

EXECUTIVE SUMMARY

The NOPD has long been a troubled agency. Basic elements of effective policing—clear policies, training, accountability, and confidence of the citizenry—have been absent for years. Far too often, officers show a lack of respect for the civil rights and dignity of the people of New Orleans. While the majority of the force is hardworking and committed to public safety, too many officers of every rank either do not understand or choose to ignore the boundaries of constitutional policing. Some argue that, given the difficulty of police work, officers must at times police harshly and bend the rules when a community is confronted with seemingly intransigent high levels of crime. Policing is undeniably difficult; however, experience and study in the policing field have made it clear that bending the rules and ignoring the Constitution makes effective policing much more challenging. NOPD's failure to ensure that its officers routinely respect the Constitution and the rule of law undermines trust within the very communities whose cooperation the Department most needs to enforce the law and prevent crime. As systematic violations of civil rights erode public confidence, policing becomes more difficult, less safe, and less effective, and crime increases.

The deficiencies in the way NOPD polices the City are not simply individual, but structural as well. For too long, the Department has been largely indifferent to widespread violations of law and policy by its officers. NOPD does not have in place the basic systems known to improve public safety, ensure constitutional practices, and promote public confidence. We found that the deficiencies that lead to constitutional violations span the operation of the entire Department, from how officers are recruited, trained, supervised, and held accountable, to the operation of Paid Details. In the absence of mechanisms to protect and promote civil rights, officers too frequently use excessive force and conduct illegal stops, searches and arrests with impunity. In addition, the Department's culture tolerates and encourages under-enforcement and under-investigation of violence against women. The Department has failed to take meaningful steps to counteract and eradicate bias based on race, ethnicity, and LGBT status in its policing practices, and has failed to provide critical policing services to language minority communities.

The problems in NOPD developed over a long period of time and will take time to address and correct. The Department must develop and implement new policies and protocols, train its officers in effective and constitutional policing, and institutionalize systems to ensure accountability, foster police-community partnerships, improve the quality of policing to all parts of the City, and eliminate unlawful bias from all levels of NOPD policing decisions.

Recommendations on achieving these changes are attached to this Report. We look forward to working with NOPD and the City of New Orleans to address the violations of constitutional and federal law that we identified, by developing and implementing a comprehensive blueprint for sustainable reform that will: (1) reduce crime; (2) ensure respect for the Constitution and the rule of law; and (3) restore public confidence in NOPD.

We find reasonable cause to believe that NOPD engages in patterns of misconduct that violate the Constitution and federal law.¹ We find further that NOPD practices and deficiencies cause or contribute to these patterns of misconduct. The following is a summary of these findings.

Patterns and Practices of Unconstitutional Conduct

1. Use of Force

Police-civilian interactions only rarely require the use of force. In the small portion of interactions where it is necessary for officers to use force, the Constitution requires that officers use only the amount of force that is reasonable under the circumstances. We found that officers in NOPD routinely use unnecessary and unreasonable force in violation of the Constitution and NOPD policy.

Our investigation did not include consideration of widely reported allegations of officer misconduct related to NOPD's response to Hurricane Katrina in 2005. Many of these incidents have been, or are currently being, prosecuted by the Criminal Section of the Civil Rights Division and the United States Attorney's Office for the Eastern District of Louisiana. We deliberately kept our civil investigation separate from the criminal investigation and prosecution of any NOPD officer, and this Report does not discuss any incident that is the subject of ongoing federal criminal proceedings. Nonetheless, our investigation, which covered incidents that occurred within the past two years and assessed practices as they exist currently, revealed a clear pattern of unconstitutional uses of force by NOPD officers.

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.

We found a pattern of unreasonable less lethal force as well. We found that NOPD's canines were uncontrollable to the point where they repeatedly attacked their own handlers, compelling us to recommend immediate suspension of NOPD's use of canines to apprehend suspects. We found that officers use force against individuals, including persons in handcuffs, in circumstances that appeared not only unnecessary but deliberately retaliatory. We reviewed instances in which NOPD officers used significant force against mentally ill persons where it appeared that no use of force was justified.

¹ Our investigation found reasonable cause to believe that NOPD has engaged in a pattern or practice of conduct that deprives individuals of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. Under 42 U.S.C. § 14141, this finding authorizes the United States to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. We did not conduct a criminal investigation, which requires the government to show guilt beyond a reasonable doubt, of any NOPD officer or any other person. We make no assertions regarding the culpability of any individual.

NOPD, for at least the past several years, has been all too frequently indifferent to its officers' improper use of force. The Department has few meaningful controls to ensure that force is used appropriately. Officers are not properly trained on using force or alternatives to force. Policies regarding use and reporting of force are inconsistent, incomplete, and routinely disregarded. To the extent officers do report force, supervisors do not conduct investigations sufficient to determine whether the force was justified. Instances of clearly unjustified force are routinely approved by supervisors and ratified up the chain-of-command, resulting in no accountability. Officers even encourage each other to use force as retaliation. Indeed, when one NOPD officer reacted calmly after being spit on by another NOPD officer he had stopped for DWI, fellow NOPD officers told the arresting officer he was a coward for not at least punching the officer.

Even the most serious uses of force, such as officer-involved shootings and in-custody deaths, are investigated inadequately or not at all. NOPD's mishandling of officer-involved shooting investigations was so blatant and egregious that it appeared intentional in some respects. For a time, NOPD had a practice of temporarily assigning officers who had been involved in officer-involved shootings to the Homicide Division, and then automatically deeming the statements officers provided to homicide investigators to be "compelled," effectively immunizing the use of these statements in any subsequent criminal investigation or prosecution. It is difficult to interpret this practice as anything other than a deliberate attempt to make it more difficult to criminally prosecute any officer in these cases. We reviewed incidents where investigative missteps could not be explained by deficient training, such as where investigators failed to even attempt to lift fingerprints from a handgun found on the scene of shooting, where the ownership of the handgun was in dispute, and then misrepresented witness statements in their investigative report so that it appeared the presence of the weapon on-scene was not disputed. During our inquiry, we learned that many Homicide Division investigations of officer-involved shootings had never been provided to NOPD's Professional Integrity Bureau ("PIB"), which is charged with determining whether these shootings are consistent with NOPD policy. Some of these investigations were provided to PIB only following our inquiries, and the appointment of new leadership in NOPD's Homicide Division. Several still have not been located.

NOPD's use of force practices present a significant threat to the safety of the public and NOPD officers, and create a substantial obstacle to strong community-police partnerships. As we conducted our investigation, NOPD had begun to make significant and long overdue changes to its force policies regarding how officers will be trained to use force, and how force will be reported, investigated, and reviewed. NOPD will need to build on these initial steps with more comprehensive changes to policy and practice to end the pattern of unconstitutional use of force by NOPD.

2. Stops, Searches and Arrests

We find reasonable cause to believe that NOPD officers engage in a pattern of stops, searches, and arrests that violate the Fourth Amendment. Detentions without reasonable suspicion are routine, and lead to unwarranted searches and arrests without probable cause. Our review of 145 randomly-sampled arrest and investigative reports confirmed a pattern of unlawful

conduct. Of the arrests that NOPD initiated, we found that a significant portion reflected on their face apparent constitutional violations, in that officers failed to articulate sufficient facts to justify stops, searches, and arrests.

A previous DOJ investigation noted almost ten years ago that some NOPD officers could not articulate proper legal standards for stops, searches, or arrests. We recommended then that NOPD provide annual in-service training to officers on this critical topic. As discussed below, NOPD still does not provide meaningful in-service training to officers on how to properly carry out stops, searches, and arrests. NOPD's failure to train officers or otherwise provide guidance on the limits and requirements of the Fourth Amendment contributes directly to the pattern of unconstitutional stops, searches, and arrests we observed. Throughout the Department, and among other stakeholders in the criminal justice system, we heard broad and emphatic consensus that officers have a poor understanding of how to lawfully execute searches and seizures.

Additionally, the Department's organizational focus on arrests, particularly in combination with its poor training and policies, encourages stops without reasonable suspicion, illegal pat downs, and arrests without probable cause. NOPD's focus on statistics, such as generating Field Interview Cards ("FIC"s) and arrests, amplifies the risk that officers will execute illegal searches and seizures. NOPD patrol officers and many members of the command staff described a Department that has long been statistics-driven—one that measures "productivity" by quantity, rather than quality, of encounters and arrests. As one commander told us, "[t]hese officers are under the gun to make arrest, arrest, arrest, which leads to civil rights violations and complaints." We observed that arrests, *Terry* stops, and FIC numbers were the predominant focus of the Department's weekly COMSTAT meetings, and many officers described a strong and unyielding pressure to increase numbers.

Detached as it is from problem-oriented policing, community partnerships, or long term strategies, there is no indication that NOPD's emphasis on arrests results in better crime prevention or safer communities. To the contrary, NOPD recently acknowledged that the Department's staggering volume of arrests for low-level offenses is counter-productive. In November 2010, according to the New Orleans Times-Picayune, the Superintendent advised the City Council that officers would no longer make arrests based on outstanding traffic or misdemeanor warrants from neighboring parishes, noting that to do so "simply does not make sense, economical or common."

We believe that with this pledge, the Department has taken a significant and positive step. Nonetheless, we found NOPD's emphasis on "activity," defined as numbers of encounters such as stops, FICs, and arrests—at the expense of a more deliberate focus on problem-solving—to be an ingrained part of NOPD's organizational culture. Although the Superintendent's commitment to ensuring that officers are engaged, observant, and productive is commendable and appropriate, the Department must recognize that its tactics and chosen police strategy, together with lapses in training and policy, cultivate an atmosphere where officers cut corners and make too many errors that result in constitutional harm and compromise effective law enforcement.

3. Discriminatory Policing

We find reasonable cause to believe that NOPD engages in a pattern or practice of discriminatory policing in violation of constitutional and statutory law. Discriminatory policing occurs when police officers and departments unfairly enforce the law—or fail to enforce the law—based on characteristics such as race, ethnicity, national origin, sex, religion, or LGBT status. Discriminatory policing may take the form of bias-based profiling, in which an officer impermissibly decides whom to stop, search, or arrest based upon one of the above-mentioned characteristics, rather than upon the appropriate consideration of reasonable suspicion or probable cause. Failing to provide police services to some persons or communities because of bias or stereotypes, or by not taking necessary steps to enable meaningful communication, also constitutes discriminatory policing. Discriminatory policing may also result when a police department selects particular enforcement and crime prevention tactics in certain communities or against certain individuals for reasons motivated by bias or stereotype.

NOPD has failed to take sufficient steps to detect, prevent, or address bias-based profiling and other forms of discriminatory policing on the basis of race, ethnicity, or LGBT status, despite widespread concern and troubling racial disparities in arrest rates and other data. We further find that the Department fails to adequately investigate violence against women, including sexual assaults and domestic violence. Additionally, we find that the Department fails to provide critical policing services to New Orleans residents with limited English proficiency.

a) Discriminatory Policing on Basis of Race, Ethnicity or LGBT status

Subjecting individuals to differential treatment—based on a belief that characteristics such as race, ethnicity, national origin, sex, or religion signal a higher risk of criminality or unlawful activity—constitutes unlawful discrimination, often called “profiling” or “biased policing.” During our investigation, many members of the community—particularly African Americans, ethnic minorities, and members of the lesbian, gay, bisexual, and transgender (“LGBT”) community—reported that the Department subjects them to harassment and disrespectful treatment, and unfairly targets them for stops, searches, and arrests. Many members of NOPD echoed these concerns.

We found a clear failure by NOPD to implement adequate policies and provide appropriate training on how to identify and articulate suspicion based on behavior and other permissible factors. This critical lapse raises the risk that NOPD officers, without sufficient guidance and training on how to properly carry out stops and arrests, will instead rely on inappropriate factors such as racial stereotypes and bias in their decision-making. NOPD’s failure to acknowledge the potential for stereotypes and bias to taint police work, on both an individual and an organizational level, and to take steps to prevent this, further cultivates an atmosphere in which discriminatory policing can occur unchecked.

Indeed, the limited arrest data that the Department collects points to racial disparities in arrests of whites and African Americans in virtually all categories, with particularly dramatic disparity for African-American youth under the age of 17. Arrest data provided by NOPD

indicates that in 2009, the Department arrested 500 African-American males and eight white males under the age of 17 for serious offenses, which range from homicide to larceny over fifty dollars. During this same period the Department arrested 65 African-American females and one white female in this same age group. Adjusting for population, these figures mean that the ratio of arrest rates for both African-American males to white males, and African-American females to white females, was nearly 16 to 1. Although a significant disparity in arrest rates for this age group exists nationwide, it is not nearly as extreme as the disparity found in New Orleans. Nationally in 2009, among those agencies reporting data, the arrest ratio of African-American youth to white youth, for the same offenses, was approximately 3 to 1. The level of disparity for youth in New Orleans is so severe and so divergent from nationally reported data that it cannot plausibly be attributed entirely to the underlying rates at which these youth commit crimes, and unquestionably warrants a searching review and a meaningful response from the Department.

NOPD use of 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. In our sample of resisting arrest reports documenting uses of force between January 2009 and May 2010, we found that in 81 of the 96 uses of force we reviewed (84%), the subject of the force was African American.

We also found reasonable cause to believe that NOPD practices lead to discriminatory treatment of LGBT individuals. In particular, transgender women complained that NOPD officers improperly target and arrest them for prostitution, sometimes fabricating evidence of solicitation for compensation. Moreover, transgender residents reported that officers are likelier, because of their gender identity, to charge them under the state's "crimes against nature" statute—a statute whose history reflects anti-LGBT sentiment. Multiple convictions under the "crimes against nature" statute, unlike Louisiana's general prostitution statute, require registration as a sex offender. Persons convicted of soliciting crimes against nature make up nearly 40 percent of the Orleans Parish sex offender registry. NOPD is charged with monitoring all registrants' compliance with sex offender registry requirements, raising questions about efficient and effective use of resources to ensure public safety. Further, for the already vulnerable transgender community, inclusion on the sex offender registry further stigmatizes and marginalizes them, complicating efforts to secure jobs, housing, and obtain services at places like publicly-run emergency shelters. Of the registrants convicted of solicitation of a crime against nature, 80 percent are African American, suggesting an element of racial bias as well. Indeed, community members told us they believe some officers equate being African American and transgendered with being a prostitute.

Both bias and the perception of bias erode citizens' inclination to trust and cooperate with law enforcement, impeding effective and safe policing. Nonetheless, NOPD has failed to take steps to counteract bias and promote impartial policing through proactive policies, clear messages from leadership, effective supervision, and quality training. The Department does not have a sufficiently comprehensive policy regarding discriminatory policing and fails to adhere to the policies that are in place. In addition, the Department has no way to track allegations and

complaints of racial profiling, and does not collect, analyze, or report race or ethnicity data for most citizen encounters with police.

b) *Gender-Biased Policing: Failure to Adequately Investigate Allegations of Sexual Assault and Domestic Violence*

Law enforcement may not selectively deny protective services to certain groups, including women. This principle applies to the under-investigation of violence against women, including sexual assault and domestic violence. Nonetheless, in many cities reports have surfaced of law enforcement agencies undercounting and failing to investigate allegations of sexual and domestic violence. Such under-enforcement appears to stem in part from cities' reluctance to acknowledge the extent of serious crime in their communities, and in part from stereotypes and misapprehensions about sexual assaults and the victims of sex crimes.

We find that NOPD has systematically misclassified large numbers of possible sexual assaults, resulting in a sweeping failure to properly investigate many potential cases of rape, attempted rape, and other sex crimes. Additionally, we find that in situations where the Department pursues sexual assault complaints, the investigations are seriously deficient, marked by poor victim interviewing skills, missing or inadequate documentation, and minimal efforts to contact witnesses or interrogate suspects. The documentation we reviewed was replete with stereotypical assumptions and judgments about sex crimes and victims of sex crimes, including misguided commentary about the victims' perceived credibility, sexual history, or delay in contacting the police. NOPD has recently acknowledged its serious deficits in responding to sex crimes, and has taken some significant remedial steps. NOPD and the City will need to build on these efforts to bring about the extensive and sustained change necessary to effectively and appropriately respond to these serious violent crimes.

We also find systemic deficiencies in NOPD's handling of domestic violence cases. In recent years, the New Orleans Family Justice Center ("NOFJC"), a federally funded center designed to provide comprehensive services to victims of domestic violence by integrating law enforcement, prosecution, civil legal services, and advocacy in one location, has had a salutary effect on NOPD's handling of domestic violence complaints. Nonetheless, we find significant weaknesses in Department policies and practices in responding to these cases.

c) *National Origin Discrimination: Failure to Provide Effective Policing Services to Persons with Limited English Proficiency*

Failing to take reasonable steps to ensure meaningful access to services for limited English proficient ("LEP") persons is a form of national origin discrimination. We find that NOPD is dangerously limited in its capacity to communicate effectively and accurately with LEP victims, witnesses, suspects, and community members in the Latino and Vietnamese communities. Language barriers, and the often closely related cultural barriers, can put cases and lives at risk and create safety, evidentiary, and ethical challenges for officers and others. Such barriers can prevent LEP individuals from understanding their rights, complying with the law, assisting law enforcement and receiving meaningful access to law enforcement services and information.

NOPD has virtually no capacity to provide meaningful access to police services to LEP community members, who in New Orleans are predominantly Latino or of Vietnamese descent. The Vietnamese community has been an established presence in New Orleans since the mid-1970s, and since Hurricane Katrina the City has seen a significant influx of Latino immigrants. Both communities represent growing shares of the City's population, and a significant segment of each has limited proficiency in English. NOPD relies primarily upon just two officers, one fluent in Spanish and one fluent in Vietnamese, to assist on calls for service and investigations throughout the Department, in addition to performing their regular duties. The Department does not compensate these officers for interpreter services performed while off-duty or provide them with enhanced pay for language fluency; nor does the Department have protocols to assess the fluency of its multilingual officers and train them in carrying out their duties.

Community members described significant consequences resulting from language barriers in their dealings with NOPD—including delays in or denial of services, incidents where victims were mistaken for suspects, and situations where encounters escalated unnecessarily due to gaps in communication. At one community meeting, a monolingual Spanish speaker reported calling police on four different nights regarding domestic violence, but receiving a response only once.

During an August 2010 ride-along, we observed firsthand a delay in response to a call for service from a victim of domestic violence, apparently because she was a monolingual Spanish-speaker. It further appeared that the officer may not have responded at all if not pressed by the DOJ investigator and if the DOJ investigator had not happened to be bilingual. After the officer continued to patrol the district for 30 minutes following receipt of the complaint, the DOJ investigator inquired about what calls had come in through dispatch. The officer initially skipped over the domestic violence call, but then asked the DOJ investigator whether he spoke Spanish. When the investigator replied that he did, the officer responded to the call. Upon arrival at the scene, the victim, who had visible injuries, said she had been waiting more than an hour for a response. Later, the officer explained that there was only one person on the shift capable of serving as an interpreter, and that the individual was often difficult to reach.

NOPD's lack of capacity to serve LEP communities undermines public safety, crime prevention, and crime-solving, and results in inferior police services to LEP community members. Although the Department has recently signaled its commitment to improving access to its services to LEP community members, NOPD has significant work ahead to ensure it can effectively serve the entire New Orleans community.

Systemic Deficiencies Causing or Contributing to Unconstitutional Conduct

A number of longstanding and entrenched practices cause or contribute to the patterns or practices of unconstitutional and discriminatory conduct we observed. The Department's failure to provide sufficient guidance, training, and support to its officers, as well as its failure to implement systems to ensure officers are wielding their authority effectively and safely, have created an environment that permits and promotes constitutional harm. We found deficiencies in a wide swath of City and NOPD systems and operations, including failures to: adopt and enforce

appropriate policies; properly recruit, train, and supervise officers; adequately review and investigate officer uses of force; fully investigate allegations of misconduct; identify and respond to patterns of at-risk officer behavior; implement community policing; oversee and control the system of Paid Details; provide officer assistance and support; or enact appropriate performance review and promotional systems. NOPD has recently begun making changes in each of these areas, but more, and more fundamental, change is necessary.

Alongside police practitioners, Courts have long acknowledged that deficiencies in systems and operations can unequivocally lead or contribute to constitutional violations. In *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989), the Supreme Court held a municipality liable for failing to adequately train its law enforcement officers, recognizing that a law enforcement agency's practices and decision-making can cause constitutional harm. *Id.* at 387. The Fifth Circuit has extended the *City of Canton* rationale to recognize that a broad range of systemic deficiencies can result in constitutional harm, including: inadequate disciplinary measures, *Deville v. Marcantel*, 567 F.3d 156, 171 (5th Cir. 2009) (citing *Piotrowski v. City of Houston*, 237 F.3d 567, 581 (5th Cir. 2001)); inadequate officer stress management programs, *Snyder v. Trepagnier*, 142 F.3d 791, 798-799 (5th Cir. 1998); and faulty screening of new officers, *Brown v. Bryan County*, 67 F.3d 1174 (5th Cir. 1995).

The deficiencies identified below must be corrected for legitimate, sustainable reform to occur. Without this comprehensive reform, the patterns and practices of unconstitutional conduct within NOPD will continue.

1. Policies

Clear and well-drafted policies are essential to ensuring constitutional police practices. Officers need to know what is permitted and what is prohibited. Police managers need policies to guide their work and hold officers accountable.

In every area we reviewed, we found that NOPD policies do not provide sufficient guidance. Policies are outdated, inconsistent, and at times, legally inaccurate. Policies do not, for example, provide officers adequate guidance regarding stops, searches, and arrests that are lawful, safe, and effective. Use of force policies are incomplete, out of date, and often contradictory. NOPD does not have in place policies or protocols for how first responders (usually patrol officers) should respond to individuals experiencing a mental health crisis. NOPD policies do not require sufficient collection of data to permit NOPD to track, assess, and respond to problems in a number of areas, from bias-based profiling, to use of force. Policies that do require NOPD to collect and analyze data are ignored. Policies related to complaint investigation facilitate the under-investigation of whole categories of complaints. There is a general lack of adherence to policy, exacerbated by pervasive tolerance by NOPD supervisors and commanders for officers' routine failure to comply with policy.

We do not discuss policies in a stand-alone section in this Report, but rather discuss policies pertaining to specific areas, such as use of force, supervision, or complaint intake, in each corresponding section of the Report.

2. Recruitment

NOPD's longstanding failure to prioritize the recruitment of high-quality candidates contributes to the chronic, Department-wide problems we observed, including inappropriate and disrespectful conduct in the community, corruption, unnecessary uses of force, and improper stops and searches. We found NOPD's recruitment program to be anemic, entirely passive, and lacking clear goals, plans, or accountability. NOPD's Recruitment and Applicant Unit, which has a staff of six commissioned law enforcement officers, has no plan to seek out and recruit qualified candidates. Recruiters were unclear about the scope of their authority or obligations, and report having done little since Hurricane Katrina to find or attract highly-qualified applicants, apart from distributing literature at job fairs, colleges, and universities.

The Department has been aware of deficiencies in its recruitment efforts, yet for years failed to act meaningfully to address them. Recently, NOPD has begun to make changes to its recruiting process to ensure a stronger pool of applicants is selected to attend the academy. Although the Department has a great deal of work ahead to attract the most highly-qualified workforce possible, we commend its recent focus on these efforts.

3. Training

The training NOPD has for the past several years provided to its officers is severely deficient in nearly every respect, compromising officer and public safety, effective crime reduction, and the credibility and reputation of the Department as a whole. Shortcomings at the recruit, field, and in-service stages of training have left NOPD officers ill-equipped to perform their duties in a safe, constitutional, and respectful manner. We found systemic problems in training of every type, including tactical, operational, legal, ethical, and professionalism training. Officers receive an insufficient amount of training—there has been almost no in-service training for the past five years—and the instruction officers do receive is often out-of date, conflicts with NOPD policies or current legal requirements, or fails to address officers' most pressing training needs. Our investigation found direct links between inadequate training and serious, systemic problems in use of force; stops, searches, and arrests; supervision; interacting with and building partnerships with members of the community; and racial, ethnic, and gender bias in policing.

We found no disagreement that NOPD training is inadequate. NOPD officers of all ranks told us they want more and better training, and strongly expressed this sentiment in their responses to a recent NOPD employee survey. In that survey, only 24% of NOPD employees agreed that they have sufficient opportunities for training, and overwhelmingly reported that existing training needs improvement. NOPD leadership likewise has acknowledged that its training systems are in need of repair, and the Superintendent has prioritized the wholesale remaking of training in his organizational strategy to improve NOPD.

4. Supervision

Front line supervision, especially of officers patrolling and responding to calls in the field, is a lynchpin of effective and constitutional policing. Field supervisors provide the close and consistent supervision necessary to guide officers' conduct and to help them learn from their

mistakes. They are in best position to recognize a problem with an officer's conduct and intervene immediately to ameliorate or prevent harm. When a supervisor is on-scene and realizes that a patrol officer has made an arrest without probable cause, the supervisor can instruct the officer to release the arrestee and immediately counsel the officer about what the officer did wrong. When a community member is upset about how an officer responded to a call, a supervisor can immediately take a complaint—or sometimes address the concern to prevent a complaint. How a field supervisor conducts him or herself, and whether he/she requires adherence to policy and ethics, sets a tone of accountability and integrity—or not.

Field supervisors also are in the best position to ensure that street level crime prevention efforts are as effective as possible; they know how productive their officers are, and what they need to be more effective. Properly trained and deployed, field supervisors can identify the strengths and weaknesses of each officer under their command, adjusting their level and type of supervision accordingly.

NOPD fails to provide the supervision necessary to prevent or detect misconduct and ensure effective policing. Supervisors frequently sign off on arrest reports that fail to articulate probable cause, and conduct use of force investigations that are grossly deficient. They also frequently ignore obvious misconduct and poor officer performance in conducting internal investigations.

Our investigation further showed a lack of accountability throughout the chain of command sufficient to ensure that field sergeants are properly supervising their subordinates. Much of the work supervisors do requires review or approval by the chain of command. Commanders seem to take no notice of, much less hold accountable, supervisors who approve egregious uses of force without question, conduct obviously flawed investigations, sign off on clearly deficient arrest reports, or who simply do not supervise.

A number of systemic deficiencies within NOPD appear to contribute to this poor supervision. Supervisors are poorly trained and poorly guided by policy. The ratio of supervisors to officers (span of control) is too high, and unity of command (allowing for close and knowledgeable supervision by ensuring that each officer has one supervisor to hold them fully accountable) exists on paper only. Supervisory accountability is undermined by NOPD's practice of broadly assigning supervisory responsibilities and then failing to ensure these responsibilities are carried out by anyone.

5. Paid Details

There are few aspects of NOPD more broadly troubling than its Paid Detail system. NOPD's Detail system, as currently structured: 1) drastically undermines the quality of NOPD policing; 2) facilitates abuse and corruption by NOPD officers; 3) contributes to compromising officer fatigue; 4) contributes to inequitable policing by NOPD; and 5) acts as a financial drain on NOPD rather than fulfilling its potential as a source of revenue for the City and Department.

The Detail system is essentially a form of overtime work for officers. Officers may work *ad hoc* Details providing, for example, extra security for special events or individuals visiting

New Orleans. Or an officer may have a regularly-scheduled Detail, such as being hired by a business to provide security in a retail establishment or by a neighborhood association to patrol the neighborhood. When on Detail, however, officers are paid and largely controlled by entities other than NOPD. Many police departments allow officers to work outside law-enforcement jobs, but few if any large police departments have a system of Details as entrenched and unregulated as in NOPD. Between August 2009 and July 2010, 69% of all officers, almost 1000 in all, submitted a request to work at least one Detail. This number includes 85% of all Lieutenants and 78% of all Captains. Virtually every officer works a Detail, wants to work a Detail, or at some point will have to rely on an officer who works a Detail. The effects of Details thus permeate the entire Department. It is widely acknowledged that NOPD's Detail system is corrupting; as stated by one close observer of the Department, the paid Detail system may be the "aorta of corruption" within NOPD. Our interviews with NOPD officers, meetings with other New Orleans-based law enforcement agencies, criminal justice system stakeholders, and the public, revealed that NOPD's Detail system was a significant contributing factor to both the perception and reality of NOPD as a dysfunctional organization.

In the last few months, Superintendent Serpas has begun to implement measures meant to correct and prevent some of the negative impact of the Detail system. In August 2010, the Superintendent banned cash payments. But officers are still expected to negotiate their compensation with the Detail employer and officers who coordinate Details still wield inordinate influence including, in some instances, over their superiors. In December 2010, the Superintendent initiated a program to try to centralize Detail information by setting up a single telephone number for all officers to call to report working a Detail, and a web-based application for officers to enter additional Detail information. While these are undoubtedly improvements, it is too early to assess whether they are effective and, regardless, they are a small part of the wholesale remaking of the Detail system that is necessary.

6. Performance Evaluations and Promotions

NOPD's evaluation and promotion practices are deficient to the point that it may be impossible to correct patterns of constitutional misconduct without also correcting the failings of these systems. NOPD's promotional system does not adequately assess or consistently reward the officers who are best able to police effectively and constitutionally. Promotional decisions do not adequately consider misconduct by officers or their ability to lead with integrity and diligence. Performance evaluations do not sufficiently assess officers' conduct or value constitutional policing. As they currently function, NOPD's performance evaluation and promotion systems erode public confidence in the Department and facilitate officers' unconstitutional conduct.

People inside NOPD and in the broader New Orleans community view NOPD's promotion and performance evaluation systems as broken. In November 2010, a NOPD employee satisfaction survey ranked promotions and performance evaluations among the areas about which employees expressed the most dissatisfaction. While a slight majority of respondents agreed that the Department punishes unethical behavior, a mere 17% agreed that the Department rewards ethical behavior. Research shows that departments that reward officers who display exemplary leadership qualities with promotion foster the growth of a values-based,

ethical culture in the department. The NOPD survey also found that only 13% of respondents believed that “promotions are handled fairly.”

Our review similarly showed significant problems with both NOPD’s performance evaluations and its system of promotions. NOPD’s performance evaluations do not assess an officer’s crime prevention skills and abilities. There are no specific goals for the officers, and no assessment of an officer’s progress in achieving stated goals. Likewise, there is no assessment of an officer’s ability to build effective community partnerships or problem-oriented policing efforts. According to City officials, the city-wide performance evaluations have not changed in 20 years and are badly in need of updating. Consistent with recommendations from outside reviews, Civil Service Commission staff and police officials reported a need for more task-specific evaluations, but recognize that this would require the creation of different evaluations for different City departments, for which the City currently has allocated no funding. However, each department, including NOPD, already has the authority and ability to create their own performance evaluation overlay to the City-wide performance evaluation form. NOPD has not done this. In addition, training for supervisors on how to most effectively evaluate employees’ performance under the current system is insufficient, and performance evaluations are infrequent and intermittent, rather than part of an ongoing process. There is no formalized system of ongoing, documented, supervisory evaluation of subordinates’ work, and we saw very little evidence of informal evaluation.

Similarly, NOPD’s promotional system policies and practices are highly process related, too infrequently held, and include insufficient substantive assessment of candidates. NOPD’s promotional policies have not been revised in nearly ten years and, until very recently NOPD’s promotional exam had not been revised in years and was, by all accounts, woefully out of date. The infrequency of exams causes good officers to leave when they learn they have missed a promotion exam and it will be years before they have even an opportunity to compete for promotion. Infrequent exams mean also that officers who scored relatively low on the last exam are promoted over other officers who were not given a chance to compete.

Nor does NOPD’s current promotions system provide for appropriate assessment of promotional candidates. There is little consideration of community policing or ethics (reportedly, promotional candidates in the past “did not do so well” on the ethical scenarios that were incorporated into the exam). Current NOPD policy further undermines adequate consideration of an officer’s disciplinary history. By policy, only sustained violations for conduct with an *incident date* within the previous year of the promotion, and which resulted in a penalty greater than a Letter of Reprimand, are considered, and denial on even this ground appears discretionary.

We found that these problems directly impact NOPD’s ability to assess and promote officers who are effective and ethical.

7. Misconduct Complaint Intake, Investigation, and Adjudication

NOPD’s system for receiving, investigating, and resolving misconduct complaints, despite many strengths and recent improvements, does not function as an effective accountability

measure. Policies and practices for complaint intake do not ensure that complaints are complete and accurate, systematically exclude investigation of certain types of misconduct, and fail to track allegations of discriminatory policing. Field supervisors are not sufficiently trained or supported in conducting misconduct investigations. Deficiencies in policies, resources, training, and oversight weaken investigations and result in findings that are unsupported by the evidence.

Discipline and corrective action are meted out inconsistently and, too often, without sufficient consideration of the seriousness of the offense and its impact on the police-community relationship. Louisiana State law requiring that internal administrative investigations be completed within 60 days is laudable in intent, but in practice has allowed officers to commit egregious misconduct and get away with it. Apparent criminal misconduct by officers is inadequately investigated and has in the past too rarely been prosecuted.

There is a lack of transparency in the Civil Service Commission's review of officer appeals of NOPD disciplinary decisions, making it difficult to fully assess whether troubling reversals of disciplinary decisions are due to the Commission's failure to stay within the appropriate bounds of review, as is widely perceived. Our review of several years of Commission decisions indicates that, while there may be legitimate concerns about particular Commission decisions, significant weaknesses in NOPD's investigation of officer misconduct, and in NOPD's and the City's defense of disciplinary decisions, unquestionably contribute to many poor outcomes.

These deficiencies render NOPD's system for investigating and responding to allegations of officer misconduct ineffective at changing officer behavior or holding officers responsible for their actions. Consequently, the system has little legitimacy in the Department or in the broader New Orleans community.

NOPD is making efforts to improve its complaint investigation process. The Department has made innovative changes, such as appointing a civilian to lead PIB, and has implemented long-overdue corrections to basic policies, including clarifying an employee's duty to be honest and truthful and to cooperate with investigations; making dismissal the presumptive penalty for not being truthful; and requiring employees who become aware of misconduct to immediately report it to a supervisor. These changes mark a good beginning; however neither the public nor the police have confidence in NOPD's current system for investigating and responding to allegations of police misconduct. A fundamental transformation of the processes for investigating and responding to allegations of police misconduct must occur in order to regain the trust of the public and officers, and correct the pattern of constitutional misconduct we observed.

8. Community Oriented Policing

Community policing strategies balance reactive responses to calls for service with thoughtful and proactive problem-solving. This problem-solving is achieved in large part by forging robust relationships in the community. The Department's policies, training, and tactics support neither a community policing orientation, nor the ultimate goal of proactively addressing problems to reduce and prevent crime, rather than merely reacting to it. Within NOPD, the

concept of community policing is poorly understood and implemented only superficially. Outside the Department, community members, especially members of racial, ethnic, and language minorities, and the LGBT communities, expressed to us their deep distrust of and sense of alienation from the police. This crisis of confidence and credibility serves as both a barrier to an effective community oriented policing program, and as a compelling reason to prioritize its implementation.

NOPD has publicly acknowledged the need to repair and cultivate community partnerships to more effectively fight crime and increase respect for police officers throughout the New Orleans community. Indeed, in August 2010, the Superintendent released a 65-point plan to reform the Department, which opened with a commitment to prioritize community policing and to “listen, collaborate, and respond proactively.” The Department has implemented or announced plans to implement a number of community outreach programs, including: citizen callbacks regarding quality of service; Community Outreach Coordinator sergeants in each district; an expanded citizen academy; a partnership with clergy; and a program for bilingual outreach on public safety issues. While these initiatives are either in the planning stages or too new to have allowed for close assessment, we commend the Department’s stated interest and focus on genuinely assessing current attitudes toward the police, reaching out to diverse segments of the City, and enhancing community relations.

Nonetheless, considerable work lies ahead if community policing is to be a central feature of NOPD’s culture, decision-making, and organizational structure, consistent with the Department’s commitment. The Department does not adequately encourage or promote meaningful partnership, interaction, and communication with diverse stakeholders, which is critical to learning about and collaboratively addressing problems in the community. Indeed, community groups nearly uniformly said that the police rarely reach out to them; one member of a Vietnamese community organization reported that “[a] lot of the young Vietnamese people who get shot in this community, we know who shot them but the New Orleans police don’t do anything. They don’t talk to us. They don’t build community relationships.” We found that some NOPD officers tend not to view members of the public as potential collaborative partners or sources of information and insight about their communities, but rather as potential problems, cultivating an “us vs. them” atmosphere of mutual distrust.

NOPD has also failed to implement policies, training, and accountability measures to truly integrate and embed community- and problem-oriented policing principles into each aspect of its management, structure, and use of resources. Consequently, few in the Department believe they bear any responsibility for implementing community policing strategies, or even have a clear sense of what specific strategies would look like. Further, officers consistently reported that pressure to conduct stops and arrests diverts attention and resources from quality arrests, community engagement, and more considered problem-solving.

Now that NOPD has identified community policing as a priority, it will need to ensure that change is sustained and more than superficial. This will require review of the Department’s leadership, policies, climate and culture, systems of accountability, training and deployment of personnel, to ensure that they reflect and integrate community-oriented and problem-oriented strategies and practices.

9. Officer Assistance and Support

Officer assistance and support services are a significant component of a department's accountability system. The demeanor, judgment, and physical abilities that make an officer effective in carrying out law enforcement duties can be dangerously impaired when officers work under inordinate stress levels or while grappling with symptoms of mental illness. Police executives owe a duty to their community and officers to provide the services necessary to ensure the mental and physical wellness of their officers. NOPD is failing to provide such critical officer assistance and support services.

Stress is not an excuse for police misconduct, but officers who are mentally and physically fit generally are more productive; use fewer sick days; and importantly, may receive fewer complaints regarding demeanor or use of force. There is little question that NOPD is in need of officer assistance and support services. We found that a comprehensive system of officer assistance and support services for NOPD officers has never been in place, and that efforts to create a system have been faltering, even after Hurricane Katrina underscored the need. NOPD can better serve its officers and protect the public by implementing a centralized and comprehensive range of officer assistance and support services to address the stress and mental health needs of its employees.

10. Interrogation Practices

NOPD's custodial interrogation practices reflect many of the same problems we found throughout NOPD: inadequate policies, poor or non-existent training, weak supervision and accountability, and inadequate facilities and equipment. As a result of these problems, NOPD does not adequately use custodial interrogations to build cases. NOPD detectives conduct relatively few interrogations and the interrogations they do conduct are often perfunctory.

We found that NOPD's policies about what constitutes a constitutional interrogation are inadequate, as is NOPD's training and selection of detectives. NOPD practice further undermines the effectiveness and integrity of NOPD interrogations. Audio and video recordings of interrogations reflect that detectives do not conduct, or at least record, full interrogations. Documentation of interrogations is poor due to a number of deficient practices and systems. Most districts lack dedicated space and video recording equipment; officers only record a final summary statement by subjects and/or witnesses; officers generally destroy notes from unrecorded portions of interviews with subjects and witnesses after completing investigative reports; and taped interviews in the Districts are preserved inconsistently, if at all. Taken together, these deficiencies not only undermine NOPD's efforts to build strong criminal cases, but could also facilitate and hide constitutional violations of criminal suspects' rights. Indeed, we found credible allegations that such violations have occurred.

While we did not reach a conclusion on whether there is a pattern or practice of unconstitutional interrogations at NOPD, we did find that as NOPD increases its efforts to build more effective cases and improve the reliability and integrity of its criminal investigations,

current interrogation policies, training, and practices should be improved to ensure constitutional and effective interrogations.

11. Community Oversight

The City of New Orleans and NOPD have a long history of efforts to provide effective civilian oversight of the Department. For decades, the City's Office of Municipal Investigation served as an alternative to NOPD's PIB, accepting and investigating individual complaints of misconduct against NOPD officers (and other City employees), before it was defunded in 2008. A thoughtful and comprehensive report in 2001 by the Police-Civilian Review Task Force, which was comprised of well-regarded and prominent community advocates as well as NOPD representatives, considered whether and what type of civilian oversight might be appropriate for NOPD. The Task Force determined that an Independent Monitor who would review policies, procedures, complaint patterns, and the quality of complaint investigations, as well as make regular reports to elected officials, NOPD and the public, would "create the impetus and the focus for correcting problems," "empower citizens with the information necessary to effect change," and would in this way "increase the ability of citizens and the NOPD to identify, address, and correct problems, thereby improving the department and building citizen confidence and support." *Report of the Police-Civilian Review Task Force* at 5. As noted in the Task Force report, this type of "quality control monitoring" has been used in other communities and has had beneficial results. *Id.* at 6.

Almost a decade later, in August 2009, New Orleans created the Office of the Independent Police Monitor ("IPM") as an independent, civilian police oversight agency. According to the IPM, its mission is to: improve cooperation and trust between the community and NOPD through objective review of police misconduct investigations; provide outreach to the New Orleans community; and make thoughtful policy recommendations to the NOPD and the City Council. The IPM recently reached an agreement with NOPD to help ensure it has access to the information it needs to fulfill these responsibilities. Last year, the IPM volunteered to use its own funds to develop a new early warning system for NOPD, and is currently working with NOPD to implement this new system. We have met with the IPM's Police Monitor several times and have been impressed with her dedication to building genuine reform and a constructive relationship with NOPD and the community.

In addition, with assistance from DOJ's Community Relations Services, community leaders in New Orleans have contributed significant time and effort to develop a community advisory board in conjunction with NOPD and the Mayor's office. This board would serve as a sustainable mechanism for ongoing dialogue to understand and address concerns from the community as well as opportunities for the community and police department to work together to achieve common goals.

There are myriad types of civilian oversight and each is capable of improving police-community relations, preventing unconstitutional conduct, and helping to ensure a constructive response when such misconduct does occur. Because 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. We have some concerns regarding whether the IPM has received sufficient resources and latitude to carry out its duties effectively. Adequate staffing, as well as the ability and authority to promptly obtain internal NOPD records on officer conduct, will be critical to the IPM's success as an oversight mechanism. Additionally, while it is still in a nascent state, we are encouraged by the steps to develop a community advisory board and hopeful that this will be an important bridge in communications between NOPD and parts of the community most concerned about police misconduct.

When combined with practices that ensure appropriate transparency in police department decisions related to misconduct and tactics, and with tools to measure, assess, and respond to changing community attitudes towards policing over time, civilian oversight can help create a powerful form of community engagement that will ensure that reforms are sustained over time, even after court-ordered oversight has ended.

Summary of Recommendations

In conjunction with our experts, we developed recommendations for correcting the deficiencies that led to the patterns and practices of constitutional violations we observed. These recommendations are listed in the attachment to this Report.

The recommendations center on our key findings related to unconstitutional policing and its causes, and concern:

- Policies and procedures in each area we reviewed;
- Training for recruits, new officers, experienced officers, and supervisors;
- Supervision for officers in the field, including patrol and task force officers, and for detectives;
- Mechanisms of accountability, including force reporting and investigation, complaint intake and investigation, and discipline;
- Tracking and analyzing data to improve police practices, including an early warning system;
- Moving from policing to increase the number of arrests to an integration of community and problem-oriented policing strategies;
- Measures to address discriminatory policing;
- Paid Details;
- Officer assistance;
- Recruitment, performance evaluations, and promotions; and
- Community Oversight

Conclusion

The City of New Orleans took a critical step by asking the Civil Rights Division to conduct a thorough, independent investigation of the Police Department in an effort to bring about the “complete transformation” of NOPD. The Department of Justice’s investigation, involving extensive community engagement and in-depth review of NOPD practices, has

provided a fuller understanding of the systemic problems within the Department and the extent of the resulting harm. This understanding serves as the foundation upon which to build sustainable reform that will reduce crime and prevent crime more effectively, police all parts of the New Orleans' community fairly, respect the rights of all New Orleans' residents and visitors, and prepare and protect officers. Past reform efforts underscore the need for long term commitment and meaningful engagement of all key stakeholders to fundamentally and permanently transform the Department in this way. The incredible optimism and desire for change expressed by the people we met tells us that this transformation is within reach. We look forward to working with the City, the Police Department and the broader New Orleans community to ensure that this effort is successful.