections.

The model we advocate would move service functions to a new HR office under the CAO, but preserve compliance functions within the Civil Service Department. Rather than trying to prevent every possible abuse up front, as the rules attempt to do now, Civil Service would audit personnel practices such as hiring, promotion, and firing. They would preserve the power to intervene when they found decisions made for reasons other than merit. To allow effective audits, the city would need electronic hiring software, such as NeoGov.

Hiring managers would be required to indicate the reasons they did not select applicants they have interviewed, and they would certify that each selection has been made without regard to non-merit factors. Violations should be addressed through the city's disciplinary system and through a civil service complaint and investigations procedure, and we believe the mayor should make very public examples of the first few offenders.

We also recommend a process whereby civil service would investigate complaints by applicants and others, where there is evidence of civil service rule violations or personnel decisions not based on merit. Those not selected for jobs should be allowed to file complaints only if they can show that

procedures were not properly followed or an appointment was made on the basis of non-merit factors. The investigative process would result in findings and recommendations to the Civil Service Commission, which could issue a public finding and a corrective action order to the CAO.

This order could require a series of disciplinary consequences, at the discretion of the commission. For instance, the CAO could be required to take certain hiring, promotion, and pay authorities and flexibilities away from the offending manager or department. The commission could also require disciplinary consequences for the hiring manager, including fines and termination. And if the employee who was hired knowingly participated in subverting the merit principles of the hiring process, the Commission could require that that employee be terminated.

To protect against discrimination in hiring, pay, promotion, termination and other personnel actions, we also recommend that the HR office do standard adverse impact testing (based on the standard 4/5ths rule specified by the EEOC) in connection with the hiring process. Where adverse impact has been determined to have occurred the HR Office, in collaboration with Civil Service, should develop strategies to either mitigate such adverse impact or statistically validate the necessity for the requirement or portion of the process where adverse impact has been determined to have occurred, by showing that there is a correlation between its hiring process (specifically, the step that created the adverse impact) and actual job performance.

### **Other Changes Necessary to Make These Reforms Work**

The rigidities we have discussed stem not only from civil service rules; they also stem from the city's budget practices. The city has used control of hiring, promotions, and pay to control spending. This has created severe problems for managers in finding and retaining the talent they need to improve results for the citizens. If these practices are not changed, civil service reform will not yield the results city leaders seek.

We believe city leaders should let department heads manage their budgets and personnel, but hold them accountable and create consequences **when** they overspend. This means that the CAO and budget office should no longer have to approve new hires, promotions, or most pay increases (with the conditions outlined above, in the section on pay flexibilities). In addition, the city should do whatever it can to avoid mid-year budget cuts, which wreak havoc with managers' ability to fill unfilled positions, punish departments that manage their money well, and create perverse incentives to overspend in the beginning of a fiscal year.

To make these things possible, we think the city should consider the following:



- Gradually build up a rainy day fund, which can be used instead of midyear budget cuts. This should be put in a city ordinance, as a requirement.
- Make it easy for departments to download monthly reports that show their spending and whether they are over or under their budgets, so they know if they have money to give promotions, raises, and make hires. This will require fixing a technology problem that does not allow this if they have the current Windows 7 operating system. In addition, the city should train department heads and their budget analysts in the use of these reports, as well as in other practices to promote continuous improvement of efficiency and cost-effectiveness.
- Change current budget practice of not budgeting for positions if they are vacant.
- When department heads overspend their budgets, the CAO and budget director should require that they accompany them to City Council meetings, hear the feedback, and explain directly to the Council why they exceeded their budget and how they plan to correct the situation and prevent it from happening again. This might be an effective form of budget discipline for department heads.

### **Longer-term Improvements**

Some less controversial or significant improvements should simply be implemented by a new HR department after it gets off the ground, and as funds are available. These include the following:

1. Allow departments to create "alternative compensation plans" within specific units, with the approval of the CAO. These might include team compensation plans, where groups of employees are paid for collective rather than individual accomplishment and cross-trained to do multiple jobs; or compensation plans in which employees are rewarded at least in part through commissions or other compensation for sales; or others. This would normally be done when the work is important to the achievement of the city's goals and the current compensation method makes it difficult to achieve those goals. The alternative pay methods would be designed to incentivize achievement of those goals. Alternative pay plans should generally link rewards to results, such as improving customer satisfaction, accomplishing specific performance goals, carrying out specific strategies, and so on. The plans would be part of a written performance contract between the employees and the department head. They could incorporate bonuses for team or individual accomplishment that exceed the performance contract.



2. Encourage departments to set up Workforce Investment Funds, for the purpose of adding funding for bonuses, as well as funding for education, training, technology, and other investments and awards. Departments would be allowed to keep and roll over any unspent balance from their performance pay into their Workforce Investment Fund, along with any gainsharing funds. The department head would decide whether to put these savings in the fund and how to use them. The city should create a pool that small departments could use to augment their Workforce Investment Funds, since small departments have fewer opportunities to save money by keeping vacant positions open.
3. Encourage departments to create their own non-financial awards and recognition systems. These could include awards such as psychic pay (e.g., time off with pay, or additional training or development opportunities), spot awards (given by one employee to another), and celebrations of employee achievement.
4. Consider creative recruiting strategies in recruiting for hard-to-fill jobs, such as social networking sites, employee referrals, signing bonuses, housing and car allowances, travel expenses, and student loan paybacks.
5. Upgrade website information using a marketing approach that sells the city to potential candidates and links to resources of interest to out-of-town applicants.

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<sup>i</sup> See for instance *Reforming Federal Hiring: Beyond Faster and Cheaper* (Washington, D.C., U.S. Merit Systems Protection Board, September 1, 2006) available at <http://www.mspb.gov/studies/mspbstudiespage.html>), and *Create a Flexible and Responsive Hiring System* (Washington, D.C., National Performance Review, 1994), available at <http://govinfo.library.unt.edu/npr/library/reports/hrm01.html>

<sup>ii</sup> See *Reforming Federal Hiring*, *ibid.*, p. 19.

<sup>iii</sup> See for instance, Schmidt, Frank L.; Hunter, John E. (1998). "The validity and utility of selection methods in personnel psychology: Practical and theoretical implications of 85 years of research findings". *Psychological Bulletin* 124 (2): 262–74. DOI:10.1037/0033-2909.124.2.262.



CUC #1

**United States District Court  
Eastern District of Louisiana**

**United States of America**

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**Civil Action**

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**Number: 12-1924**

**Versus**

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**Section "E"**

**The City of New Orleans**

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**Magistrate "2"**

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**Cover Statement**

The purpose of this hearing is to determine whether the proposed agreement is crafted on sound principles that produce fair, reasonable, and adequate foundation for a constructive Agreement.

Community United for Change (CUC) used two methods to test for fairness, reasonability and adequacy. The first test was; the comparisons of the cure matching the diagnosis. The second test applied was to measure the response from the Public Comments to the proposed Agreement. CUC found the most damaging of all are the comments from the various City Departments; Official comments that exposes the hypocrisy of an agreement that is spun from political expediency without the benefits of sound academic resolutions.

What CUC found in the first test was a “Rush to Judgment” in order to make the remedy palatable to political expediency. With that process, a side effect was created that injured the people’s right to “We the People” in the preamble of the U.S. Constitution. Further examination disclosed point for point the diagnosis as found in the Findings Letter, of the DOJ, did not justify the means from which the remedy was formulated. The proposed Agreement does not fit the prescription that was documented as being the problem.

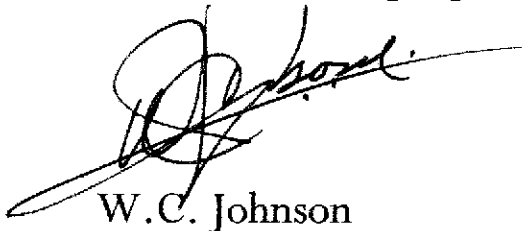
In the second test, the observation from the public, especially the professional sector and City Department Heads reveals that, even though most of the professionals and department heads stated at the beginning of their evaluations that they favored the proposed Agreement, they expressed reservations and suggested changes, modifications, eliminations, and academic applications to insure a safe and constitutionally correct Agreement. The amount of uneasiness among these professionals and department heads concerning the proposed Agreement should be enough to remand the proposal back to the architects for further consideration.

The greatest problems that stood out were the symptoms of political intrusion and deprivations of Constitutional rights. The Independent Police Monitor talked about the 40 plus years New Orleans has been trying to enact police reforms but to no avail because of political tampering. This proposed Agreement reeks of political arm twisting and bare bones fist to cuffs.

In fact, page 2, 2<sup>nd</sup> paragraphs of the Findings Letter states; “Deference should be given to the Oversight Mechanisms a community has chosen

for itself” (See Community United for Change Committee Work Shop Booklet). Yet the proposed Agreement ignores any solutions that include a Community Oversight structure. Instead, this Agreement continues the same failed practices and policies that created and nurtured the problems the Consent Decree claims it is redressing. Police policing themselves has not worked and can never work with a “Culture of Corruption” that has roots that has runs through the system for more than 100 years.

CUC’s entire statement elaborates more specifically and I trust the court will accept and enter the entire statement in to evidence and consider the points in the statement to conclude that the proposed Agreement does not meet the requirements of Fair, Reasonable and Adequate as required by law. Community United for Change petitions this court to deny the request of the City and the Department of Justice and remand this proposal back for further consideration and inclusion.

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

Organizer,  
Community United for Change

CUC #2

**United States District Court  
Eastern District of Louisiana**

**United States of America**

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**Civil Action**

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**Number: 12-1924**

**Versus**

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**Section "E"**

**The City of New Orleans**

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**Magistrate "2"**

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**Fairness Hearing Statement to be Entered into the  
Court Record**

As it pleases the court, testimony concerning the Fairness, Reasonability, and Adequacy of the proposed Consent Decree in United States of America Verses City of New Orleans case number, 12-1924; witness W.C. Johnson, Organizer with Community United for Change (CUC) and party to the Mover CUC for Intervention into this captioned case.

**Statement**

Dr. Romell Madison, the brother of one death victim and one wounded victim of police terror in the Danziger Bridge Massacre, gave Dr. Madison cause for pursuing actions against the New Orleans Police Department (NOPD). It was the sacrifice and persistence of Dr. Romell Madison that brought hope to the people of New Orleans when he was successful in getting the U. S. Department of Justice (DOJ) to investigate the Danziger Bridge Massacre. The people of New Orleans were in need of hope because police terror has run ramped

throughout the streets of New Orleans since the Civil War. It was at this time that Community United for Change convinced the DOJ to include other questionable homicides in the scope of their investigation.

The U. S. Department of Justice continued that hope when they issued their Findings Letter and demonstrated a willingness to cooperate with the community of New Orleans in responding to the people of New Orleans. It was not until the Consent Decree Agreement (Agreement) was unveiled that the people of New Orleans knew that hope was dead and the peoples work was casted aside for political expedience.

This Fairness Hearing not only weighs the Fairness, Reasonability, and Adequacy of the proposed Agreement, it also weighs the Fairness, Reasonability, and Adequacy of this court, the American Constitution and their agents.

Unfortunately, the United States Court, the Constitution, and their agents do not have a good track record with other Agreements concerning non-white inhabitants, citizens, and residents of the United States. When I petition those I hold supreme, I request their due diligence in pointing this court in the direction of identifying the Wisdom in remanding this Agreement for further considerations and inclusion that will give Fairness, Reasonability, and Adequacy an opportunity to breathe life back into hope by placing hope on life support.

With respect to this court and the process the honorable Judge Susie Morgan established with her orders of possible Intervention and public input as a means of perfecting the proposed Consent Decree we petition the court for relief from the current proposed Agreement. For that reason, many of the movers for Intervention and concerned spectators have risen to the call of a Fairness Hearing. After reviewing the order denying Intervention and laboring through the public comments submitted by the August 24<sup>th</sup> deadline, which has become the foundational ledger and a reasonable conclusion that the proposed Consent Decree is a product of a "Rush to Judgment" and a disparity to "We the People" as outlined in the United States Constitution. The process followed by the City of New Orleans and the U.S. Department of Justice was one of exclusion and



privilege. What was billed as an exercise in public law quickly turned into segregated dialog by the haves to reject the have not's. The very people who are disadvantaged by the lack of public access are being subjected to limited *Constitutional Rights and Privileges and limited Democratic Policies and Procedures* as the current proposed Agreement suggests.

The U.S. Department of Justice has suggested that New Orleans has the greatest Consent Decree product to date. However, with the endowment of hindsight, we find too many elements proven to be successful in passed Agreements are being ignored in this Agreement. The major obstacle with the current proposal is the opposition to Citizens Oversight. Which is a contradiction to DOJ's Findings on page-2, 2<sup>nd</sup> paragraph of the Findings Letter that states; ... "Deference should be given to the Oversight mechanism as a community has chosen for itself"... When combined with the number of Public Comments issued by public officials, professionals, scholars, and other interested parties, the *Nakedness of Unfair, Unreasonable, and Inadequate* measures are echoed from the valleys to the mountain tops for all to see.

Citizens, residents, police, victims, and victim families have all been denied Constitutional standings with this "***Rush to Judgment***" that has been referred to as a political deal that smells of the historic white washing that police reform has suffered throughout the many years of challenges by citizens to cleanse the NOPD of its corruption and unconstitutional behaviors.

The second major flaw for this Agreement is the time remedy suggested to overturn infectious and malignant disease that has shown continual growth since the race riots at the Mechanics Building in 1866. There is no way this "***Culture of Corruption***" (as the DOJ identified it in its Findings Letter) can be remedied with two or four years of Federal Oversight. This has to be another testimonial to the political influence granted the architects of this flawed and biased Agreement. We did not get to the point of infectious corruption as identified by the DOJ, in just a few a short years. It will take at least 10 years to establish a

Constitutional pattern of policing before the NOPD can begin to cast out the demons of dissent running through the ranks of the NOPD.

The proposed Agreement for consideration was conceived, incubated, and breached from *Unfair, Unreasonable, and Inadequate* methodology by political pundits whose only motivation is to keep the status quo, the status quo. Meaning the *Culture of Corruption* will continue. This theory is proven by the lack of citizen involvement as demonstrated in the number of Public Comments that suggest and request additional time for other considerations to be included in the proposal. Clearly when you have supporters and proponents for this proposed Agreement listing and illuminating flaws and deficiencies, better judgment should prevail and more consideration given to the framing of a stronger Agreement. The degree in which police, public officials, professionals, and a sundry of other positions took the time to register their concerns demonstrates the need for more time. It is with the mind's eye of the court that we solicit the *Wisdom of Solomon* to assist us in prevailing.

We are expecting this court to apply the *Full Faith and Credit Clause* of *Article IV, Section 1* of the *United States Constitution* to the U.S. Department of Justice Findings Letter as the basis for the development of a final Consent Decree known as the Agreement. The architects of the proposed Agreement have not framed the proposed Agreement from the building blocks issued by the DOJ's Findings Letter.

The history unveiled by many of the respondents issuing public comments reveals New Orleans, under the cloak of protection of the State of Louisiana, has chose to ignore the *U. S. Constitution* and *Federal laws* of the United States. The proposed Agreement grants weight to the continuation of the premeditated malfeasance of U.S. Constitutional Law. As spotlighted by one of the Mayor of New Orleans own department head Susan Hutson who pointed that political expediency has ... "*blocked from participation for what we believe are political reasons which have nothing to do with effectiveness or efficacy*"... Through this evidentiary process, CUC will featured comments solicited from the public by this court for additional input and transparency.

The first commentator will be Susan Hutson, Independent Police Monitor for the City of New Orleans who boldly entered into the public record; ...*"We have been monitoring the process by which the NOPD investigates itself for over two years and we have Consent Decree experience but were **blocked from participating for what we believe are political reasons** which have nothing to do with effectiveness or efficacy. Since the 1940's reform in policing has attempted to separate policing from politics. **Political interest may not be able to achieve the legitimacy needed for an effective Consent Decree process**".*

Coming from a member of the Mayor's team, makes this a powerful statement that carries the weight and authority of the Mayor's Office. Throughout her entire official comments, the Independent Police Monitor documents the deficiencies' of inadequate, unreasonableness and unscrupulous means and methods used to deny the people of New Orleans their just and due opportunity of getting, as Susan Hutson, the Independent Police Monitor, so proudly pronounced; ...*"**The people of this city deserve some control over their fates and will not easily tolerate being locked out of important decisions that affect them**".* The people of New Orleans equally expects to look to the Federal Courts to grant them relief from the political interest that have blocked forward progress, for the New Orleans Police Department (NOPD), since the Civil War.

Sandra Wheeler Hester, an advocate and activist for police reform, civil, human, and educational rights introduced an article by Merrick Bobb, a person she believes to be...*"**the foremost expert in the country on civilian oversight of police in the United States**".*

In Merrick Bobb's article entitled "***Civilian Oversight of the Police in the United States***" he points to the Civilian Oversight as a means to appeal to the Federal Court. He points out "The intent of these federal investigations and decree is to make closed and mysterious internal police processes open and transparent so that police officials can be held publicly responsible and accountable for the thoroughness, correctness, reasonableness, and fairness of their decisions. Merrick Bobb' is detailing what a Consent Decree is and what it recognizes. He is careful to point out the relationship between the city and the federal government towards eliminating problems found in contractual

agreements binding policing agencies and the people the policing agencies are commissioned to serve. Merrick Bobb' organizes the different approaches to civilian oversight so they may be viewed as a spectrum or continuum.

Merrick Bobb's overview categorically places the responsibility of *Fairness*, *Reasonability*, and *Adequacy* on the parties to the Consent Decree before the federal courts accepts any attempts to resolve the "*Culture of Corruptions*" found at the apex of police, citizen dilemmas.

The BreakOUT organization that fights the "criminalization of lesbians, gay, bisexual, and transgender (LGBT) youth in New Orleans reinforces the call to defer the process for lack of Adequate, Reasonable, and Fairness demonstrated in the current proposed Agreement before this court. In BreakOUT's six (6) point comments to the court, the first concern states; ... "*There was an inadequate amount of time to review the details of this Consent Decree, discuss the impact of this decree with our member base, and submit comments to the Judge.*" In the second point, "*...had community been more involved in the process of drafting the document, we would be in a better position to comment on the final decree*"... In their third point they state ... "*Our members voiced concerned with the placement of cameras on patrol vehicles only, as opposed to on the officers themselves, except in the case of SWAT team officers; We are also interested to know if cameras will be recording audio to document possible cases of verbal harassment, threats, or intimidation*"...

In BreakOUT's forth point the highlight; ... "*It is our understanding that no changes are being made to the trainings currently happening regarding cultural sensitivity, despite the fact that this was named an area of grave concern by the DOJ*"...

The Louisiana Language Access Coalition submitted a six (6) page document to the court which continued the documented concern for lack of *Adequate*, *Fair*, and *Reasonable* commissions of an Agreement that will shape and mold the lives of over Three Hundred Thousand (300,000) people in the New Orleans area. Louisiana Language Access Coalition list ten (10) Recommendations of Changes that need to be made to perfect a Fair, Adequate and Reasonable Agreement.

Since these recommendations are lengthy, I would invite the court to revisit these document, to examine the rich history and expert opinions expressed by professionals who have worked angles and perfected the boots on the ground strategies that any Agreement needs in order to be successful. The in depth overviews, demonstrating their knowledge and commitment to their careers could be, should be, needs to be a practical ingredient in an already overdue supplement to American Justice. The need for this court to defer and restructure the proposed Agreement as prescribed for by title 42 section 1983, to insure this proposed Agreement meets the *Fair, Adequate, and Reasonable* doctrine outweighs any objection for a "*Rush to Judgment*". The purpose of qualifying this Agreement under Title 42 section 1983 is to make all parties liable to the Fairness Doctrine and the U. S. Constitution. Throughout the Public Comments, organizations and people alike demonstrate a clear and decisive conclusion that the proposed Agreement, in its current state is flawed and does not meet the four corner test that law requires for acceptability. This proposed Agreement needs to be deferred and returned for further ratification.

Not only are the organizations that petitioned to Intervened in the Agreement and governmental organizations directly affected by the Consent Decree, they are also joined by Community Grass-root organizations, private citizens and residents who complied with the call for public comments, are all in agreement that the time to "*Call for the Question*" is not at hand and there needs to be more work crafted and greater illumination granted to the transparency of the proposed Agreement prior to the acceptance or perfecting of said Agreement.

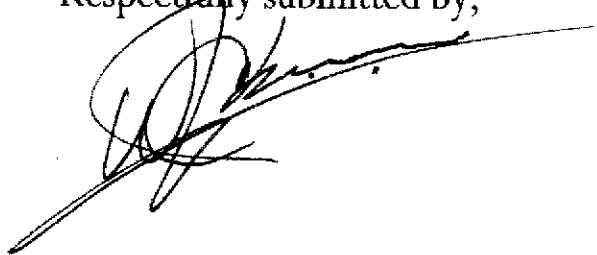
Among those additional "Interveners", through their public comments are: Court Watch NOLA, Mary Howell, Coach Frank, the Inspector General, Edouard R. Quatrevaux, Louisiana Language Access Coalition, The Grimes Family, Jasmine Groves, Judonna Mitchell, Southern Christian Leadership Concerence (Conference), Cecil W. Tebo, Sandra Wheeler Hester, Dr. Romell Madison, Mathew Davis, Shan Sears, Business Council, Sharon Jasper, Southern Poverty Law Center, Kawana Jasper, Breakout, and the Victims and Family Members of Victims, and more than 100 individual supporters of Community United for

Change (CUC) who signed the Affidavits in support of CUC representing them in Consent Decree negotiations.

We understand that if the NOPD were a civilian organization, the USDOJ would have charged the NOPD with violations under Title 18 Chapter 96 of the USC and declared the NOPD a criminal enterprise punishable under the Racketeer Influenced and Corruption Act (RICO)

In conclusion, a cross section of New Orleans people has spoken. This Agreement *Need Not* be ratified and needs to be set aside for the interest of Justice. Until a more deserving Agreement is perfected and the necessary Community Oversight put in place, this Agreement cannot pass the test of Fairness, Reasonable and Adequate protection under the law. We therefore petition the court to *Deny Approval* of this Agreement.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'W.C. Johnson', written over a horizontal line.

W.C. Johnson,  
Organizer for Community United for Change (CUC)

CUC #3

United States District Court

Eastern District of Louisiana

Judge Susie Morgan

Fairness Hearing Statement

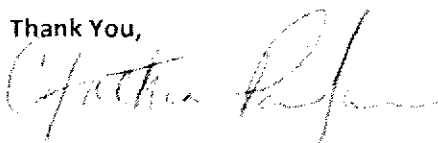
My name is Cynthia Parker; I'm a mother, grandmother, citizen of New Orleans, and Community United for Change (CUC) member. I have lived here in this city all my life, my sons were born here and my three grandsons as well. I strongly believe that NOPD are a very troubled organization and has been for a long, long time. Right now we have a consent decree that's hollow, the shell is in place, but it's empty; that's what our consent decree looks like. When the Department of Justice (DOJ) came to New Orleans to investigate the police department (NOPD), it wasn't on a hunch; it was because of all the murders and corruption done by the hands of the police, some very high ranking police as well. I have provided the court with a three page document that my mother for all these years showing how corrupted NOPD were. This document is dated November 1963, the time some of the high ranking cops was trying to blackmail my father. My dad took a chance at reporting these police officers to other police officers, police that were dedicated to their job and did the right thing to make sure my dad got justice. Over 30 years later, my son are now incarcerated with a life plus 5 year sentence, all done by the hands of some dirty corrupted police officers, again high ranked policemen. I studied my son's transcript and discovered at [REDACTED] who have been terminated from the police department, that some of them had with the Department of Justice. These cops were not given the time my son got for the same charges that were handed down to my son. [REDACTED] I have no faith in our justice system or the police department (NOPD). I feel these are reasons for this Fairness Hearing. Without input from the citizens here who are directly affected by the hands of a heavily corrupted police department, this will remain an unfair broken system, mainly for people of color. It is our children that are being shot down and killed by the very people that should be protecting us (NOPD), it's our sons that are going to jail for the rest of their lives, for some of the same charges the police are found guilty of and only receiving a slap on the wrist (short to no time in jail). The old saying "He who knows of wrong doings and does nothing is just as guilty as the doers. Your Honor, you yourself said that we the people have permissive rights to intervene this consent decree, but yet you denied it, the people are yet again taking a stand on our beliefs as human beings, because we are so unjustly treated and I feel it's a shame to the human race that we are being over looked. GOD did create us as well as any other race of people, did he not? It almost seem as though some are saying that GOD made a mistake when He created people of color. Again Your Honor, where did so much hate come from? The citizens only want to be acknowledge as people too, even though our fore

OK  
BSQ



fathers had nothing to do with the constitution, but does that make it wrong for people of color to want justice, does that make it wrong for people of to want a consent decree in place that offers an umbrella of protection for our communities. It's a shame that we as people are still stuck in a time where everyone are not treated as equal. I feel as though the Department of Justice(DOJ) had good reason to come to New Orleans and investigate what was going on, if not, they(DOJ) would not have come.

Thank You,

A handwritten signature in cursive script, appearing to read "Cynthia Parker".

Cynthia Parker

CUC #4

United States District Court

Eastern District of Louisiana

United States of America

Civil Action

Versus

No. 12-1924

The City of New Orleans

Judge Susie Morgan

Fairness Hearing

Friday, September 21, 2012

Witness Statement of Randolph J. Scott

My name is Randolph J. Scott and I have lived in New Orleans all of my life. I am a retired City of New Orleans Employee with thirty eight (38) years of service. Also, I am an Honorably Discharged Veteran of the United States Uniformed Services. In addition, I have been an instructor providing security training to Security Officers in the State of Louisiana since 1993.

I have worked with individuals and community groups for more than twenty-five (25) years regarding police murders and corruption by the New Orleans Police Department (NOPD). Over these years in reviewing many incidents of murder, brutality, and harassment by NOPD officers, I can say, with confidence, that the NOPD cannot police itself. In addition, the local justice system, city, and state have failed to provide justice to the families that have suffered from the illegal actions of the NOPD. There have been numerous incidents and evidence submitted to this court in support of this fact. Therefore, it would be unfair to the families and the victim community to allow the NOPD to be in charge of conducting investigations of murder, brutality and criminal activities that are known to be engrained within this department.

Witness Statement of Randolph J. Scott  
Fairness Hearing  
September 21, 2012  
Page 2

The Department of Justice (DOJ) has released investigative findings involving the NOPD. The findings noted the following: "NOPD use force data also shows a troubling racial disparity that warrants a searching inquiry into whether racial bias influences the use of force at NOPD. Of the 27 instances between January 2009 and May 2010 in which NOPD officers intentionally discharged their firearms at people, all 27 of the subjects of this deadly force were African American". It was indicated that in at least five (5) of these shootings the investigation reports could not be located or they were incomplete. Also, "Our review of officer-involved shootings within just the last two years revealed many instances in which NOPD officers used deadly force contrary to NOPD policy or law. Despite the clear policy violations we observed, NOPD has not found that an officer-involved shooting violated policy in at least six years, and NOPD officials we spoke with could recall only one out-of-policy finding even before that time".

The recommended Consent Decree dated July 24, 2012 by the DOJ and City of New Orleans indicated the creation of a Force Investigation Team (FIT), and Use of Force Review Board (UFRB). Both of these units will be primarily manned by NOPD Officers. This is inadequate. The problems in the past with accountability and oversight have been the continued process of placing the "fox in charge of the hen house". Community United for Change (CUC) has recommended the creation of a Community Oversight Committee (COC). The COC will employ an outside investigative body to investigate police brutality, police murder, civil and human rights violations and all other criminal conduct. This is reasonable. In support of this conclusion, the DOJ has already indicated that "There are myriad types of civilian oversight and each capable of improving police-community relations, preventing unconstitutional conduct, and helping to ensure a constructive response when such misconduct does occur. Because of the type of oversight appropriate for any given community is circumstantial, deference should be given to the oversight mechanisms a community has chosen for itself. Regardless of the type of oversight chosen, it is critical that oversight mechanisms be sufficiently resourced and empowered".

Witness Statement by Randolph J. Scott  
Fairness Hearing  
September 21, 2012  
Page 3

It is expected that a Consent Decree would require fundamental changes to a failed structure and present a viable solution that would eliminate the NOPD's "culture of corruption". The Consent Decree offered by the DOJ and City of New Orleans falls short of this goal. I believe that the Peoples Consent Decree offered by CUC has provided a reasonable approach in eliminating NOPD's dysfunction and probably for the first time in its history makes the NOPD a constitutional Police Force.

The implementation of a COC, as recommended by CUC, would be in the best interest of the victim community and most reasonable. Please see the previously submitted Peoples Consent Decree by CUC which is attached and contains the following information:

- Management and Supervision
- Provocation, Documentation and Investigation (Use of Force)
- Training
- Use of Video and Audio Equipment
- Discipline
- Complaints

CUC affiliates and supporters have an extensive history and track record in fighting against Police Brutality. See attached photo taken in 1983 by Mr. George Lebeaud (Sekou Fela) and shows Mr. Leon Waters and myself boycotting Canal Street. The victim community came together and established the "Police Brutality Committee" to fight for police reform. Also, we demanded that a Citizen's Oversight Board be created. We were unsuccessful at that time. Since then, many more innocent African-American citizens have died at the hands of the NOPD. I have attached for your review a list containing African-American Citizens that were murdered by the NOPD. The Department of Justice, State of Louisiana and the local Justice System have failed to prosecute the majority of these unlawful homicides committed by the NOPD.

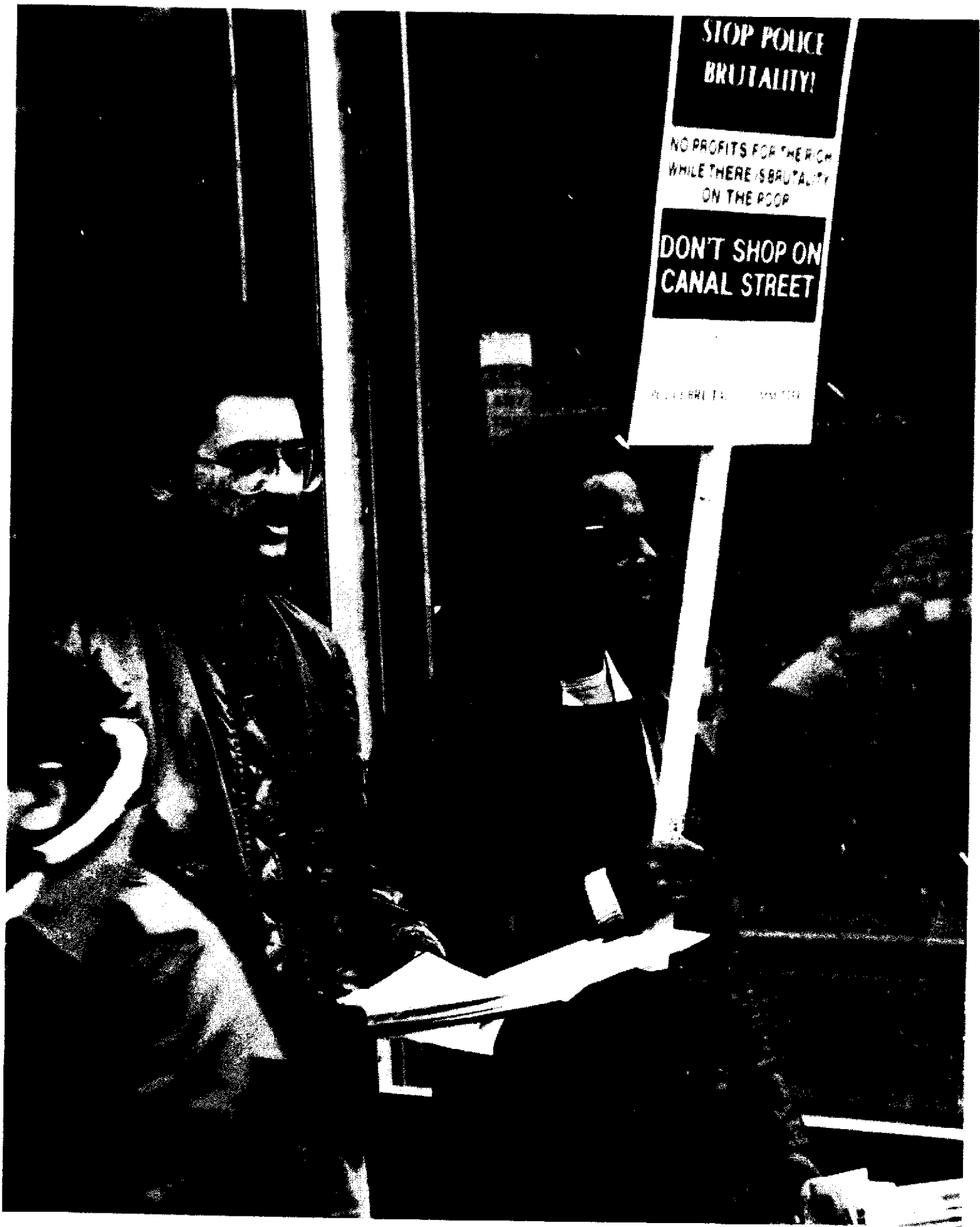
Witness Statement by Randolph J. Scott  
Fairness Hearing  
September 21, 2012  
Page 4

Respectfully Submitted:

Randolph J. Scott  
Community United for Change

Attachment (s)

- 1) Photo taken in 1983-Boycott of Canal Street as a result of Police Murders
- 2) List of Homicides committed by the NOPD
- 3) Peoples Consent Decree submitted by CUC



EUC #6

United States District Court

Eastern District of Louisiana

Civil Action

No. 12-1924

Judge Susie Morgan

Fairness Hearing

Friday, September 21, 2012

Witness Statement of Malcolm Suber

In

USDOJ

v.

City of New Orleans

Judge Morgan,

My name is Malcolm Suber and I have lived in New Orleans since 1978. All of this time I have been a leading activist against policeterror, police brutality and police murder. I have developed ties with many families that have been the victims of NOPD murder. Very few of these families have received even the semblance of justice for the deaths of their loved ones. The seed of these injustices started with NOPD officers acting as judge, jury and executioner. These illegalities were covered up with a wink and nod by the internal investigation of the NOPD and the failure of our coroner and District Attorney to label these police murders as other than justifiable homicides.

The court inquires about the fairness, adequacy and reasonableness of the proposed consent decree. I can attest to failures of the NOPD in all there categories and the failure of the proposed consent decree to remedy these unjust conditions.

Is it fair that scores of residents of New Orleans have died at the hands of the NOPD? Is it fair that these murdering police officers have gone unpunished? The USDOJ verified what we have known all along –



that the NOPD is guilty of unconstitutional policing which has resulted in scores of homicides of New Orleans residents. Since NOPD officers are rarely punished for these homicides, officers feel no compunction about using deadly force.

~~the year, we have to...~~

- ~~Grand Jury, she was shot in the...~~
- ~~April 1999, she was shot while...~~
- ~~...~~
- ~~March 1999, a group of NOPD officers...~~
- ~~...~~
- ~~...~~
- ~~...~~

OK  
[Handwritten initials]

There are scores of other police homicides that I could cite and I have attached a pamphlet on NOPD murders that I am working on.

Fairness would demand that these victim families get justice and that some of the killer cops would get punished. When does fairness begin? Is it only after the implementation of the proposed consent decree? Or does it take into the account the past crimes committed against residents by the NOPD?

In South Africa after the overthrow of apartheid the new democratic government developed a methodology to chart a new course by forming a commission to address past crimes of the apartheid regime. They established a truth and reconciliation commission where perpetrators and victims could publicly name the ones who had violated them. It was felt that if South Africans were to move forward a complete renunciation of past actions and structures must be addressed. I believe fairness for New Orleans residents demands no less an effort.

The present NOPD structure and method of operations produced these homicides and condoned unconstitutional policing. There is no new approach and no fundamental changes offered in the present consent decree. We therefore do not believe that the proposed decree meets any common sense notion of fairness.

To me adequacy would mean that the proposed consent decree solves the outstanding problem of ending unconstitutional policing by the NOPD. It would require that NOPD officer know and respect the law. The history of NOPD violations of peoples rights demonstrates the NOPD leadership do not respect citizens' and residents' rights. Illegal stops, unwarranted arrests and disrespect is the common experience of the Black community as well as other minorities and the gay community. We demand absolute respect for the law and that all residents be treated with respect. We cannot just reshuffle the

deck as the proposed decree proffers. We need a new deck and a new dealer that is answerable to a citizens' oversight committee.

On the reasonableness front, I believe that the CUC has made many perfectly reasonable suggestions in our People's Consent Decree. Reasonableness means that the proposed remedy has a chance of solving the dilemma. The NOPD's dysfunction has historical roots which have not been acknowledged by the proposed consent decree. The NOPD has been a tool to oppress the Black community and keep us in our place. This tradition has continued even though the NOPD has had many years of Black police officers and quite a few Black police chiefs. These officers have accepted the NOPD mores and culture rather than challenging and changing it. Black mayors have failed miserably when it comes to demanding and ensuring fairness and constitutional behavior by the NOPD. Thus, I believe a reasonable approach would be to reject any notion that the NOPD can change its spots and police itself. Let us try something radical. Let us try something new. Let us try civilian oversight of the NOPD.

Another reasonable remedy we proposed would be the equipping of all NOPD officers with audio and video recorders on their person. We would then have a record of their interactions with residents of the city. This would provide ultimate transparency. This will reveal if NOPD officers are performing constitutional policing.

Insanity is defined as doing the same actions repeatedly and expecting different results. Let's stop the insanity. Let's reconstitute a new NOPD that respects and serves all residents of New Orleans.

CUC #7

September 15, 2012

To Judge Suzie Morgan:

Respond in terms of Reasonability:

When a community's citizens lives, civil, and constitutional liberties are at stake, deliberate action should be taken to correct the problem. That means that expediency ought not be the primary concern in moving forward, it should be effectiveness. It is not reasonable to expend all of this energy, money, and time on this endeavor and not get the best possible document for all concern, especially for those who originally sort justice. Reasonability means rational, sound and impartial judgment. To me implies, all parties involved interest should be taken into consideration, not just plaintiff and defendant. Could also imply:

Reasonability - legal interpretation

The scale of reasonability represents a quintessential element of modern judicial systems and particularly important in the context of international disputes and conflicts of laws issues. The concept is founded on the notion that all parties should be held to a reasonable standard of conduct and has become embedded in a number of international conventions such as the UNIDROIT principles and the CISG.

UNIDROIT principles, which imposes a duty on all parties concern to act in good faith throughout the length of the contract. In actuality, these principles do not apply, because the Defendants and Plaintiffs listed on the document have not acted in good faith so far, TOWARDS THE CITIZENS WHOSE CONSTITUTIONAL AND CIVIL RIGHTS ARE CONSTANTLY BEING VIOLATED BY THE NEW ORLEANS POLICE DEPARTMENT, BECAUSE THE POWERS AT BE, DID NOT THINK THE CITIZENS OPINION MATTERED ENOUGH TO BE INCLUDED IN THE NEGOTIATING PROCESS. What leads us to believe that all of a sudden the police department are going to do the right, fair and equitable thing. WRONG ANSWER, IT AIN'T GONNA HAPPEN!

Is it reasonable to agree that the New Orleans Police Dept. will all of a sudden will implement and follow the rules as stated in, III. USE OF FORCE, page 16, 29, "No officer shall carry any weapon, or use force, that is not authorized by the Department. No mention is made of the Federal Monitor or citizens input, just the police department again in charge of policing itself, which is history repeating itself and is detrimental to the black community.

The earliest recorded use of the term 'reasonability' has been in the Roman ages, where Romans became known for their methods in assessing an individual's conduct according to the scale. It became common practice to attribute a 'reasonability' score between 1 and 5, where 5 would indicate that a party had acted reasonably and would be entitled to the full sympathy of the court. As for the score this Consent Decree gets regarding the citizens most affected by police terror is a "1."

Definition of Adequacy:

Sufficient to satisfy a requirement or meet a need. See Synonyms at sufficient. 2. Barely satisfactory or sufficient:

The Consent Decree is by no means adequate enough to reach the effectiveness to stop the inappropriate actions perpetrated on the Black citizens of New Orleans by the police dept. The Justice Dept. investigation revealed what mandates would adequately help to achieve the desired results, most importantly, "Community Oversight."

On page 17, 36., sentence states, "NOPD policy and training shall require and teach proper techniques for upholstering, drawing, or exhibiting a firearm." Again there is not reference to any kind of education, intervention, or monitoring from anyone else other than the police department itself

Response in terms of Fairness:

This question of fairness brings about the question of exclusion, which is practically the opposite of fairness. The initial Plaintiffs were excluded from every aspect of the decision making process. Others who have no real connection to the black community were allowed to advocate or act in behalf of these excluded citizens without any communication with those whose behalf they were acting on. I would say that fairness was not definitely a consideration involved in the creating of this document and doesn't seem to be a part of the enacting of said document, because the voice and opinions of the affected people are still falling on deaf ears and not being respectfully acknowledged. On just about every decision regarding policy, education, and intervention is determined by the police department itself, not with an advisory committee or the Federal Monitor. As it is written in the Consent Decree the police department seems to be the authority and in charge of oversight, which is not fair at all for the desperate people of this city who are looking for justice and the right to the liberties as any other citizen in this country.

Respectfully,

Walter J. Milton

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CIVIL ACTION
Plaintiff	*	NUMBER: 12-1924
v.	*	SECTION: E
THE CITY OF NEW ORLEANS	*	
Defendant	*	

\* \* \*

UNITED STATES' EXHIBIT LIST

1. Declaration of Merrick Bobb
2. Declaration of Jacinta Gonzalez
3. Declaration of Wesley Ware
4. Declaration of Mary Claire Landry
5. Opportunities for Community Involvement in Consent Decree Implementation
6. <sup>TENTATIVE</sup> Action Deadlines Following Effective Date
7. PowerPoint presentation

*Admitted*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CIVIL ACTION
Plaintiff	*	NUMBER: 12-1924
v.	*	SECTION: E
THE CITY OF NEW ORLEANS	*	
Defendant	*	
	* * *	

DECLARATION OF MERRICK J. BOBB

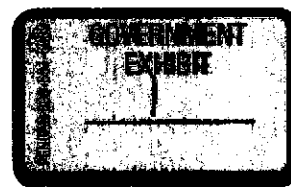
I, Merrick J. Bobb, upon my own personal knowledge, hereby depose and declare:

1. I make this Declaration in support of the Joint Motion of the United States Department of Justice ("DOJ") and the City of New Orleans ("New Orleans" or "City") for this Court's approval of the Consent Decree filed on July 24, 2012.

2. I am a cum laude graduate of Dartmouth College and received my *Juris Doctorate* from the University of California at Berkeley, where I was selected to join the California Law Review based upon my law school grades. I clerked for Federal District Judge Irving Hill before joining the law firms of O'Melveny & Myers and later Tuttle & Taylor.

3. For the past 21 years, I have worked in the law enforcement area. I was a staff member and then a Deputy General Counsel of the Christopher Commission examining the Los Angeles Police Department (LAPD) in light of the Rodney King incident; a year later, I served as General Counsel to the Kolts investigation of the Los Angeles County Sheriff's Department (LASD). Shortly thereafter, I was appointed as Special Counsel to the County of Los Angeles for purposes of monitoring the LASD, a position that I have held since 1993.

4. In addition to serving on police oversight related commissions and as Special Counsel to the LASD, I have been engaged to conduct many law enforcement related investigations and reviews throughout my years of practice. In 1996, I was engaged by the Los Angeles Police Commission to examine the LAPD five years after the Rodney King incident. In 1997, I was engaged by the city of Detroit to investigate the Detroit Police Department. Thereafter, I was engaged as a consultant to DOJ in connection with investigations of patterns or practices of police misconduct.



5. In 2001, pursuant to a generous grant from the Ford Foundation, I founded the Police Assessment Resource Center (PARC) with the assistance of the Vera Institute of Justice. PARC is a national nonprofit providing research, investigation, and evidence-based analysis on law enforcement issues for cities, counties, police departments, and independent monitors. I continue to serve as President and Executive Director of PARC.

6. I am the author of numerous police oversight related publications. I have authored, in whole or in part, over thirty semiannual reports in my role as Special Counsel of the LASD. I have authored a number of reports regarding other law enforcement agencies. Examples in the previous ten years include: *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths* (August 2003); *Review of National Police Oversight Models* (February 2005); *Promoting Police Accountability in Milwaukee: Strengthening the Fire and Police Commission* (June 2006); *Assessing Police-Community Relations in Pasadena, California* (August 2006); *Promoting Police Accountability and Community Relations in Farmington: Strengthening the Citizen Police Advisory Committee* (June 2007); *A Bad Night at Powell Library: The Events of November 14, 2006*, (August 2007); *Evaluation of a Pilot Community Policing Program: The Pasadena Police-Community Mediation and Dialog Program* (February 2008); *Use of Deadly Force in Denver* (June 2008).

7. It is my opinion that the Consent Decree of July 24, 2012 between the City of New Orleans and the United States Department of Justice is fair, adequate, and reasonable. It is necessary to bring a halt to unconstitutional policing in New Orleans, as was detailed in DOJ's Findings Letter of March 16, 2011. The Consent Decree is indispensable for lasting reform of the New Orleans Police Department (NOPD).

8. Concern has been expressed by some that they will be marginalized by the Consent Decree and thereby need to intervene in this action. Among those entities is the Office of Independent Police Monitor (OIPM). It is my opinion, however, that the Consent Decree is more likely to amplify the power and authority of the Independent Monitor, thereby enhancing the ability of the OIPM to thwart possible efforts to terminate the office or cut its funding. In that connection, I note that the Consent Decree at ¶ 442 incorporates the entirety of the Memorandum of Understanding (MOU) between New Orleans and the Office of the Independent Police Monitor, thereby putting the MOU on the same footing as the Consent Decree. I further point out that the Consent Decree at ¶ 440 provides the OIPM ready and timely access to the City of New Orleans and the NOPD to the information necessary for the OIPM to fulfill its duties.

9. I have been a strong advocate for an Independent Monitor in New Orleans for more than 10 years. I first came to New Orleans in 2002 at the invitation of the Police Civilian Review Task Force to testify about the strengths and weaknesses of different models for civilian oversight of the police. I advocated for a monitor model as being the strongest and most effective for purposes of transparency and legitimacy. A monitor model most rapidly and successfully helps a police department to identify and manage the risk of police misconduct and to control unconstitutional policing.



10. When those efforts bore fruit in 2008 with the passage in New Orleans of a charter provision for the creation of the Independent Monitor within the Office of Inspector General, I was very pleased. Similarly, I was pleased with the selection of Susan Hutson as Independent Monitor. I know Susan from her work beginning in 2007 in Los Angeles for the Office of Inspector General. I also have met and respect the Deputy Monitor, Simone Levine.

11. The OIPM has played an important role prior to the Consent Decree, and will continue to do so during the existence of the Consent Decree, and after the Consent Decree has terminated. I have closely observed the relationship of a local monitor with the court-appointed monitor under a Consent Decree. In Los Angeles, for example, the Inspector General (IG) worked closely with the DOJ monitoring team during the implementation phase of the Consent Decree. They shared information, divided up certain tasks, coordinated on audits, and played a complementary role.

12. There is no reason why the OIPM cannot play a similar complementary role under the New Orleans Consent Decree. In Los Angeles, the role of the Inspector General expanded considerably in the aftermath of the Consent Decree as the IG produced trustworthy and well-researched written reports and conducted thorough audits. No doubt that if the OIPM does the same, and is similarly supported by the City, it can play a similar role in New Orleans.

13. Accordingly, City financial and political support of the OIPM will help guarantee the success of the Consent Decree. But it is the job of the City, and not that of the Consent Decree, to act as the advocate and guarantor of the OIPM's success. Like the Inspector General in Los Angeles, an independent monitor must prove his or her indispensability through the excellence and credibility of the work product.

14. The Consent Decree provides amply for involvement by the OIPM and community members. Declarations in support of intervention argue that the OIPM will not be able to perform functions that are assigned to the court-appointed monitor even if those functions are assigned to the OIPM in its foundational ordinance. That simply is not the case. There is nothing in the Consent Decree that inhibits the OIPM from doing the important and demanding work required by the ordinance. The separate and independent work of the OIPM will complement that of the court-appointed monitor and move New Orleans more smoothly through the implementation stage.

15. It is also vitally important that the NOPD be receptive and affirmative. Above all, the NOPD, the Court, and the court-appointed monitor must act in a coordinated way to bring about greater accountability and responsibility by the NOPD for the management of its police officers and the identification and elimination of unconstitutional policing. To be successful, the Consent Decree must have the full and willing cooperation of the NOPD. If such cooperation is not forthcoming, it will be the task of the federally-appointed monitor and the federal court to bring it about. It is vital that the Court be actively involved in the oversight activities and be available to the federal monitor and the parties to keep progress moving forward. The Consent Decree in Los Angeles foundered when it was met with both active and passive resistance by the LAPD. It

did not become the great success it has become until its Chief of Police fully embraced the Consent Decree and provided the resources and willing personnel to implement it.

16. The Court's involvement not only is necessary to make sure the NOPD is doing its job. The federal court must also keep DOJ and the court-appointed monitor on track and moving forward. It is hoped that the federal court will remain available to the parties and the monitor to resolve issues that cannot be settled otherwise. At the end of the day, it is the federal court that makes crucial decisions about terminating the Decree.

17. Ultimately, it will be the Court that determines whether New Orleans and its Police Department have fully and effectively complied with the provisions of the Consent Decree. That, in turn, will require the court to make a judgment whether the patterns or practices that gave rise to the decree in the first place have been eliminated, and whether structures are in place to provide reasonable assurance they cannot come back. Such structures include: a robust early warning and tracking system; a high functioning system for the identification and correction of problem officers; a solid form of civilian oversight, such as the OIPM, that receives broad community and City support; revised training consistent with best practice; a transparent, legitimate disciplinary system that is both tough and fair; supervisors who are well-trained to perform supervisory responsibilities and are held strictly accountable for doing so; and use of force standards that reflect best practice. Bias-based policing cannot be tolerated and a police agency must have measures to detect and deal with it.

18. The goal of a Consent Decree is to put such structures in place, monitor them vigilantly to make sure they are functioning as contemplated, and measure whether the Police Department itself can spot and correct unconstitutional policing and integrity issues. Most important of all, the monitoring process must track whether instances of unconstitutional policing have become aberrational and infrequent and whether the conditions that gave rise to the need for a Consent Decree have actually abated and will likely not come back.

19. The New Orleans Consent Decree is strong and fair. It should promote a sweeping difference in how this great city is policed. I respectfully urge this Court to approve it.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 09-13-2012 Merrick J. Bobb MJB

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

<b>UNITED STATES OF AMERICA</b>	*	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	*	<b>NUMBER: 12-1924</b>
<b>v.</b>	*	<b>SECTION: E</b>
<b>THE CITY OF NEW ORLEANS</b>	*	
<b>Defendant</b>	*	

\* \* \*

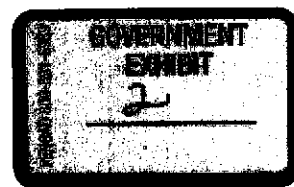
**DECLARATION OF JACINTA GONZALEZ**

I, Jacinta Gonzalez, upon my own personal knowledge, hereby depose and declare:

1. I am the Lead Community Organizer for the Congress of Day Laborers (“the Congreso”), a project of the New Orleans Workers’ Center for Racial Justice. I have worked in my capacity as the Lead Community Organizer for the past five years. The Congress of Day Laborers is a member organization of the National Day Labor Organizing Network, which is a network of over forty groups across the country that works to support day laborers.

2. The Congress of Day Laborers’ membership includes hundreds of day laborers, domestic workers, housekeepers, and their families. Our work consists of regular organizing, advocacy, and legal defense to support the civil, labor, and human rights of these workers. The organization works with the broader Latino community to identify and advocate for best practices for the City of New Orleans to ensure a diverse and strong community. The organization works also with a coalition of criminal justice reform groups to ensure that our entire criminal justice system, including not only the police but also the prison and the court system, accords with fundamental standards for fairness and human dignity.

3. My individual work as a community organizer combines case management, direct assistance, and general education and assistance to workers in New Orleans. Specifically, over the last five years, I have provided direct services to thousands of day laborers, housekeepers, and domestic workers, including ongoing support to a membership of several hundred workers and their families. This work includes providing direct support to day laborers on five day labor corners and providing long term services and support to our membership. I am fluently bilingual in Spanish and English, which helps me perform this work. I also translate for state, municipal, and traffic courts across Louisiana.



4. In addition to this work, I coordinate a Spanish language Know Your Rights program where community leaders provide Know Your Rights Trainings using popular education, street theater, and radio.

5. In my experience, I have found that day laborers, housekeepers, and domestic workers are among the most vulnerable workers and community members in the United States. They often work under dangerous health and safety conditions, regularly earning below minimum wage.

6. I have also found that these workers are likely to be the victims of various types of criminal conduct, including wage theft, street crime, and hate crimes motivated by anti-immigrant bias. Because of their enormous responsibilities, vulnerability, and social isolation, these workers often suffer extreme emotional and social ramifications from such criminal activity. In many cases, I have learned that reporting such crimes leads to criminalization and severe immigration consequences.

7. In my work, I regularly translate for our members in their interactions with the New Orleans Police Department (NOPD) and in their court hearings that result from these and other arrests, which are mostly for misdemeanor infractions. I have facilitated the participation of dozens of our members as witnesses in criminal court proceedings. I have helped our members win release from criminal custody when they were wrongfully arrested and wrongfully detained. I have also helped prevent the deportation of members who were placed in deportation in violation of their civil, labor, and human rights, often when police collaborate with retaliatory employers. Through these experiences, I have witnessed widespread, systematic problems where workers, their families and the greater Latino community are targets of de facto immigration enforcement and racial and ethnic profiling by the NOPD.

8. I have personally witnessed how such police practices have enacted long-lasting trauma, fear, and distrust of the NOPD in the community in New Orleans. Because so many community members are unfairly targeted by the police, many members of the community are reluctant to communicate with NOPD officers, even when they need assistance or protection.

9. For example, I can recall many day laborers who are stopped by NOPD for minor, often traffic offenses, questioned about their immigration status, and arrested. Members then spend days and weeks in prison before their charges are resolved, and are often transferred into immigration custody. In one instance, a concerned neighbor called NOPD to the scene where a community vigilante was holding a member of the Congress of Day Laborers on the ground using physical force. In this situation, NOPD took no action against the community vigilante. Instead, they arrested the member and transferred him into the custody of U.S. Border Patrol.

10. In another instance, a member locked her partner out of the house following a domestic dispute for the protection of her and her new born baby. The partner called the NOPD simply to ask that he be let back into the house. Speaking only Spanish, the partner was unable to communicate his request to the officer, who lacked any translation services. Without making an effort to further investigate the situation, the officer proceeded to enter the house, wake the

member from her sleep, and arrest her. Though the charges were ultimately dropped, the member spent more than 45 days in jail and was only able to secure her release through a writ of habeas corpus.

11. I am familiar with the NOPD consent decree before the court and support its entry as it represents a major step towards addressing the wayward policing of the NOPD and its damaging impact on the community. The provisions of the proposed consent decree on bias-free policing, including paragraph 183, represent a crucial, long-awaited step forward for day laborers, domestic workers, housekeepers, and their families in New Orleans. It is my view that the decree will drastically help to ensure that police services are provided to the community regardless of immigration status or language proficiency, and free from race, color, ethnicity, and national origin discrimination.

12. Successful implementation of paragraph 183 will require the meaningful consultation and collaboration with community members and advocates to develop and implement the plan. It is my hope that attention is paid to ensuring that directly affected people, who are the voices of experience, have a direct seat at the table in implementing the decree. As our city moves forward on the consent decree, I urge this Court to monitor and ensure that the plan in paragraph 183 includes public, written provisions with adequate public accountability measures specifically addressing the following key issue areas:

- Prohibition of questioning, recording, and sharing of information about immigration status or country of origin;
- Prohibition of the use of federal immigration agents for police functions including but not limited to interpretation and translation functions;
- Prohibition of assisting any municipal, parish, or state enforcement agency in enforcing federal immigration law; and
- Protection of victim-witnesses including a policy on U-visa and T-visa certifications.

13. These provisions, taken together, would seriously address NOPD's practices of using immigration status related coercion as an element of policing and of using racial and ethnic profiling. The provisions would also ensure that NOPD does not contribute to retaliatory and/or biased actions by employers, landlords, or other law enforcement agencies.

14. Taking NOPD out of the job of immigration enforcement and returning the force to its core police mission not only brings the Department into compliance with basic constitutional standards, it also begins the process of building trust with community members. (When individuals are stopped or arrested in violation of the Fourth Amendment, it erodes the community's trust. This is especially true when individuals are mistreated on the basis of their language, ethnicity, or immigration status.) I believe that building a police force that is transparent in its actions, accountable to its policies, and works with the community and not against it to solve crime is a key necessity to building a vibrant, strong future for our city. The impact of a successful consent decree, in my view, will lead to more effective crime prevention and crime solving, and make communities far more safe and secure.

15. In addition to submitting this declaration, I contributed to the comment submission by the New Orleans Workers' Center for Justice, which includes additional key issue areas and supporting evidence that will be critical to the successful implementation of the consent decree.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 9/10/12

Jacinta Gonzalez

A handwritten signature in black ink, appearing to read 'Jacinta Gonzalez', written over a horizontal line.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CIVIL ACTION
Plaintiff	*	NUMBER: 12-1924
v.	*	SECTION: E
THE CITY OF NEW ORLEANS	*	
Defendant	*	

\* \* \*

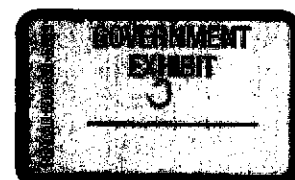
I, Wesley Ware, upon my own personal knowledge, hereby depose and declare:

1. My name is Wesley Ware. I am the Director of *BreakOUT!*, an organization that fights the criminalization of lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth in New Orleans, LA. We are a membership-based group of LGBTQ young people ages 13-24 who are directly impacted by the criminal justice system.

2. Six youth members and I founded *BreakOUT!* when I received the Soros U.S. Justice Fellowship in 2011. Our main campaign currently is the “We Deserve Better” campaign, which is focused on reducing discriminatory policing within the New Orleans Police Department (“NOPD”), particularly of young African American transgender women.

3. Prior to founding *BreakOUT!*, I worked as an advocate, investigator, and eventually the LGBTQ Youth Project Director at the Juvenile Justice Project of Louisiana (“JJPL”), visiting youth in secure facilities across the state of Louisiana from 2007 until 2011. During this time, I focused on the needs and experiences of LGBTQ young people in Louisiana’s state secure care facilities, as well as local detention centers. I also coordinated the investigation for the class action lawsuit against the City of New Orleans for conditions at the Youth Study Center, the local juvenile detention facility. I later worked with the same facility to help them develop a model LGBTQ policy for their youth and staff. I published a report on the experiences of LGBTQ youth in state custody in Louisiana called *Locked Up & Out* and currently sit on the Advisory Board of the Equity Project, a national initiative to reform juvenile courts to provide fairness to LGBTQ clients. In September 2011, I testified in front of the Prison Rape Elimination Act’s Prison and Jail Rape Review Panel with the Department of Justice.

4. Through my work with LGBTQ youth involved in the juvenile justice system and the adult criminal justice system in Louisiana, I have heard first-hand the accounts of negative experiences with law enforcement and have organized young people with direct experience with NOPD to run campaigns to reform its discriminatory practices.





5. National data has shown that LGBTQ youth are overrepresented among homeless<sup>1</sup> and other marginalized youth<sup>2</sup>, as well as among youth in the juvenile and criminal justice system.<sup>3</sup> National data has also consistently shown that LGBTQ youth are disproportionately targeted by law enforcement, more likely to be arrested, and report being frequently profiled and treated unfairly by the police and other officials.<sup>4</sup> Transgender women of color are more at risk for physical violence in their lives; and at the same time, transgender people are also more likely to experience barriers to reporting to law enforcement, not report to law enforcement altogether, and more likely to experience police violence.<sup>5</sup>

6. In New Orleans, this has been true for generations, with transgender people, specifically transgender women, reporting being stopped for no reason, being assumed by police officers to be criminal for walking down the street, being accused of falsely identifying themselves when presenting I.D.'s inconsistent with their gender expression, being arrested after calling the police for help, being called names and verbally harassed, being approached for sexual favors by members of the NOPD, being sexually assaulted by the NOPD, or having their legal rights abused or undermined in other ways. In fact, in preliminary results from a survey conducted by our members in the summer of 2011, we found that 15 out of 15 of young African American transgender women polled had been approached by an NOPD officer for sex. Just this past May, one of our members was stopped one block from her house as she was walking to a convenience store by an officer who claimed to be the "Chief of Tulane Avenue," searched her illegally, and accused her of prostitution. While many in the NOPD have been receptive to hearing our recommendations or concerns, I have also had representatives from the Department tell me that transgender women simply should not walk down certain streets in New Orleans, regardless of whether or not they live nearby. To this, we say, "Walking while transgender is not a crime."

7. From 2010 until the conclusion of the United States Department of Justice's ("DOJ") investigation of the NOPD, *BreakOUT!* organized hearings with other community organizations, including Women With a Vision, for community members to share some of these personal stories of discriminatory and illegal treatment by NOPD officers. Our members met with DOJ investigators and attorneys several times over the course of the investigation, both concerning the police department as well as conditions inside Orleans Parish Prison. The stories our communities relayed contributed to DOJ's finding that NOPD practices lead to discriminatory treatment of LGBTQ individuals, in particular African-American transgender women.

<sup>1</sup> Most recently documented by Williams Institute, "Serving Our Youth: Findings From A National Survey Of Service Providers Working With LGBT Youth Who Are Homeless Or At Risk of Becoming Homeless," 2012. Other sources for reference available at: <http://www.nationalhomeless.org/factsheets/lgbtq.html>.

<sup>2</sup> Sources for reference available at Center for Disease Control and Prevention <http://www.cdc.gov/lgbthealth/youth.htm>.

<sup>3</sup> Center for American Progress, "The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System," 2012.

<sup>4</sup> Himmelstein and Brückner, "Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study" *Pediatrics*, 2010 and Amnesty International, *Stonewalled: Still Demanding Respect. Police Abuses Against Lesbian, Gay, Bisexual And Transgender People In The USA* Amnesty international, 2006.

<sup>5</sup> National Coalition of Anti-Violence Programs, "Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Communities in the United States in 2011: A Report from the National Coalition of Anti-Violence Programs," 2012.

8. Problems with the NOPD have been so rampant that *BreakOUT!* has hosted several "Know Your Rights" workshops with the Independent Police Monitor, produced a video called "We Deserve Better" that we delivered to the NOPD for use in their officer trainings, and developed a Street Safety Guide, focused primarily on preserving rights with the police. We also developed community identification cards for our members with their rights on the back for easy reference during a police encounter and are now working on writing our own LGBTQ policy to propose to the NOPD for implementation.

9. Given the pattern or practice of violating the constitutional rights of LGBTQ youth by NOPD officers, as well as the long-standing and intractable nature of this conduct, we believe that a Consent Decree which includes court oversight is necessary to achieve sustainable reform of NOPD.

10. NOPD's unfair treatment of LGBTQ youth, as well as the perception that NOPD officers are biased against them, has led many to distrust the NOPD, thereby impeding effective and safe policing. We believe a robust consent decree that is closely monitored and strictly enforced is a prerequisite to building LGBTQ youth's trust in NOPD.

11. Along with many other community organizations in New Orleans, we were encouraged by the DOJ's investigation, the community's participation in it, and DOJ's reported findings afterward, but were disappointed that negotiations over the consent decree were not a similarly open and transparent process.

12. However, *BreakOUT!* members and other community representatives met with the DOJ and NOPD several times to submit sample policies and recommendations that we hoped would be reflected in the consent decree and in NOPD's revised policies. Many of those recommendations were included in the Proposed Consent Decree ("Decree") currently before the Court, and we believe it is essential that they be implemented without delay. Those recommendations are reflected in the LGBTQ provisions in the Decree, particularly those that prohibit the use of sexual orientation or gender identity as reasonable suspicion for a stop or arrest; the requirements that NOPD adopt policies to ensure that transgender people are referred to by their preferred name and appropriate gender pronoun; that transgender people will not be subjected to overly invasive searches due to their gender identity or to solely to determine their anatomy or genitalia; and that same-gender searches are to be done in accordance with gender identity. We believe that it is critical that these provisions in the Decree be entered and become an enforceable court order in order to vindicate the rights of our members and other LGBTQ youth in New Orleans.

13. We know from the stories told to us by so many of our young people, from those who have lost family members to the NOPD, and from community representatives that have been working to reform the NOPD for decades that there is a clear need for full oversight of the NOPD and a thorough Decree with extensive provisions to outline the path to reform. In fact, the Decree could be strengthened in several areas.

14. For example, in order to address the deficiencies noted by DOJ in its findings, the quality and quantity of training on LGBTQ issues required by the Decree should be

higher, particularly as it is situated within the same entity that has been conducting the training, inadequately, for several years. We also believe that the training should reflect input from national experts, along with local community members with direct experience with NOPD. We also believe that the Decree would be stronger if it required that the Office of the Independent Police Monitor be given a greater role in implementation and enforcement of the Decree, particularly as it is the entity that will remain in New Orleans long after the DOJ has gone. We also are concerned that the Decree's requirement that cameras be placed on patrol vehicles only, as opposed to on the officers themselves, will not provide adequate accountability, especially if those cameras do not include an audio recording of encounters between LGBTQ youth and NOPD officers outside of the car and out of camera sight. This is a particular concern for officers who patrol on foot in areas such as the French Quarter, as well.

15. We have had only a limited amount of time to review the Decree, and, as noted above, have concerns that some of its provisions may not go far enough to correct all of the myriad problems with NOPD. However, we believe the Decree is necessary to reform the NOPD, especially those provisions pertaining to NOPD interactions with LGBTQ individuals in New Orleans. It is imperative that nothing short of this Decree is implemented to ensure the safety and well-being of LGBTQ youth and young adults of color in this City and to protect the rights of all New Orleanians who live in fear of those who are supposed to protect us.

I declare under penalty of perjury that the foregoing is true and correct.

DATED SEPTEMBER 19, 2012



WESLEY WARE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>UNITED STATES OF AMERICA</b>	*	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	*	<b>NUMBER: 12-1924</b>
<b>v.</b>	*	<b>SECTION: E</b>
<b>THE CITY OF NEW ORLEANS</b>	*	
<b>Defendant</b>	*	

\* \* \*

I, Mary Claire Landry, upon my own personal knowledge, herby depose and declare:

1. My name is Mary Claire Landry. I am the Director of the New Orleans Family Justice Center (“NOFJC”), a federally funded center designed to provide comprehensive services to victims of domestic violence and sexual assault by integrating law enforcement, prosecution, civil legal services, and advocacy in one location. The services provided at the center include a 24-hour crisis hotline, housing assistance and referrals, case management, crisis intervention, civil legal services, individual and group counseling, support groups, children’s services, court advocacy, community capacity building, immigration services, advocacy, and community education outreach. I have been involved with this work since June 2003.

2. I also am the president and owner of Pathways to Wholeness, an organization in New Orleans that provides comprehensive services that promote personal and professional growth and transformation, including to victims of sexual assault and domestic violence. We provide personal and professional coaching, workshops, staff training and development, management and leadership development and consultation, strategic planning, and grant writing. I have held this position since January 2000.

3. I have a Masters in Business Administration from the University of New Orleans, and I am a licensed clinical social worker with a Masters degree from Tulane University.

4. I have worked specifically on behalf of victims of sexual assault and domestic violence in New Orleans since 2000. Additionally I have worked in New Orleans in various capacities in the areas of behavioral health and substance abuse for the past 32 years. That work included close interaction with and assistance to victims of sexual assault and domestic violence.

5. Through my work in New Orleans on behalf of victims of domestic violence and sexual assault, I have heard first-hand accounts of their experiences with the New Orleans Police Department (“NOPD”).



6. In the past decade especially, I have seen victims of domestic violence and sexual assault being re-victimized by the very systems that are designed to protect them. In cases where it is difficult for officers to identify the primary aggressor, we often hear from victims that the police threatened to arrest both parties. Thus, we support the Consent Decree's requirement that NOPD discourage dual arrests. We have also heard police officers say to victims that they should arm themselves to protect themselves. Additionally, we hear from sexual assault victims that some police officers blame them for the rape.

7. I have heard first-hand accounts from victims of officers mistreating them and failing to take adequate reports of domestic violence and sexual assault allegations. Some officers minimize the conduct that is reported to them by these women. I also am aware the NOPD officers discourage many women from reporting and seeking prosecution of these types of crimes. Women often are accused, explicitly or implicitly, of having participated in or "asked for" the abusive and illegal treatment they have received. During their interactions with victims, NOPD officers often convey stereotypical assumptions and judgments about sex crimes and victims of sex crimes, and make inappropriate commentary about their perceived credibility, sexual history, or delay in contacting the police. I have heard first-hand accounts from victims of officers asking victims why they did not resist, why they put themselves in certain situations, and why they did not immediately disclose the assault to police, family, or friends.

8. Where officers do take reports from this vulnerable population, the follow-up investigation either is non-existent or extremely deficient. Just in the past few weeks, during the NOFJC's high-risk assessment team meeting, a case was presented of physical battery and serious stalking where the only charge identified by NOPD was Driving While Intoxicated. This gave the team working with this woman great concern for her safety. We have also heard from rape victims that, even when they have cooperated with the forensic exam and were willing to testify, often there is no follow-up investigation or there is poor or non-existent follow-up communication with them. This is often perceived as re-victimization by the rape victim and creates even more hostility toward the police.

9. Women who are victims of sexual assault and domestic violence often come from the most vulnerable segments of our community. Their experiences with NOPD, and NOPD's reputation for engaging in this kind of discriminatory conduct, lead many women not to report criminal conduct they experience or witness, or to cooperate in subsequent investigations of violent crime. NOPD's behavior when taking and investigating reports of sexual assault and domestic violence heighten many victims' feelings of shame and self-blame, fear of not being believed, and lack of confidence in the criminal justice system, and intensify their reluctance to cooperate with an investigation or prosecution. I have personally heard from victims how NOPD's conduct leaves them apprehensive and distrustful of NOPD. This distrust directly interferes with NOPD's ability to fight violent crime in New Orleans.

10. To help correct these problems, training is urgently needed for detectives and supervisors of sex crimes and domestic violence, as well as patrol officers, who are the

first responders to a complaint of sexual assault and domestic violence. The Consent Decree's requirements for extensive training of these officers on victim interviewing, reporting and investigating sexual assault and domestic violence, and the realistic dynamics of sexual assault, including issues related to response to trauma and delayed reporting, are necessary steps to remediate the discriminatory conduct described above.

11. All of us at the NOFJC have worked with the NOPD over the past years to promote promising and best practices as they relate to investigating these cases. The NOFJC has provided many opportunities for training, including paying for the Superintendent and members of the Domestic Violence Unit ("DVU") to attend the International Family Justice Center Conferences in each of the past five years. Through the technical assistance of the National Family Justice Alliance, the NOFJC has been instrumental in drafting and implementing an integrated Domestic Violence Protocol that includes the best practices of communities across the country. Because of this protocol, we have seen the functioning of NOPD's DVU improve, specifically in the area of follow-up investigations.

12. While we are pleased with these improvements, serious deficiencies remain. The DVU is not adequately staffed to handle the large numbers of active cases. Since Hurricane Katrina, it has operated with only three or four detectives, as opposed to the eight assigned to the unit prior to Katrina. This lack of adequate staffing is exacerbated by the fact that, during high tourist events such as Mardi Gras and the Sugar Bowl, detectives assigned to the DVU are pulled from handling domestic violence cases. Every time these events occur in this very high tourist city, the detectives are unable to handle their domestic violence cases for weeks at a time, resulting in a troubling back-log of cases. We believe this keeps victims in danger and promotes the perception in the community that these cases are not a priority. While we understand that a majority of these cases may be classified as misdemeanor cases, we believe many of them would include felony charges had they been investigated properly. This lack of adequate investigation is due in part to the inadequate staffing of the DVU. The Consent Decree requires that NOPD assign sufficient staff to the DVU. We believe this provision of the Consent Decree is critical.

13. The provisions of the Consent Decree, particularly those related to policing free of gender-bias, represent a crucial, long-awaited step forward for victims of domestic violence and sexual assault. It is my view that the decree will help to ensure police services are provided to victims of sexual assault and domestic violence, and will help NOPD fight crime in New Orleans.

14. I am very familiar with the NOPD Consent Decree and support its approval. I believe that a consent decree which includes court oversight is necessary to achieve sustainable reform of NOPD.

I declare under penalty of perjury that the foregoing is true and correct.

DATED September 18, 2012

  
MARYCLAIRE LANDRY

**OPPORTUNITIES FOR COMMUNITY INVOLVEMENT**  
**IN CONSENT DECREE IMPLEMENTATION**

**1. Crisis Intervention Team**

- The CIT Planning Committee, which analyzes and recommends appropriate changes to policies, procedures, and training methods regarding police contact with persons who may be mentally ill, must include representation from City-contracted mental health professionals. NOPD must seek representation from the civilian leadership of the Mobile Crisis Transportation Unit, local municipal government, the New Orleans Metropolitan Human Services District, community mental health professionals, professionals from emergency health care receiving facilities, members of the local judiciary, the Orleans Parish Criminal Sheriff's Office, homeless service agencies, and mental health professionals and advocates. ¶ 112
- The CIT training faculty should include volunteer local area professionals and advocates to the greatest extent possible. ¶ 116

**2. Investigations of Sexual Assault and Domestic Violence**

- NOPD must establish protocols for forensic examinations of both victims and suspects, as well as evidence preservation and crime scene management in the sexual assault context. These protocols shall be established in collaboration with the New Orleans SART and shall incorporate the recommendations of the National Protocol for Sexual Assault Medical Forensic Examination recommended protocols governing police procedure. ¶ 199
- NOPD must work with the DA, community service providers, and other stakeholders to develop and implement a SART and collaborative SART agreement within 180 days of the Effective Date, to provide a coordinated and victim-centered approach to sexual violence. ¶ 210
- NOPD must ensure that feedback and recommendations from the committee of community representatives who will be reviewing certain sexual assault and domestic violence investigations are incorporated into policies, general training, remedial training for specific officers or detectives, and the decision to re-examine and re-open investigations, if warranted. ¶ 211.
- NOPD must closely collaborate with the DA and community providers to ensure that domestic violence policies and protocols remain victim-centered and effective. The Superintendent or a designee at the level of Commander or above has to meet with the Executive Committee of the NOFJC on at least a quarterly basis to discuss and coordinate policy, training, and other aspects of NOPD's response to domestic violence. NOPD must designate, and include at this quarterly meeting, an NOPD





employee at the rank of sergeant or above responsible for reviewing and coordinating NOPD's policies on domestic violence. This designated officer shall review NOPD's domestic violence policies for internal consistency, and consistency with the Integrated Protocol developed by the NOFJC, the Blueprint for Safety, and any similar plan adopted by the City. He or she shall closely collaborate with NOFJC and the DA to strengthen the Integrated Protocol and/or the Blueprint for Safety to ensure that they comport with best practices, NOPD policies, and this Agreement, and to review and update policies at least annually, or as necessary. ¶ 217

### **3. Early Warning System**

- NOPD must seek the services of mental health professionals and others to ensure that interventions are appropriate and effective. ¶ 319.d)

### **4. Training Generally**

- The Training Advisory Committee must include a community representative from the Police-Community Advisory Board, two representatives from area colleges and universities, an outside police professional with expertise in model training practices, a representative from the FBI, the District Attorney's office, the USAO, and the City Attorney's Office. ¶ 248
- The training plan must comport with best practices, and must be annually reviewed and updated. In conducting the annual review, the Training Advisory Committee must consider input from members of the community. ¶¶ 249, 251
- The Curriculum Director has to ensure that all curricula, lesson plans, instructor's qualifications, and testing materials are reviewed, where appropriate, by persons external to NOPD with expertise in the relevant lesson areas. ¶ 256
- NOPD must actively seek out and retain qualified instructors, including instructors from outside NOPD, with expertise in areas such as law and investigations, as necessary, to supplement the skills of in-house training staff and adjunct instructors. Additionally, NOPD will incorporate experts and guest speakers such as judges, prosecutors, including representatives of the USAO, crime victims, and community members, to participate in courses at the Training Academy. ¶ 259

### **5. Stops, Searches, and Arrests**

- Stop, Search, and Arrest training must be taught by a qualified legal instructor with significant experience in Fourth Amendment issues. ¶ 162

### **6. Bias-free policing**

- Cultural awareness training shall be designed and delivered in cooperation with City Human Relations Commission staff and community representatives selected by the Commission. ¶ 226.g

- Within 180 days of the Effective Date, NOPD will develop and implement a process of consultation with representatives of the LEP community to develop and at least annually review: implementation of the language assistance plan, including areas of possible collaboration to ensure its effectiveness; identification of additional languages that would be appropriate for translation of materials; accuracy and quality of NOPD language assistance services; and concerns, ideas, and strategies for ensuring language access. ¶ 193

#### **7. Officer Assistance and Support**

- Mental health professionals must be involved in officer training on use of force. ¶ 294

#### **8. Community Engagement**

- All neighborhoods will have a regularly assigned officer who engages in problem identification and solving activities with the community members around the community's priorities. ¶ 224
- NOPD will support community groups in each District (e.g., NONPACC) and will meet regularly with the communities each District serves. In addition, within 240 days of the Effective Date, NOPD will develop and implement mechanisms to measure officer outreach to a broad cross-section of community members, with an emphasis on youth outreach, to establish extensive problem-solving partnerships and develop and implement cooperative strategies that build mutual respect and trusting relationships with this broader cross-section of stakeholders. NOPD will develop and implement partnerships to provide immediate and ongoing support to families of victims of homicides and other serious crimes. ¶ 227
- Within 180 days of the Effective Date, NOPD will develop and implement a Community Outreach and Public Information program in each NOPD District. ¶ 432
- The Community Outreach and Public Information program will include at least one semi-annual open meeting in each of NOPD's eight Districts for the first year of the Agreement, and one meeting in each District annually thereafter. These open meetings will be led by the Superintendent or Deputy Superintendent and will inform the public about the requirements of the Agreement; inform the public regarding NOPD's progress toward meeting the requirements; and address areas of community concern related to public trust and constitutional policing. ¶ 433
- The Community Outreach and Public Information meetings will include summaries of all pertinent audits and reports completed pursuant to this Agreement and inform the public of any policy changes or other significant actions taken as a result of this Agreement. ¶ 434.

- For at least the first two years of the Agreement, every NOPD officer and supervisor assigned to a District will attend at least two community meetings (e.g., NONPACC and other meetings with residents, and business and religious groups) per year in the geographic area to which the officer is assigned. ¶ 435
- NOPD and the City will participate in a community-based restorative justice project. The aim of this project shall be to help remedy mistrust between NOPD and the broader New Orleans community and create an environment for successful problem-solving partnerships. ¶ 439

#### 9. The Police Community Advisory Board

- NOPD will work collaboratively with PCAB to develop and implement public safety strategies that respect and reflect each community's public safety priorities and concerns about particular police tactics. ¶ 437
- NOPD will participate in quarterly meetings scheduled by PCAB and will have command/executive level staff representation present at all regularly scheduled meetings. ¶ 438

#### 10. Policies

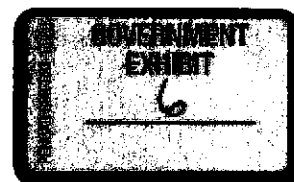
*Many provisions require that NOPD implement policies that are consistent with "best practices" or "current professional standards." Learning about and incorporating best practices and professional standards will, in many instances, require soliciting input from community stakeholders who have substantive knowledge about the issue addressed by the policy. Some examples of provisions that may require such consultation include:*

- NOPD must develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with best practices and current professional standards. ¶ 28
- NOPD must finalize and implement canine policies and procedures that comply with applicable law and the requirements of this Agreement, and that comport with best practices and current professional standards. ¶ 38
- NOPD officers acting as interpreters during interrogations must be trained in using interpretation protocols consistent with best practices. ¶ 168
- NOPD must ensure its policies and procedures on sexual assault comply with applicable law and comport with best practices and current professional standards. ¶ 195
- NOPD must incorporate IACP recommendations for VAW Law Enforcement Best Practices into its training on domestic violence and sexual assault, and update

procedural requirements annually, to reflect changes in policy and law and developments in research and best practices. ¶¶ 203, 219

- NOPD must develop and implement fair and consistent promotions practices that comport with best police practices and the requirements of this Agreement and result in the promotion of officers who are both ethical and effective. ¶ 302

Action Required	Paragraph No.	Deadline Date
<b>Effective Date</b>	<b>Paragraph 14</b>	<b>September 23, 2012</b>
Provide opportunity for officer review of Agreement.	Paragraph 24	November 22, 2012
Establish schedule for completing policies, procedures, and manuals within 365 days of the Effective Date as required by Paragraph 15.	Paragraph 20	December 22, 2012
Create a full-time, Department-wide training liaison position within the training division; designate a single training coordinator in each District, and central organizational unit to coordinate and document training.	Paragraph 247	December 22, 2012
Create implementation plan for EWS.	Paragraph 317	December 22, 2012
Develop/implement schedule for testing recording equipment.	Paragraph 329	December 22, 2012
City agrees to request Civil Service Commission to post online its decisions related to NOPD discipline.	Paragraph 425	December 22, 2012
City and DOJ shall together select a Monitor.	Paragraph 477	December 22, 2012
Establish a Training Advisory Committee.	Paragraph 248	January 21, 2013
Develop/implement system for formal coordination between command-level NOPD and DA, judges, Orleans Public Defenders, FBI, USAO, and IPM.	Paragraph 430	January 21, 2013
Establish schedule for delivering all training required by the Agreement within 365 days of Effective date as required by	Paragraph 26	March 22, 2013
Implement a Crisis Intervention Planning Committee to direct development/ implementation of the CIT.	Paragraph 111	March 22, 2013
Designate a language access coordinator.	Paragraph 192	March 22, 2013
Develop process for consultation with representatives of LEP community to develop and review implementation of the language assistance plan.	Paragraph 193	March 22, 2013
Develop and implement a SART and collaborative SART agreement to direct approach to sexual violence.	Paragraph 210	March 22, 2013
Reassess staffing and deployment to ensure core operations support community policing.	Paragraph 223	March 22, 2013
Remake COMSTAT meeting.	Paragraph 229	March 22, 2013
Conduct survey of community regarding perceptions of NOPD/public safety.	Paragraph 230	March 22, 2013
Develop written, strategic recruitment plan.	Paragraph 234	March 22, 2013
Develop and implement a system for psychological screening and assessment of all NOPD recruit candidates.	Paragraph 238	March 22, 2013
Establish standardized qualifications and guidance for who may serve on a recruit applicant interview panel.	Paragraph 241	March 22, 2013
Establish standardized scoring system for interview panelists to assess applicants.	Paragraph 243	March 22, 2013



## Action Deadlines Following Effective Date

Develop/implement Community Outreach and Public Information program in each NOPD district.	Paragraph 432	March 22, 2013
City files status report to the Court.	Paragraph 469	March 22, 2013
Develop and implement mechanisms to measure officer outreach.	Paragraph 227	May 21, 2013
Develop measurements to assess effectiveness of community partnerships.	Paragraph 228	May 21, 2013
Subcommittee of Crisis Intervention Planning Committee develops policies for coordinating with local mental health and social service agencies.	Paragraph 113	June 20, 2013
Subcommittee of Crisis Intervention Planning Committee develops 40-hour curriculum and training for first responders.	Paragraph 116	June 20, 2013
Develop report format to collect data on investigatory stops and searches.	Paragraph 149	June 20, 2013
Designate interview rooms for all Districts and ensure rooms contain required recording technology.	Paragraph 167	June 20, 2013
Use qualified interpreters in Mirandizing/interrogating LEP	Paragraph 168	June 20, 2013
Develop process for determining whether new items need to be made accessible for LEP individuals.	Paragraph 194	June 20, 2013
Training Advisory Committee shall develop a written training plan for NOPD's recruit academy, field, and in-service training	Paragraph 249	June 20, 2013
Assign all Field Operations Bureau District officers to a single supervisor.	Paragraph 307	June 20, 2013
Assign first-line patrol supervisors to no more than eight officers.	Paragraph 310	June 20, 2013
Develop/implement program to identify and train acting patrol supervisors who can fill-in for assigned supervisors as needed.	Paragraph 311	June 20, 2013
Hire at least one qualified information technology specialist for	Paragraph 317	June 20, 2013
City (through PIB) reviews NOPD's anti-retaliation policy/implementation.	Paragraph 377	June 20, 2013
Recruit, assign, and train a sufficient number of personnel to FIT.	Paragraph 97	June 30, 2013
Development of all policies, procedures, and manuals	Paragraph 15	September 23, 2013
Complete delivery of training required pursuant to Agreement, except as noted.	Paragraph 26	September 23, 2013
Provide officers with 40 hours of use of force training.	Paragraph 109	September 23, 2013
Deliver firearms training to all officers.	Paragraph 110	September 23, 2013
Crisis Intervention Planning Committee selects CIT officer	Paragraph 113	September 23, 2013
Begin training for all newly selected CIT officers.	Paragraph 117	September 23, 2013
Provide all current officers with eight hours of training in responding to those in behavioral or mental crisis.	Paragraph 118	September 23, 2013
Offer the 40-hour crisis intervention training to all dispatchers.	Paragraph 119	September 23, 2013
Provide officers with 24 hours of training on stops, searches and arrests.	Paragraph 162	September 23, 2013

## Action Deadlines Following Effective Date

Develop and deliver 24 hours of training for detectives on interrogation procedures.	Paragraph 170	September 23, 2013
Provide officers with four hours of training on bias-free policing.	Paragraph 177	September 23, 2013
Incorporate requirements on bias-free policing into hiring, promotion, and performance processes.	Paragraph 182	September 23, 2013
Develop/implement plan to provide services regardless of immigration status.	Paragraph 183	September 23, 2013
Assess NOPD programs/initiatives/activities to ensure none are administered in discriminatory manner.	Paragraph 188	September 23, 2013
Train personnel on language assistance services.	Paragraph 191	September 23, 2013
Develop mechanism to select committee of community representatives, and enable committee to review various sexual assault records.	Paragraph 211	September 23, 2013
Provide 8 hours of in-service training on community policing.	Paragraph 226	September 23, 2013
Create/staff position of Curriculum Director.	Paragraph 252	September 23, 2013
Develop/implement lesson plan template for training courses.	Paragraph 253	September 23, 2013
Develop/implement recruit academy curricula.	Paragraph 254	September 23, 2013
Develop/implement in-service curricula.	Paragraph 255	September 23, 2013
Develop/implement process that allows for review of training effectiveness.	Paragraph 262	September 23, 2013
Develop/implement appropriate testing policies.	Paragraph 263	September 23, 2013
Develop/implement recruit training program.	Paragraph 264	September 23, 2013
Ensure sufficient staffing of recruit academy.	Paragraph 273	September 23, 2013
Provide recruits with appropriate training facilities.	Paragraph 274	September 23, 2013
Develop/implement field-training program for recruit academy graduates.	Paragraph 275	September 23, 2013
Create mechanism allowing recruits to provide confidential feedback on training.	Paragraph 280	September 23, 2013
Review/revise FTO participation policy to attract best FTO candidates.	Paragraph 281	September 23, 2013
Training advisory committee conducts study of implementing training model incorporating community/problem-oriented policing principles and learning methods.	Paragraph 282	September 23, 2013
Develop/implement mandatory annual in-service training program, including at least 64 hours of in-service training.	Paragraph 283	September 23, 2013
Develop/implement system allowing Training Division to track training records.	Paragraph 286	September 23, 2013
Develop/implement accountability measures to ensure successful completion of required training programs.	Paragraph 287	September 23, 2013
Develop/implement system to evaluate officer performance in specific areas.	Paragraph 295	September 23, 2013

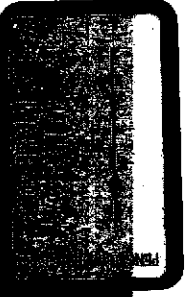


## Action Deadlines Following Effective Date

Train supervisors on how to effectively evaluate officer	Paragraph 300	September 23, 2013
Develop/implement promotions practices.	Paragraph 302	September 23, 2013
Maintain/operate required audio/visual devices in one half of all relevant vehicles.	Paragraph 327	September 23, 2013
Provide supervisors with handheld digital recording devices and require use of devices to record complainant/witness statements.	Paragraph 331	September 23, 2013
Develop/implement searchable list of secondary employment opportunities.	Paragraph 338	September 23, 2013
Review staffing of PIB and ensure effective staffing.	Paragraph 380	September 23, 2013
Administer 40 hours of initial training and eight hours annual training in conducting officer misconduct investigations to all appropriate personnel.	Paragraph 382	September 23, 2013
Develop/implement plan for conducting integrity audit checks.	Paragraph 383	September 23, 2013
Develop/implement program to ensure community educated on misconduct complaints.	Paragraph 384	September 23, 2013
Ensure availability of effective mechanisms for making misconduct complaints.	Paragraph 384	September 23, 2013
Revise policy/training to ensure proper handling of complaints.	Paragraph 388	September 23, 2013
Develop/implement centralized numbering/tracking system for all misconduct complaints.	Paragraph 395	September 23, 2013
Maintain/operate required audio/visual devices in all relevant	Paragraph 327	September 23, 2014
Monitor shall conduct comprehensive assessment of whether intended outcomes of Agreement achieved and determine any necessary modifications to Agreement.	Paragraph 456	September 23, 2014
Train 20% of patrol division in the CIT program.	Paragraph 115	September 23, 2015
Training completed for all new CIT officers.	Paragraph 117	September 23, 2015
Fully implement EWS program.	Paragraph 324	September 23, 2015

New Orleans Police Department  
**Consent Decree**

U.S. Department of Justice  
&  
City of New Orleans



# Timeline

- 1996 – DOJ Opens Investigation of NOPD
- 2004 – DOJ and City resolve DOJ investigation without Consent Decree
- May 2010 – Mayor Landrieu asks DOJ to investigate NOPD
  - DOJ initiates new investigation of NOPD
- March 2011 – DOJ issues Report of Findings
- July 2012 – Proposed Consent Decree Filed

# DEPARTMENT OF JUSTICE FINDINGS



# Patterns and Practices of Misconduct

in violation of the 4<sup>th</sup>

Amendment

in violation of the 4<sup>th</sup>

Amendment

in violation of Federal Law and the

Constitution

status

Based on

Based on

Based on

# Causes

- ④ Outdated, inconsistent and legally inaccurate
- ④ Ineffective of high-quality candidates
- ④ too lax; supervisors not held accountable for supervising
- ④ too weak to identify and effectively respond to problematic trends or officers
- ④ that undermine lines of authority and facilitate abuse and corruption
- ④ Deficient officer practices mean that too often good officers are overlooked and bad officers promoted
- ④ too often not supported by evidence and take too long to complete
- ④ Even where there is a finding of misconduct, discipline is lax.

# Causes (continued)

- ④ Failure to support officers with and
- ④ Severely deficient both in amount and type, in every area
- ④ ad hoc, insufficient, and difficult to access
- ④ Supervision is not just about accountability, it is about guidance and instruction
- ④ exacerbates distrust and deprives community of its voice in establishing community priorities for public safety and the importance of respectful, constitutional policing in preventing crime



FAIR

ADEQUATE

REASONABLE

# What the Consent Decree Requires. . .

*(the big picture)*

- New systems that ensure officers know how to do to police constitutionally and effectively
- Extensive additional training to ensure that officers know how to police in accordance with policies and the constitution
- New systems to ensure that officers follow policy and the law in

# Use of Force

- ensure that officers use only the minimal force necessary—as required by law to
- Train officers to de-escalate situations and avoid force
- Train all officers on how to deal with persons in mental health crisis and create a cadre of specially trained CIT officers to ensure that every shift in every District has a CIT officer

# Force Reports and Investigation

- New systems for reporting, investigating, and reviewing force to ensure that force is consistent with policy
- Reporting:
  - More types of force must be reported directly by officers who use and witness force
- Investigation and Review:
  - Supervisors must report to the scene of a force incident to conduct a full investigation (supervisor must review and approve level one uses of force)
  - The most serious uses of force will be assigned to a specially trained Force Investigation Team
  - PIB will immediately notify and consult with DA, IPM, FBI, and USAO where indication of criminal conduct

# Use of Force Review

- Chain-of-Command review all use of force investigations and send back findings that are not supported by the evidence
- UFRB, made up of three Deputy Superintendents reviews and orders additional investigation where relevant evidence not collected or findings are not supported by a preponderance of the evidence
- Supervisors will be how to investigate force incidents and will be for doing so
- Superintendent responsible for ensuring where force is used inconsistently with policy

# STOPS, SEARCHES & ARRESTS



# Stops, Searches & Arrests

- New searches are based on reasonable suspicion and probable cause, not on race, ethnicity, or any other impermissible factor, to ensure stops and require supervisory approval
- Stops, searches, and arrests will be documented and supervisors will to ensure police action was consistent with law and policy
- United States Attorney's Office will to discuss quality of arrests, refer concerns for investigation, and report on previous referrals.
- Individuals can consistent with First Amendment

\*



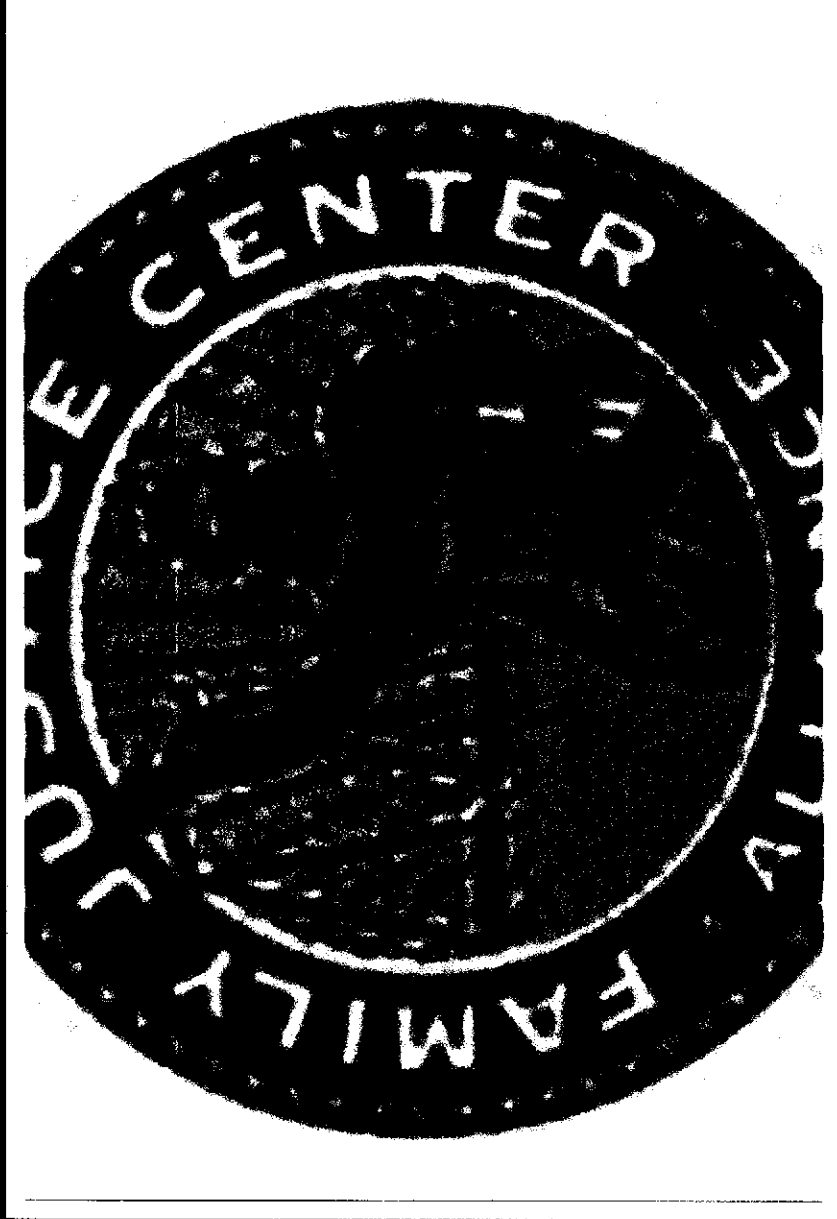
# Custodial Interrogations and Lineups

Officer administering will not know which photograph shows suspect

and all interrogations that involve suspected homicides or sexual assaults, will be video- and audio-recorded in their entirety

must be provided during the interrogation of any

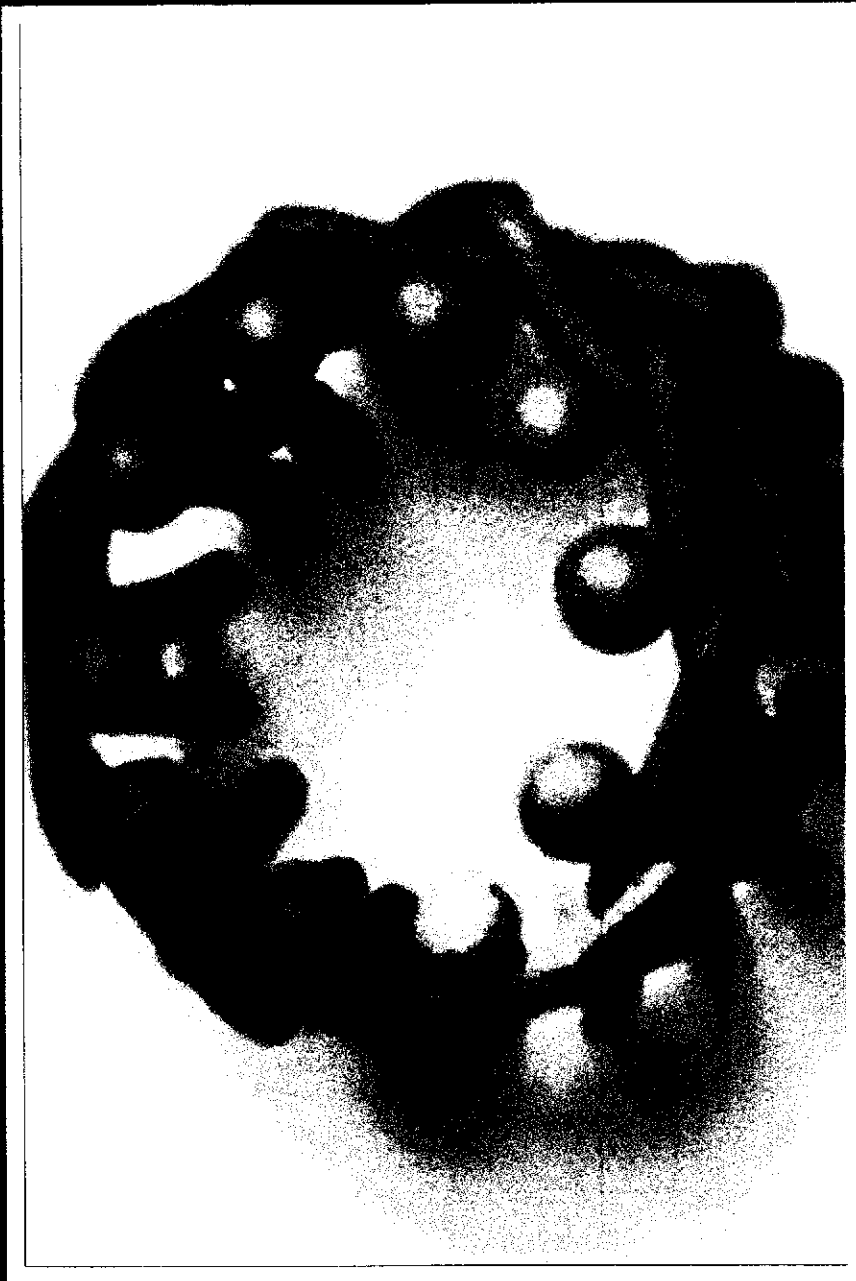
# Bias-Free Policing



# Bias-Free Policing

- New policies, training, and data collection to based on race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.
- No law enforcement action on the basis of or
- Develop and implement a to ensure officers can provide needed police services
- to improve investigations of domestic violence and sexual assaults

COMMUNITY ENGAGEMENT



# Community Engagement

- ❖ Modify deployment strategies as necessary to ensure that core operations support effective
- ❖ neighborhoods will have a based on who engages in
- ❖ Improved training for officers on how to problem solve and do real community policing based on community partnerships and community engagement
- ❖ of community residents, officers, and arrested detainees every 2 years to measure public satisfaction with policing

# Recruit Selection and Training

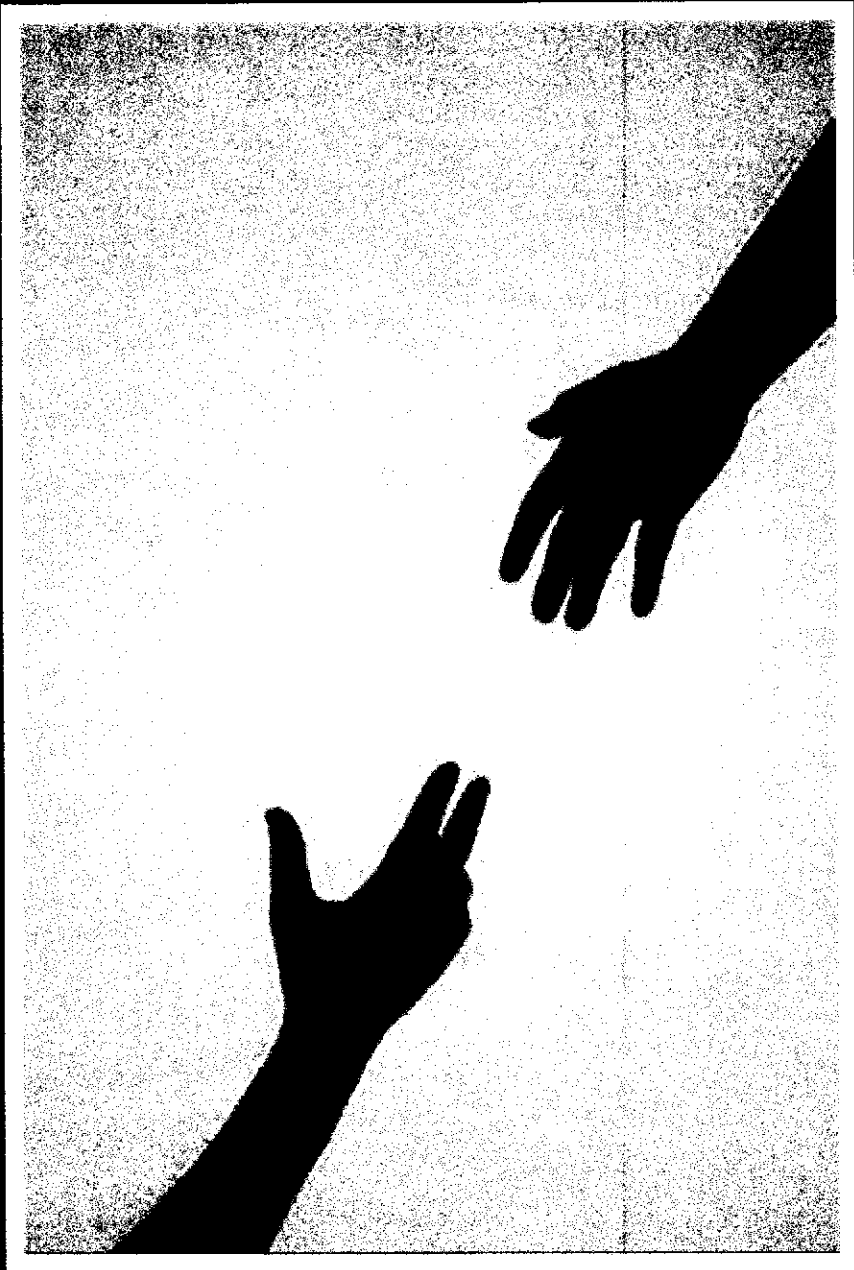


# Recruit Selection and Training

- New mechanism to improve quality of recruits and better prepare them to be effective and ethical officers
- Strategic Recruitment Plan to
- Improved for Recruitment Unit and Academy staff
- Longer, more stringent, training Academy and revamped Field Training Program
- extensive in quantity and breadth



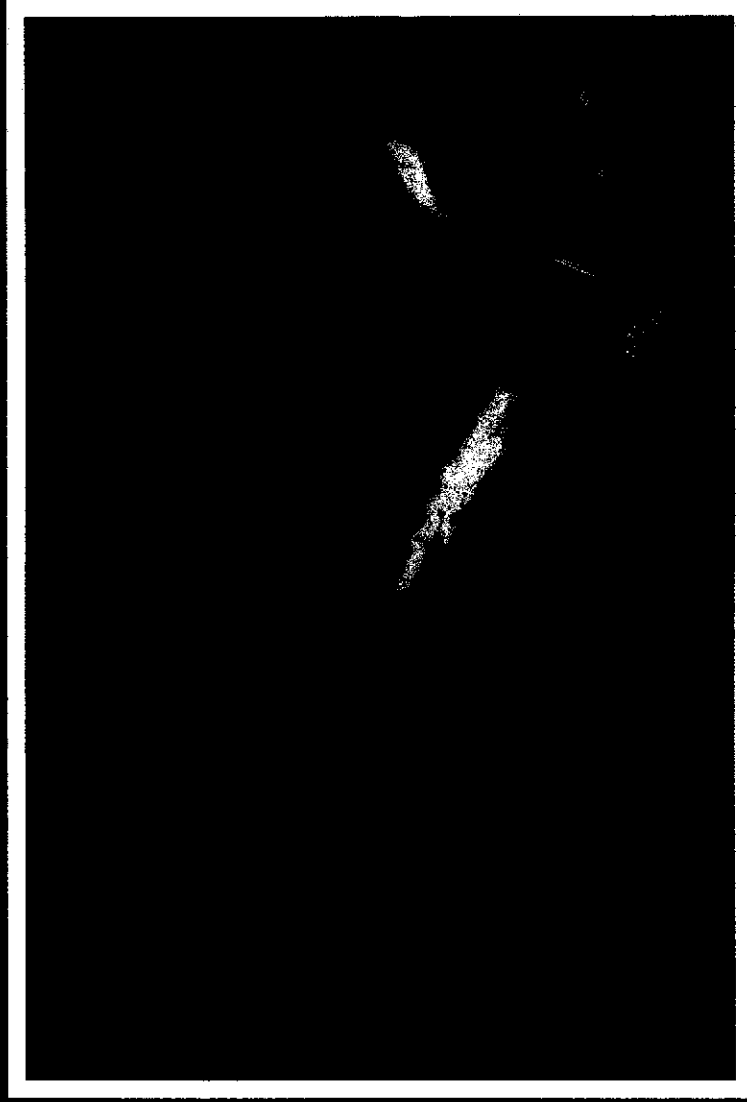
OFFICER ASSISTANCE & SUPPORT



# Officer Assistance & Support

- and mental health services including a range of services for officers.
- Access to from competent providers with no conflicting interests, especially following potentially traumatic experiences.
- Available services will include and stress management techniques and services for

# PERFORMANCE EVALUATIONS & PROMOTIONS



# Performance Evaluations and Promotions

- Recognize and promote
- Document and respond to poor performance
- Formalize performance evaluations to ensure and train supervisors how to evaluate officers
- [REDACTED] will be prioritized as criteria for promotion

# Supervision

- ④ requirements for of officers (1:8), including broader and strict requirements for
- ④ Most officers assigned to a single, consistent, and clearly-defined supervisor and work same days and hours as their supervisors.
- ④ Supervisors trained on how to effectively supervise, and will be for the quality of their supervision.
- ④ An will allow the Department to quickly identify problematic behaviors and to take appropriate corrective action.
- ④ Closer documentation of officer activity on video and audio.

# SECONDARY EMPLOYMENT



# Secondary Employment

• New Secondary Employment system will ensure that NOPD officers primary work is as a sworn officer

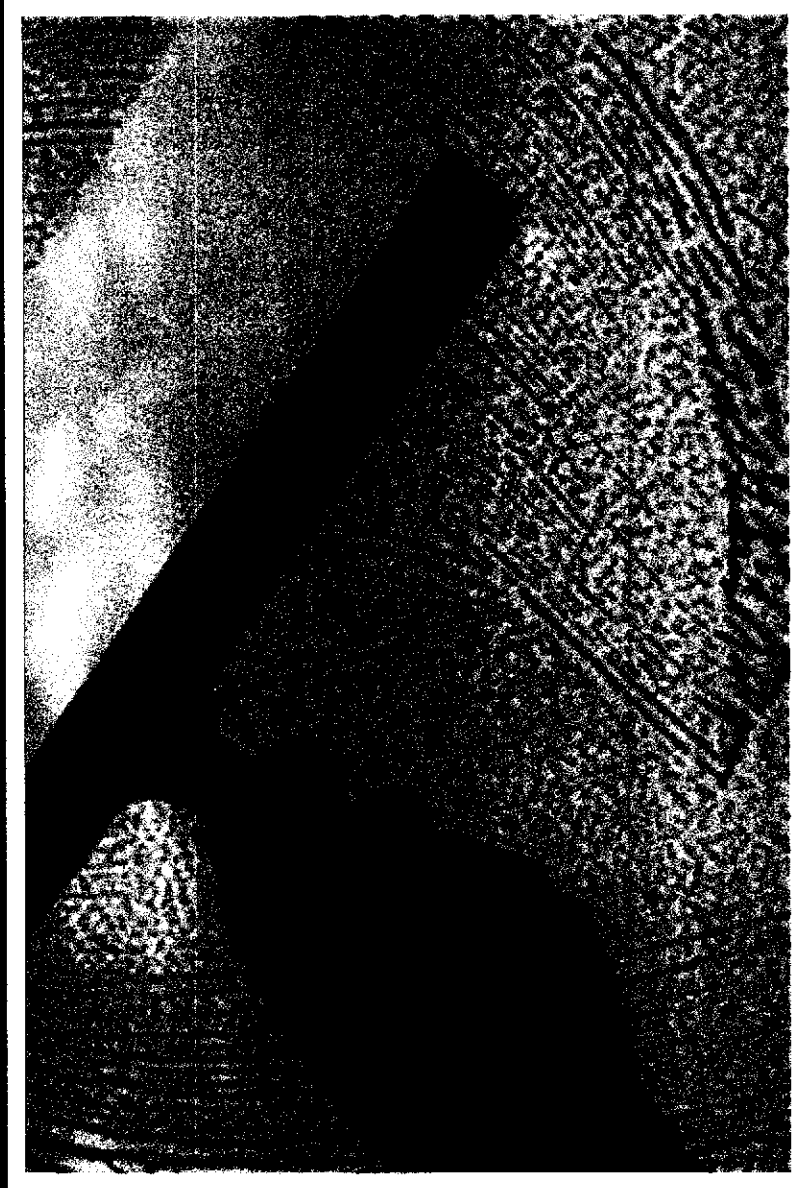
• NOPD officers working secondary employment



# Misconduct Complaint Investigations

- The process for complaining about misconduct will be and investigations will be
- Changes to complaint classification will help ensure that all allegations of officer misconduct are fully investigated
- New rules for and will help ensure that officers who commit misconduct are
- Changes to NOPD's disciplinary processes will help ensure that discipline for misconduct is

# TRANSPARENCY & OVERSIGHT



# Transparency & Oversight

- Policies and procedures will be
- Consent Decree available.
- Annual Reports of NOPD activities will be publicly available
- to information, including previously withheld information, and with NOPD now has the

# Implementation and Enforcement

# What is the role of the . . .

- and solution to the problems DOJ found
- has the responsibility of these requirements
- hold the City and NOPD for implementing the Decree

*Dist. of Columbia*  
*log*  
*comes*

# ROLE OF U.S. DISTRICT COURT

• Court Retains Jurisdiction Over Agreement to:

• Any Disputes

• Determine appropriate

if Consent Decree not implemented as Agreed ¶ 486

• Approve (or not) Parties ¶ 487

proposed by the

• Determine when and whether City has attained

with the Consent Decree

and when that compliance has been sustained for two years ¶ 491

# ROLE OF U.S. DISTRICT COURT

*Potential Disputes include:*

- Whether Agreement are consistent with
- Monitor- Outcome Assessment measurements for changing the
- Whether a particular provision of the Agreement has been
- Whether the City has implemented the Consent Decree



# ROLE OF DOJ

- Provide and In Some instances
- Policies for Compliance with Agreement (Comment)
- Monitoring Plan (Approval)
- Recommendations to Change Outcome Assessment data (Approval)
- Implementation/Outcome Assessment Methodology (Approval)
- Monitor's Quarterly Reports (Comment)
- Bring as necessary to ensure that Consent Decree is being implemented and that NOPD and City with the Consent Decree ¶ 486
- with all Stakeholders Agreement

# ROLE OF THE MONITOR

*“The Monitor shall  
whether the  
requirements of this  
Agreement have been  
implemented, and whether  
this implementation is  
resulting in the  
treatment of  
individuals by NOFD.”*

¶444

# Monitor has Broad Access to Information

- On-site visits and assessments 470
- Access to including, for example, trainings, meetings, critical incident reviews, use of force review boards, crime scenes, criminal investigations, and disciplinary hearings. ¶ 470, 471, 475
- NOPD must within twelve hours of any critical firearms discharge, in-custody death, or arrest of officer.
- Provided copies of all policies, procedures, manuals for (see below) ¶¶ 21,23

~~BB~~  
JFM  
NCPD  
M...  
M...

# Monitoring Plan

*must for conducting reviews, audits and assessments within 90 days of assuming duties as Monitor. The must this plan. ¶450*

*Monitor must recommend any to measurements within 120 days.*

*Parties must review and approve any changes. ¶*

# Monitor's Duties

Review ¶ 21, 22, 447

Review ¶ 447

Conduct to  
Determine Whether Agreement Implemented ¶ 446,  
447  
Coordinate and with the Parties (¶  
460); IPM (¶ 459, 454); and Community Stakeholders  
(¶ 461).  
to the Court, the Parties, and the Public the  
Status of the Agreement Implementation ¶ 457

# Monitor's Duties

Assessments ¶ 448

Biennial Survey ¶¶ 230-233

Make and Provide  
[Limited] as

Necessary ¶ 455

Comprehensive ¶ 456

# Coordination with the IPM

- Monitor and IPM have both to Implementing and Constitutional Policing
- The Monitor is expected to the IPM
- The Monitor specifically is required to with the IPM:
  - to duplication of and;
  - when conducting use of and



# can do all this?

• A monitoring team with the right to complete this big job.

- Proposals Due
- Evaluation Committee Reviews Each Proposal
- Finalists Interviewed in a
- Parties' Selection Subject to

# ROLE OF CITY AND NOPD

The City and Police Department remain ultimately responsible for constitutional policing as well as for ensuring that the Consent Decree is implemented within the agreed upon time frames.

# ROLE OF CITY AND NOPD

- Ensure Necessary for Monitor, DOJ, OIPM, and Court to fulfill their roles. ¶ 468
- Establish Unit to Making Sure Consent Decree is Implemented ¶ 467
- ¶ 458 on Monitor's Quarterly Reports.
- File with Court Every Six Months ¶ 469
- and Set Aside funds for Additional Technical Assistance ¶¶ 480, 481, 483

# Role of the Community

Provide

a number of new initiatives:

with NOPD to establish and for enforcement

# TERMINATION OF CONSENT DECREE

This Agreement terminates when “the City and NOPD have been in with this Agreement for ‘Full and Effective Compliance’ shall be defined to require with all material requirements of the Agreement as pursuant to the Agreement’s outcome measures.” (§491)

# Next Steps

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** : **CIVIL ACTION NO.**  
 : **12-CV-01924**  
**VERSUS** :  
 : **SECTION E**  
 : **JUDGE SUSIE MORGAN**  
**CITY OF NEW ORLEANS** :  
 : **DIVISION 2**  
 : **MAGISTRATE WILKINSON**

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**EXHIBIT LIST**

The Defendant, City of New Orleans ("City"), submits the following exhibits, which will be presented to the Court during the Fairness Hearing scheduled for September 21, 2012:

- Admitted* {
- Exhibit A: Declaration of Gerald Chaleff
  - Exhibit B: Affidavit of Lieutenant Brian Monteverde (with Attachment 1- Emails transmitting draft policies to BOP, FOP, and PANO)
  - Exhibit C: Affidavit of Captain Michael Sauter



Respectfully submitted,

/s/ Sharonda R. Williams

MATTHEW J. LINDSAY (LSB #30599)  
ASSISTANT CITY ATTORNEY  
CHRISTY HAROWSKI (LSB #30712)  
ASSISTANT CITY ATTORNEY  
MARY KATHERINE TAYLOR (LSB#32719)  
ASSISTANT CITY ATTORNEY  
CHURITA HANSELL (LSB#25694)  
DEPUTY CITY ATTORNEY  
ERICA N. BECK (LSB #3000)  
CHIEF DEPUTY CITY ATTORNEY  
SHARONDA R. WILLIAMS (LSB#28809)  
CHIEF DEPUTY CITY ATTORNEY  
RICHARD F. CORTIZAS (LSB #28890)  
CITY ATTORNEY  
1300 Perdido Street, Ste. 5E03  
New Orleans, Louisiana 70112  
Telephone: 504-658-9920  
Facsimile: 504-658-9868  
shrwilliams@nola.gov

BRIAN CAPITELLI (LSB#27398)  
RALPH CAPITELLI (LSB#3858)  
CAPITELLI & WICKER  
Energy Centre  
1100 Poydras Street, Ste. 2950  
New Orleans, LA 70163  
Telephone: 504-582-2425

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Exhibit List has been served on all counsel of record via hand delivery this 21st day of September, 2012.

/s/ Sharonda R. Williams  
SHARONDA R. WILLIAMS

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA : CIVIL ACTION NO.  
12-CV-01924  
  
VERSUS :  
  
SECTION E  
JUDGE SUSIE MORGAN  
  
CITY OF NEW ORLEANS :  
DIVISION 2  
MAGISTRATE WILKINSON

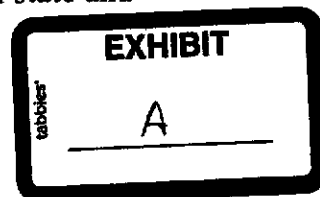
STATE OF California

COUNTY OF Los Angeles

**DECLARATION OF GERALD L. CHALEFF**

I, Gerald L. Chaleff, upon my own personal knowledge, hereby depose and declare:

- 1 I am of the age of majority, and I have personal knowledge of the facts set forth herein.
- 2 I currently hold the position of Police Administrator-Special Assistant for Constitutional Policing for the Los Angeles Police Department, which is the civilian equivalent of Deputy Chief of Police.
- 3 I am a graduate of The Harvard Law School and have practiced law for 45 years.
- 4 I have been a Deputy District Attorney for Los Angeles County, a Deputy Public Defender for Los Angeles County, a partner in my own firm for 20 years, a partner of the law firm of Orrick, Herrington & Sutcliffe (now known as Orrick), and a Senior Advisor to the City Attorney of Los Angeles, prior to my present employment.
- 5 My practice consisted of primarily criminal defense with some experience in civil litigation
- 6 I have practiced in both federal and state courts
- 7 I have been recognized as an expert in criminal defense in both state and federal courts.



8. I have been elected a fellow of the American College of Trial Lawyers.
9. I served as a Deputy General Counsel to the Webster Commission, which examined the Los Angeles Police Department's response to civil unrest in 1992, following the verdict in the first Rodney King trial
10. I served as President of the Los Angeles County Bar Association, the largest voluntary bar association in the United States.
11. I was a member of the California Commission on the Fair Administration of Justice. The commission was established by the California State Senate to study and review the administration of justice in California, to determine the extent to which the system had failed in the past, to examine and recommend improvements and proposals to further ensure that the administration of criminal justice in California is just, fair and achieves proper results.
12. I have served as president of the Inner City Law Center, a homeless outreach program, on the board of the Constitutional Rights Foundation, the Southern California chapter of the American Civil Liberties Union.
13. I was appointed to the Los Angeles Police Commission in August 1997 and served as president of the Commission from 1999 to February 2001
14. As President of the Los Angeles Police Commission, I was appointed a member of the four person negotiating team for the City of Los Angeles to negotiate with the United States Department of Justice Consent Decree
15. This negotiation took place over a six month period and culminated in a Consent Decree agreed to by the parties and approved by Judge Gary Feess of the Central District of California on June 15, 2001
16. The Consent Decree consisted of 187 paragraphs.
17. On January 13, 2003, I was appointed to the Los Angeles Police Department as Bureau Chief of the Consent Decree Bureau with the responsibility of implementing the requirements of the Consent Decree.
18. As Bureau Chief of the Consent Decree, it was my responsibility to coordinate with the Department of Justice, the Independent Monitor, community organizations, the Mayor and City Council, the Police Commission, the Inspector General and members of the Los Angeles Police Department.
19. The City of Los Angeles and the Los Angeles Police Department have successfully fulfilled the requirements of the Consent Decree.
20. In light of my experience and expertise in implementing the Consent Decree in Los Angeles, I have been asked to advise and consult with other police departments throughout the United States.

- 21 In light of my experience and expertise in implementing the Consent Decree in Los Angeles, counsel for the City of New Orleans retained me to participate in and advise the City in the negotiation of the proposed Consent Decree between the City of New Orleans and the United States of America-Department of Justice, which has been filed in *United States of America v City of New Orleans*, U.S. District Court for the Eastern District of Louisiana Civil Docket No. 12-1924.
- 22 I reviewed the March 16, 2011 findings issued by the United States Department of Justice ("DOJ") and participated in the extensive and detailed negotiation sessions between the parties.
- 23 The proposed Consent Decree that has resulted from the extensive negotiations between the parties address the findings set forth in the DOJ's March 16, 2011 findings letter, while ensuring the best practices are implemented, applicable law is followed, and citizens and New Orleans Police Department ("NOPD") employees are protected.
- 24 Based upon my experience and participation in the negotiation process, the proposed Consent Decree is fair, adequate, and reasonable. In light of my experience in Los Angeles and with the California Commission on Fair Administration of Justice, the proposed Consent Decree is just, fair, and accurate.
- 25 The proposed consent decree includes provisions ensuring that the NOPD implement best practices, review and analyze policies and procedures on an annual basis to ensure ongoing compliance with best practices, court and monitor oversight of revisions to policies and procedures, a year for implementation of any new policies and procedures, 60 days for NOPD officers and employees to learn of any responsibilities under the Consent Decree, and a full year for any additional training required by the proposed Consent Decree Such provisions ensure that the proposed Consent Decree can be implemented in a just and fair manner
- 26 I attest to the foregoing based upon my personal knowledge of the March 16, 2011 findings letter issued by the DOJ, the extensive negotiations between the parties, and my extensive experience in implementing and overseeing the Consent Decree in Los Angeles.

I declare under penalty of perjury that the foregoing is true and correct.

DATED SEPTEMBER 19, 2012

  
GERALD CHALEFF

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	:	CIVIL ACTION NO.
		12-CV-01924
VERSUS	:	
		SECTION E
	:	JUDGE SUSIE MORGAN
CITY OF NEW ORLEANS	:	
		DIVISION 2
	:	MAGISTRATE WILKINSON

STATE OF LOUISIANA

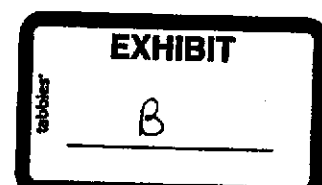
PARISH OF ORLEANS

Before the undersigned notary public appeared

LIEUTENANT BRIAN MONTEVERDE

who attested and swore as follows:

1. I am of the age of majority, and I have personal knowledge of the facts set forth herein. I am a Lieutenant in the New Orleans Police Department ("NOPD"), and I have direct involvement with the EDC and the PRC in developing and changing NOPD policies and procedures.
2. The NOPD has formed an Executive Development Committee ("EDC") and Administrative Policy Review Committee ("PRC"). The EDC consists of four bureau representatives, the Office of Policy & Planning (3 members), and a representative from the Superintendent's Staff Division. A representative from the education/training unit, a representative from the Superintendent's Staff and a representative from the City Attorney's Office also attend weekly EDC meetings. The PRC consists of Bureau Chiefs and three designated Commanders.
3. The EDC and PRC meet regularly to review proposed policies to ensure that best practices are implemented.
4. In addition, NOPD has recently engaged Lexipol, a policy development vendor, to assist with developing policies and to propose policies consistent with best practices.
5. In developing policies, Lexipol proposes policies consistent with best practices, which proposed policies are provided to the appropriate bureau representative, which then works with the appropriate unit personnel who work in the related policy area. These unit



personnel review the proposed policies and make appropriate changes to the draft policies. These revised draft policies are then made accessible to the EDC online through the "e-room" developed by Lexipol.

- 6. The EDC has an opportunity to comment on draft policies made available in the "e-room."
- 7. After the draft policies are approved by the EDC, they are forwarded to Danny Cazenave (Superintendent's Staff) and the City Attorney's Officer for Consent Decree compliance.
- 8. After the City Attorney's Office consent decree compliance review is complete and any needed changes implemented, The Office of Policy and Planning sends the policies to the PRC, FOP, PANO, and BOP. FOP, PANO, and BOP are given five (5) days to provide comments regarding the draft policies. See Attachment 1.
- 9. The PRC meets regularly to review the draft policies and to consider any comments provided by FOP, PANO, and BOP. After the PRC approves the policies, the Superintendent reviews the policies and gives the final approval before policies are implemented.

  
 \_\_\_\_\_  
 LIEUTENANT BRIAN MONTEVERDE

SWORN TO AND SUBSCRIBED  
 BEFORE ME THIS 20<sup>th</sup> DAY OF  
September, 2012.

  
 \_\_\_\_\_  
 NOTARY PUBLIC

**Sharonda R. Williams**  
**Notary Public**  
**State of Louisiana**  
**Bar No. 28809**  
**My commission is for life.**

The following Policies and Procedures have already been approved:

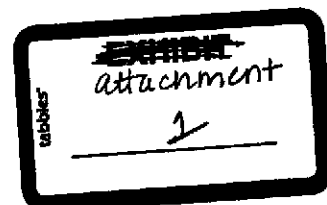
Code of Ethics  
Mission Statement  
Statement of Policy  
Rules 1 through 7  
316  
324  
336  
344  
400  
414  
446  
500  
516

The following policies/procedures are up for review by the PRC on 9/20/12:

204  
212  
306  
308  
314

These were sent previously and again on 8/24/12

As of this date, we have not received any comments/suggestions from the Organizations.













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## PolicyandPlanning


**From:** PolicyandReview **Sent:** Tue 6/19/2012 5:13 PM  
**To:** Simon B. Hargrove; Michael D. Glasser; Walter Powers  
**Cc:** James P. Treadaway  
**Subject:** New/Updated Policies and Procedures  
**Attachments:**  [Code of Ethics.pdf\(92KB\)](#)  [Rule 1 - Operation Manuals - DRAFT.pdf\(95KB\)](#)  [Rule 2 -Moral Conduct-DRAFT.pdf\(95KB\)](#)  [Rule 3 - Professional Conduct - DRAFT.pdf\(121KB\)](#)  [Rule 4 - Performance of Duty - DRAFT.pdf\(101KB\)](#)  [Rule 5 - Restricted Activities - DRAFT.pdf\(111KB\)](#)  [Rule 6 - Official Information - DRAFT.pdf\(98KB\)](#)  [Rule 7 - Department Property - DRAFT.pdf\(92KB\)](#)

Organization Presidents:

As the Department moves to the new Policy and Procedure format, we would like to pass along to you advance copies of the proposed policies and procedures for your review and for comments you may want to make. We ask that you return your comments, if any, within five (5) days from the date the copies were sent to you. We further ask that there be only one list of comments from each organization so if more than one member in an organization makes comments, then these comments must be consolidated by the organization and submitted within the five (5) calendar day timeframe.













Please send all consolidated comments to [policyandreview@nola.gov](mailto:policyandreview@nola.gov)

We will be forwarding an additional email containing various department policies and procedures in the new format.

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## PolicyandPlanning









**From:** PolicyandReview **Sent:** Tue 6/19/2012 5:15 PM  
**To:** Walter Powers; Michael D. Glasser; Simon B. Hargrove  
**Cc:** James P. Treadaway  
**Subject:** New/Updated Policies and Procedures - Email 2  
**Attachments:**  [Policy 306 - Handcuffing and Restraints.pdf\(143KB\)](#)  [PR306 - Handcuffing and Restraints.pdf\(131KB\)](#)  
 [Policy 316 - Officer Response to Calls.pdf\(137KB\)](#)  [PR316 - Officer Response to Calls.pdf\(129KB\)](#)  [Policy 320 - Domestic Violence.pdf\(159KB\)](#)  [PR320 - Domestic Violence.pdf\(171KB\)](#)  [Policy 324-Temporary Custody of Juveniles.pdf\(171KB\)](#)  [PR324-Temporary Custody of Juveniles.pdf\(151KB\)](#)  [Policy 336-Victim and Witness Assistance.pdf\(139KB\)](#)  [PR336-Victim and Witness Assistance.pdf\(158KB\)](#)  [Policy 344-Report Preparation.pdf\(143KB\)](#)  [PR344-Report Preparation.pdf\(137KB\)](#)

Attached are proposed policies and procedures in the new format for your review and comment. Please return your comments, if any, within five (5) days from the date the copies were sent to you. Once again, please consolidate your comments, by organization prior to submission. Please forward all comments to [policyandreview@nola.gov](mailto:policyandreview@nola.gov)


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## PolicyandPlanning











**From:** PolicyandReview **Sent:** Tue 6/19/2012 5:16 PM  
**To:** Simon B. Hargrove; Michael D. Glasser; Walter Powers  
**Cc:** James P. Treadaway  
**Subject:** New/updated policy and procedure - Email 3  
**Attachments:**  Policy 400 - Patrol Function.pdf(133KB)  PR400 - Patrol Function.pdf(122KB)  Policy 414-Hostage and Barricade Incidents.pdf(153KB)  PR414-Hostage and Barricade Incidents.pdf(128KB)  Policy 500 - Traffic Function and Responsibility.pdf(137KB)  PR500 - Traffic Function and Responsibility.pdf(68KB)  Policy 516 - Traffic Citations.pdf(101KB)  PR516 - Traffic Citations.pdf(92KB)

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## PolicyandPlanning

**From:** PolicyandReview **Sent:** Mon 6/25/2012 4:44 PM  
**To:** Simon B. Hargrove; Walter Powers; Michael D. Glasser  
**Cc:** James P. Treadaway  
**Subject:** New/Updated Policies and Procedures  
**Attachments:**  [DRAFT Policy 308 - Control Devices and Techniques.pdf\(154KB\)](#)  [Draft PR308 - Control Devices and Techniques.pdf\(72KB\)](#)  [DRAFT Policy 322 - Search and Seizure.pdf\(105KB\)](#)  [DRAFT PR322 - Search and Seizure.pdf\(124KB\)](#)  [DRAFT Policy 440 - Contacts Detentions and Photographing Field Detainees.pdf\(151KB\)](#)  [DRAFT PR440 - Contacts Detentions and Photgrpahing Field Detainees.pdf\(110KB\)](#)  [DRAFT Policy 902 - Custody Searches.pdf\(148KB\)](#)  [DRAFT PR902 - Custody Searches.pdf\(136KB\)](#)  [Draft PR206 - Emergency Operations Plan.pdf\(123KB\)](#)  [Policy 206 - Emergency Operations Plan - DRAFT.pdf\(129KB\)](#)

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**PolicyandPlanning**

**From:** PolicyandReview **Sent:** Wed 6/27/2012 11:07 AM  
**To:** Simon B. Hargrove  
**Cc:**  
**Subject:** FW: New/Updated Policies and Procedures  
**Attachments:**  Policy 309 - Electronic Control Weapon.pdf(167KB)  PR309 - Electronic Control Weapons.pdf(176KB)  
 Policy 314 - Vehicle Pursuits.pdf(194KB)  PR314 - Vehicle Pursuits.pdf(180KB)  Policy 600 -  
Investigations and Prosecutions.pdf(141KB)  PR600 - Investigations and Prosecution.pdf(144KB)  Policy 810  
- Records Release and Security.pdf(154KB)  PR810 - Records Release and Security.pdf(106KB)

We apologize, your name was dropped of the email prior to sending. We wanted to ensure you received these new/updated policies and procedures for review. Any questions/comments can be forwarded to [policyandreview@nola.gov](mailto:policyandreview@nola.gov).

---

**From:** PolicyandReview  
**Sent:** Mon 6/25/2012 4:47 PM  
**To:** Michael D. Glasser; Walter Powers  
**Cc:** James P. Treadaway  
**Subject:** New/Updated Policies and Procedures

Attached are proposed policies and procedures in the new format for your review and comment. Please return your comments, if any, within five (5) days from the date the copies were sent to you. Once again, please consolidate your comments, by organization, prior to submission. Please forward all comments to [policyandreview@nola.gov](mailto:policyandreview@nola.gov)

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




## PolicyandPlanning

**From:** PolicyandReview **Sent:** Thu 6/28/2012 1:15 PM

**To:** Simon B. Hargrove; Michael D. Glasser; Walter Powers

**Cc:** James P. Treadaway











**Subject:** New/Updated Policies and Procedures

**Attachments:**  Policy 446-Digital Mobile Video Audio Recording.pdf(148KB)  PR446-Digital Mobile Video Audio Recording.pdf(141KB)  Policy 402-Racial Biased Based Profiling.pdf(133KB)  PR402-Racial Biased Based Profiling.pdf(97KB)  Statement of Policy.pdf(102KB)  Mission Statement.pdf(89KB)

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## PolicyandPlanning

**From:** PolicyandReview **Sent:** Tue 7/3/2012 12:54 PM  
**To:** Simon B. Hargrove; Michael D. Glasser; Walter Powers  
**Cc:**  
**Subject:** FW: New/Updated Policies and Procedures  
**Attachments:**  [DRAFT Policy 308 - Control Devices and Techniques.pdf\(154KB\)](#)  [Draft PR308 - Control Devices and Techniques.pdf\(72KB\)](#)  [DRAFT Policy 322 - Search and Seizure.pdf\(105KB\)](#)  [DRAFT PR322 - Search and Seizure.pdf\(124KB\)](#)  [DRAFT Policy 440 - Contacts Detentions and Photographing Field Detainees.pdf\(151KB\)](#)  [DRAFT PR440 - Contacts Detentions and Photographing Field Detainees.pdf\(110KB\)](#)  [DRAFT Policy 902 - Custody Searches.pdf\(148KB\)](#)  [DRAFT PR902 - Custody Searches.pdf\(136KB\)](#)  [Draft PR206 - Emergency Operations Plan.pdf\(123KB\)](#)  [Policy 206 - Emergency Operations Plan - DRAFT.pdf\(129KB\)](#)

This is just a reminder to provide the Office of Policy and Planning with any comments/suggestions you may have regarding the attached policies/procedures in the new format. Should we not hear from you by close of business today, we will assume you have no comments/suggestions.


Thank you

---









**From:** PolicyandReview  
**Sent:** Mon 6/25/2012 4:44 PM  
**To:** Simon B. Hargrove; Walter Powers; Michael D. Glasser  
**Cc:** James P. Treadaway  
**Subject:** New/Updated Policies and Procedures

Attached are proposed policies and procedures in the new format for your review and comment. Please return your comments, if any, within five (5) days from the date the copies were sent to you. Once again, please consolidate your comments, by organization prior to submission. Please forward all comments to [policyandreview@nola.gov](mailto:policyandreview@nola.gov)



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## PolicyandPlanning

**From:** PolicyandReview **Sent:** Tue 7/3/2012 12:58 PM  
**To:** Simon B. Hargrove; Walter Powers; Michael D. Glasser  
**Cc:**  
**Subject:** FW: New/Updated Policies and Procedures  
**Attachments:**  Policy 309 - Electronic Control Weapon.pdf(167KB)  PR309 - Electronic Control Weapons.pdf(176KB)  
 Policy 314 - Vehicle Pursuits.pdf(194KB)  PR314 - Vehicle Pursuits.pdf(180KB)  Policy 600 -  
Investigations and Prosecutions.pdf(141KB)  PR600 - Investigations and Prosecution.pdf(144KB)  Policy 810  
- Records Release and Security.pdf(154KB)  PR810 - Records Release and Security.pdf(106KB)

This is just a reminder that any comments/suggestions you may have are due to the Office of Policy and Planning at [policyandreview@cityofno.com](mailto:policyandreview@cityofno.com) by close of business today regarding the attached policies/procedures in the new format.

Should we not hear from you, we will assume you have no comments/suggestions.

Thank you








---

**From:** PolicyandReview  
**Sent:** Mon 6/25/2012 4:47 PM  
**To:** Michael D. Glasser; Walter Powers  
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## PolicyandPlanning

**From:** PolicyandReview **Sent:** Thu 7/26/2012 4:11 PM  
**To:** Michael D. Glasser; Walter Powers; Simon B. Hargrove  
**Cc:** James P. Treadaway; Michael Sauter; Brian L. Monteverde  
**Subject:** New/Updated Policies and Procedures  
**Attachments:**  DRAFT Policy 102 - Superintendent of Police.docx(14KB)  DRAFT Policy 104 - Oath of Office.docx(11KB)  
 DRAFT Policy 106 - Policy Manual.docx(19KB)  DRAFT Policy 204 - Departmental Orders.docx(14KB)  
 DRAFT Policy 212 Electronic Mail.docx(16KB)  DRAFT PR106 - Policy Manual.doc(40KB)  DRAFT PR 204 - Departmental Orders.docx(20KB)

Attached are the proposed policies and procedures in the new format for your review and comment. Please return your comments, if any, within five (5) days from the date the copies were sent to you. Once again, please consolidate your comments, by organization, prior to submission. Please forward all comments to [policyandreview@cityofno.com](mailto:policyandreview@cityofno.com)

Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

## PolicyandPlanning

**From:** PolicyandPlanning **Sent:** Fri 8/24/2012 3:25 PM  
**To:** Simon B. Hargrove; Michael D. Glasser; Walter Powers  
**Cc:** James P. Treadaway; Daniel V. Cazenave; Michael Sauter  
**Subject:** Updated Policies and Procedures  
**Attachments:**  DRAFT Mission Statement .docx(18KB)  DRAFT Policy 104 Oath of Office.docx(16KB)  DRAFT Policy 204 - Departmental Orders.docx(18KB)  DRAFT PR 204 - Departmental Orders.docx(23KB)  DRAFT Policy 212 Electronic Mail.docx(18KB)  DRAFT Policy 214 Administrative Communications.docx(17KB)  DRAFT PR 214 Administrative Communications.docx(19KB)  DRAFT Policy 306 - Handcuffing and Restraints.docx(20KB)  DRAFT PR306 - Handcuffing and Restraints.docx(21KB)  DRAFT Policy 308 Control Devices and Techniques .docx(28KB)  DRAFT Policy 314 - Vehicle Pursuits Rev.docx(28KB)  DRAFT PR 314 - Vehicle Pursuits Rev .docx(28KB)

Organizational Presidents:

Attached are proposed policies and procedures in the new format for your review and comment. Please return your comments, if any, within five (5) days from the date the copies were sent to you. Once again, please consolidate your comments, by organization prior to submission. Please forward all comments to [policyandplanning@nola.gov](mailto:policyandplanning@nola.gov).

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CIVIL ACTION NO.</b>
		<b>12-CV-01924</b>
<b>VERSUS</b>	:	
		<b>SECTION E</b>
	:	<b>JUDGE SUSIE MORGAN</b>
<b>CITY OF NEW ORLEANS</b>	:	
		<b>DIVISION 2</b>
		<b>MAGISTRATE WILKINSON</b>

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STATE OF LOUISIANA

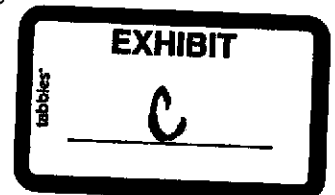
PARISH OF ORLEANS

Before the undersigned notary public appeared

CAPTAIN MICHAEL SAUTER

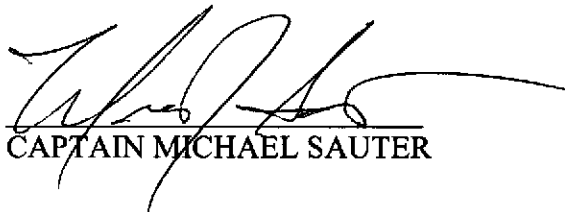
who attested and swore as follows:

1. I am of the age of majority, and I have personal knowledge of the facts set forth herein. I am a Captain in the New Orleans Police Department ("NOPD"), and I have direct involvement with the EDC and the PRC in developing and changing NOPD policies and procedures.
2. The NOPD has formed an Executive Development Committee ("EDC") and an Administrative Policy Review Committee ("PRC"). The EDC consists of four bureau representatives, the Office of Policy & Planning (3 members), and a representative from the Superintendent's Staff Division. A representative from the education/training unit, a representative from the Superintendent's Staff and a representative from the City Attorney's Office also attend weekly EDC meetings. The PRC consists of Bureau Chiefs and three designated Commanders.
3. The EDC and PRC meet regularly to review proposed policies to ensure that best practices are implemented.
4. In addition, NOPD has recently engaged Lexipol, a policy development vendor, to assist with developing policies and to propose policies consistent with best practices.
5. In developing policies, Lexipol proposes policies consistent with best practices, which proposed policies are provided to the appropriate bureau representative, which then works with the appropriate unit personnel who work in the related policy area.. These



unit personnel review the proposed policies and make appropriate changes to the draft policies. These revised draft policies are then made accessible to the EDC online through the "e-room" developed by Lexipol.

6. The EDC has an opportunity to comment on draft policies made available in the "e-room."
7. After the draft policies are approved by the EDC, they are forwarded to Danny Cazenave (Superintendent's Staff) and the City Attorney's Office for Consent Decree compliance.
8. After the City Attorney's Office consent decree compliance review is complete and any needed changes implemented, the policies are provided to the PRC, FOP, PANO, and BOP. FOP, PANO, and BOP are given five (5) days to provide comments regarding the draft policies.
9. The PRC meets regularly to review the draft policies and to consider any comments provided by FOP, PANO, and BOP. After the PRC approves the policies, the Superintendent reviews the policies and gives the final approval before policies are implemented.



CAPTAIN MICHAEL SAUTER

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 20<sup>th</sup> DAY OF  
SEPTEMBER, 2012.



NOTARY PUBLIC

**Sharonda R. Williams**  
**Notary Public**  
**State of Louisiana**  
**Bar No. 28809**  
**My commission is for life.**