

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA,
Plaintiff**

CIVIL ACTION

VERSUS

No. 12-1924

**CITY OF NEW ORLEANS,
Defendant**

SECTION "E"

ORDER

Before the Court is the Motion in *Limine* to Exclude Testimony and Evidence at the Fairness Hearing scheduled for September 21, 2012, in the above-captioned matter filed by the City of New Orleans (the "City").¹ The United States of America ("United States"), the Office of the Independent Police Monitor for the City of New Orleans ("OIPM"), Susan Hutson in her official capacity as Independent Police Monitor for the City of New Orleans, and Susan Hutson ("Hutson") in her individual capacity have filed memoranda in opposition to the City's motion.²

The City argues that "the purpose of the Fairness Hearing is to determine whether the proposed Consent Decree is 'fair, adequate, and reasonable.' As such, any testimony related to specific incidents of alleged police misconduct or alleged constitutional violations is prejudicial, irrelevant, goes beyond the scope of the Fairness Hearing, and should be

¹ R. Doc. 123. The Court granted the City's motion to expedite hearing of this motion on September 20, 2012. R. Doc. 125. The Court's Order directed that any memorandum in opposition to the City's Motion in *Limine* was to be filed no later than Friday, September 21, 2012, at 9:00 a.m.

² R. Docs. 126 and 127.

excluded pursuant to Federal Rules of Evidence 401-403.”³ The United States responds that

“[t]estimony about the problems the Decree is meant to address is relevant, as it will assist the Court in understanding why the Decree is necessary, and why its provisions are fair, adequate, and reasonable. Nor is there a danger of unfair prejudice, confusing the issues, or misleading the jury, as this is a judicial hearing rather than a jury trial.”⁴ The United States further states that while it “will offer testimony of individuals’ experiences with the police department,” it does not “intend for witnesses to identify specific officers. Nor will the United States discuss any pending criminal matters.”⁵

OIPM and Hutson urge the Court to deny the motion because:

1. Testimony related to specific incidents of alleged constitutional violations or police misconduct are the exact reason the parties are entering into a consent decree information of the character described in Petitioners['] [sic] Motion go directly to the fairness, reasonableness, and adequacy of the current consent decree.
2. The OIPM does not plan on presenting testimony to the court from any individual or family member associated with the Danziger Bridge killing or the Cover killing and further no matter is before this court related to the proposed testimony.
3. Testimony regarding constitutional violations or police misconduct in the past can't be prejudicial to the

³ R. Doc. 123-1 at p. 1. Rules 401 through 403 of the Federal Rules of Evidence address the relevancy of evidence presented to a court. In particular, Rule 403 provides that a court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403.

⁴ R. Doc. 126 at p. 1.

⁵ R. Doc. 126 at p. 2.

city because this information is already in the public domain and widely known.

4. The probative value of the proposed testimony far outweighs any prejudice because in determining the “fairness, adequacy, and reasonableness,” of this consent decree the court must consider the egregious nature of past conduct to determine the adequacy and fairness of any proposed remedy.⁶

The purpose of the Fairness Hearing is for the Court to assess the “fairness, adequacy, and reasonableness” of the proposed Consent Decree in this matter. In order to determine whether the proposed Consent Decree is adequate and reasonable, the Court must consider the events that led to the filing of this lawsuit and must put these events in context. It would be unreasonable for this Court to approve a consent decree if the New Orleans Police Department (“NOPD”) were not in need of reform. Furthermore, the adequacy of the proposed remedy may be judged only in light of the conduct that led to its proposal. To exclude all testimony “related to specific incidents of alleged police misconduct or alleged constitutional violations” as the City requests would not serve the interests of the Court or the public.

However, the Court is also charged with protecting the judicial process in this Court and other courts. The Court recognizes that there will be no opportunity for cross-examination in this proceeding and, as a result, no opportunity to question or challenge witnesses on any allegations made. Moreover, criminal and civil litigation regarding NOPD is pending or anticipated in both federal and state courts in Louisiana and allowing testimony with respect to pending matters could be problematic. Consequently, the Court will not permit testimony related to any such pending or anticipated criminal or civil

⁶ R. Doc. 127 at pp. 1-2.

litigation in federal or state court. Furthermore, the Court will not permit testimony identifying specific NOPD officers or City employees with respect to allegations of misconduct or unconstitutional policing. The Court is well aware of the allegations of misconduct against NOPD. Testimony in accordance with this Order will be sufficient for the Court to make the necessary determinations regarding the proposed Consent Decree. Thus,

IT IS ORDERED that the City's Motion in *Limine* be and is hereby **GRANTED IN PART** and **DENIED IN PART**.

New Orleans, Louisiana, this 21st day of September, 2012.


SUSIE MORGAN
UNITED STATES DISTRICT JUDGE